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CANAL ZONE CODE

CANAL ZONE CODE

Public Law 87-845
87th Congress, H. R. 10931
October 18, 1962

An Act

To revise and codify the general and permanent laws relating to and in force in the Canal Zone and to enact the Canal Zone Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the eight titles hereinafter set forth constitute the Canal Zone Code, embracing all the permanent laws relating to and applying in the Canal Zone other than the general laws of the United States that relate to or apply in the Canal Zone:

CANAL ZONE CODE

TITLE 1—GENERAL PROVISIONS

CHAPTER 1—THE CODE

§ 1. Scope and citation of Code

(a) The laws embraced in this Code constitute the "Canal Zone Code". This Code, and the then current supplement, certified by the Governor, establish the permanent laws relating to or in force in the Canal Zone, other than the general and permanent laws of the United States that relate to or apply in the Canal Zone, on the day preceding the commencement of the session following the last session the legislation of which is included; and they are legal evidence of those laws in all the courts of the United States, the District of Columbia, the Canal Zone, the several States, the territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(b) This Code may be cited by the abbreviation "C.Z.C.", preceded by the number of the title and followed by the number of the section, chapter, or part, of the title.

§ 2. Territorial application of Code

This Code applies throughout the Canal Zone, and throughout the corridor over which the United States of America exercises jurisdiction pursuant to the provisions of article IX of the General Treaty of Friendship and Cooperation between the United States of America and the Republic of Panama, signed March 2, 1936, to the extent that its application to that corridor is consistent with the nature of the rights of the United States therein.

§ 3. Edition with ancillaries; revisions; supplements

(a) The Governor shall cause the Canal Zone Code to be printed and published, with appropriate ancillary materials, and from time to time may cause revisions of the Code to be prepared, printed and published. For this purpose and for the supplements to the Code, the Governor, in such case, may negotiate, without advertising, a contract with a qualified law book publisher.

(b) The Governor shall cause cumulative supplements to this Code to be prepared, printed and published at least every two years.

(c) The supplements shall contain all amendments to this Code, amendment notes, annotations based upon pertinent court decisions, tables, and index, and such other ancillary materials as the Governor directs.

CHAPTER 3—PERSONAL AND CIVIL RIGHTS

Sec.

§ 31. Rights and guarantees

The principles of government enumerated below, that are essential to the rule of law and the maintenance of order, have applicability and force in the Canal Zone:

(1) Bills of attainder and ex post facto laws are void.

(2) Laws respecting the establishment of religion or prohibiting the free exercise thereof are void.

(3) Laws abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for a redress of grievances are void.

(4) The right of the people to be secure against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(5) A person may not be:

(A) put twice in jeopardy for the same offense; or

(B) compelled in any criminal case to be a witness against himself; or

(C) deprived of life, liberty, or property without due process of law.

(6) Private property may not be taken for public use, without just compensation.

(7) In criminal prosecutions, the accused has the right to:

(A) a speedy and public trial;

(B) be informed of the nature and cause of the accusation;

(C) except as provided by section 3507 of Title 6, be confronted with the witnesses against him;

(D) produce witnesses in his behalf and have compulsory process for obtaining them: and

(E) have the assistance of counsel for his defense.

(8) Excessive bail may not be required, nor excessive fine imposed, nor cruel or unusual punishments imposed.

(9) Slavery and involuntary servitude may not exist, except as a punishment for crime.

CHAPTER 5—RULES OF DEFINITIONS

Sec.

§ 61. Words denoting number, gender, etc.; definitions

As used in this Code, unless it is otherwise provided or the context requires a different meaning:

words importing the singular include the plural, and words importing the plural include the singular;

words importing the masculine gender include all genders;

words used in the present tense include the future as well as the present;

"affinity", when applied to the marriage relation, means the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other;

"agency", includes the Canal Zone Government, the Panama Canal Company, and any department, independent establishment, commission, administration, authority, board or bureau of the United States or corporation in which the United States has an interest, unless the context shows that the term is intended to be used in a more limited sense;

"aircraft" means contrivance used, capable of being used, or designed, for navigation or flight in the air;

"Canal Zone", in a geographical sense, embraces the same land, land under water, and islands that are designated as such by sections 1 and 2 of Title 2, and the corridor referred to in section 2 of this title, as far as its inclusion in the term "Canal Zone" is consistent with the General Treaty of Friendship and Cooperation between the United States of America and the Republic of Panama, signed March 2, 1936;

"department" means any one of the executive departments enumerated in section 158 of the Revised Statutes of the United States, as amended (5 U.S.C., sec. 1), unless the context shows that the term is intended to describe the executive, legislative, or judicial branch of the government of the United States.

"depose" means to make a written statement under oath;

"Government of the Canal Zone" embraces the Canal Zone Government, the agency continued under section 31 of Title 2, together with the judicial and law-enforcement offices and officers established or provided for by Title 3.

"insane person" includes every idiot, lunatic, and person non compos mentis;

"month" means a calendar month;

"oath" includes affirmation or declaration;

"officer" includes any person authorized by law to perform the duties of the office;

"person" and "whoever", respectively, include a corporation, company, association, joint stock company, firm, partnership, and society, as well as an individual;

"personal property" includes money, goods, chattels, things in action, and evidences of debt;

"President" means the President of the United States;

"process" means a writ or summons issued in the course of judicial proceedings;

"property" includes both real and personal property;

"real property" includes real estate, lands, tenements, and hereditaments, corporeal or incorporeal;

"seal" means a particular sign made to attest, in the most formal manner, the execution of an instrument; and a public seal, when the seal of a court or public officer is required by law to be affixed to any paper, means a stamp or impression of the seal, made with an instrument provided by law, upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression;

"signature" or "subscription" includes a mark of a person who can not write, as provided by section 65 of this title;

"State", when applied to different parts of the United States, includes the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico;

"sworn" includes "affirmed" or "declared";

"testify" includes every mode of oral statement under oath;

"United States" includes its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico;

"vehicle" includes every description of carriage, or other artificial contrivance used, or capable of being used, as a means of transportation on land;

"vessel", when used with reference to shipping or navigation, includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

"writ" means an order or precept in writing, issued in the name of the Government of the Canal Zone, or of a court or judicial officer;

"writing" includes printing and typewriting and reproduction of visual symbols by any process; and

"year" means a calendar year.

§ 62. Words and phrases

Words and phrases shall be interpreted according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined by section 61 of this title, shall be interpreted according to the peculiar and appropriate meaning or definition.

§ 63. Words giving joint authority

Words granting a joint authority to three or more persons grant the authority to a majority of them, unless otherwise provided.

§ 64. Notice

(a) Notice is:

(1) actual, which consists in express information of a fact; or

(2) constructive, which is imputed by law.

(b) A person who has actual notice of circumstances sufficient to put a man upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting the inquiry, he might have learned the fact.

§ 65. Execution of signature by mark

When a person, who can not write, makes his signature or subscription by a mark, his name must be written near it and the mark witnessed by another person who writes his own name as a witness; but when a signature is by mark and it is desired or required that the signature be acknowledged or serve as the signature to a sworn statement, it must be witnessed by two other persons who must subscribe their own names as witnesses thereto.

§ 66. Construction of Code

(a) The provisions of this Code, as far as they are substantially the same as statutes existing on January 2, 1963, shall be construed as continuations thereof, and not as new enactments.

(b) The provisions of this Code shall be construed according to the fair construction of their terms, with a view to effect its object and to promote justice.

CHAPTER 7—MAXIMS OF JURISPRUDENCE

Sec.
81. Enumeration and application.

§ 81. Enumeration and application

The following maxims of jurisprudence are intended not to qualify any of the provisions of this Code, but to aid in their just application:

(1) When the reason of a rule ceases, so should the rule itself.

(2) Where the reason is the same, the rule should be the same.

(3) One must not change his purpose to the injury of another.

(4) One may waive the advantage of a law intended solely for his benefit. But a law established for a public reason can not be contravened by a private agreement.

(5) One must so use his own rights as not to infringe upon the rights of another.

(6) One who consents to an act is not wronged by it.

(7) Acquiescence in error takes away the right of objecting to it.

(8) One can not take advantage of his own wrong.

(9) One who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

(10) One who can and does not forbid that which is done on his behalf is deemed to have bidden it.

(11) One should not suffer by the act of another.

(12) One who takes the benefit must bear the burden.

(13) One who grants a thing is presumed to grant also whatever is essential to its use.

(14) For every wrong there is a remedy.

(15) Between those who are equally in the right or equally in the wrong, the law does not interpose.

(16) Between rights otherwise equal, the earliest is preferred.

(17) No man is responsible for that which no man can control.

(18) The law helps the vigilant before those who sleep on their rights.

(19) The law respects form less than substance.

(20) That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

(21) That which does not appear to exist is to be regarded as if it did not exist.

(22) The law never requires impossibilities.

(23) The law neither does nor requires idle acts.

(24) The law disregards trifles.

(25) Particular expressions qualify those which are general.

(26) Contemporaneous exposition is in general the best.

(27) The greater contains the less.

(28) Superfluity does not vitiate.

(29) That is certain which can be made certain.

(30) Time does not confirm a void act.

(31) The incident follows the principal, and not the principal the incident.

(32) An interpretation which gives effect is preferred to one which makes void.

(33) Interpretation must be reasonable.

(34) Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

CHAPTER 9—HOLIDAYS

§ 111. Legal holidays

(a) The following are legal holidays:
Every Sunday
January 1 (New Year's Day)
February 22 (George Washington's Birthday)
Good Friday
May 30 (Memorial Day)
July 4 (Independence Day)
First Monday in September (Labor Day)
November 3 (Panamanian Independence Day)
November 11 (Veterans Day)
Thanksgiving Day
December 25 (Christmas Day)
and such other days as may, pursuant to law, be declared to be holidays.

(b) As far as practicable, all public business shall be suspended on the holidays enumerated in subsection (a) of this section.

§ 112. Business days

All days other than those specified by section 111 of this title are business days for all purposes.

§ 113. Performance of acts under law or contract

An act of a secular nature, other than a work of necessity or mercy, appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

TITLE 2—ADMINISTRATION AND REGULATION

PART 1—ADMINISTRATION

CHAPTER 1—CANAL ZONE

§ 1. Designation

The zone of land and land under water granted to the United States by the treaty with the Republic of Panama, dated March 18, 1903, as modified by subsequent treaties, shall be known and designated as the Canal Zone, and the canal constructed thereon shall be known and designated as the Panama Canal.

§ 2. Acquisition of additional land; exchange of land

The President, by treaty with the Republic of Panama, may:

(1) acquire additional land or land under water not already granted, or which was excepted from the grant, which he deems necessary for the maintenance, operation, sanitation or protection of the Panama Canal and the Canal Zone; and

(2) exchange land or land under water not deemed necessary for those purposes, for other land or land under water which he deems necessary for those purposes.

The additional land or land under water so acquired shall become part of the Canal Zone.

§ 3. Towns and subdivisions

The President shall:

(1) determine or cause to be determined what cities or towns shall exist in the Canal Zone; and

(2) subdivide and from time to time re-subdivide the zone into subdivisions with clearly defined boundaries, which he shall designate by name or number, so that at least one city or town will be situated in each subdivision.

CHAPTER 3—EXECUTIVE

Sec.

§ 31. Canal Zone Government; administration and functions generally

The Canal Zone Government, an independent agency of the United States, shall:

(1) be administered, under the supervision of the President or such officer of the United States as may be designated by him, by a Governor of the Canal Zone; and

(2) be charged, except as otherwise provided by law, with the performance of the various duties connected with the civil government, including health, sanitation, and protection, of the Canal Zone.

§ 32. Appointment and term of Governor

The President, by and with the advice and consent of the Senate, shall appoint the Governor of the Canal Zone. The Governor shall hold office for a term of four years and until his successor is appointed and has qualified.

§ 33. General powers and duties of Governor

The Governor of the Canal Zone shall:

(1) have official control and jurisdiction over the Canal Zone; and

(2) perform all duties in connection with the civil government of the Canal Zone, which is to be held, treated and governed as an adjunct of the Canal.

§ 34. Army control in time of war or imminence of war

In time of war in which the United States is engaged, or when, in the opinion of the President, war is imminent, such officer of the Army as the President may designate shall, upon order of the President, assume and have exclusive authority and jurisdiction over the operation of the Panama Canal and all its adjuncts, appendants and appurtenances, including the entire control and government of the Canal Zone. During a continuation of this condition, the Governor of the Canal Zone shall be subject to the order and direction of the officer so appointed, in all respects and particulars as to:

(1) the operation of the Canal; and

(2) all duties, matters and transactions affecting the Canal Zone.

§ 35. Assistance of Armed Forces

The Governor of the Canal Zone may call upon the Commander of the Armed Forces of the United States in the Canal Zone for military assistance, whenever the Governor deems the assistance of the Armed Forces necessary to:

(1) protect the Canal Zone;

(2) preserve the peace;

(3) quell or disperse routs or riots; or

(4) disperse unlawful assemblies.

CHAPTER 5—PANAMA CANAL COMPANY

Sec.

§ 61. Continuation, purposes, offices and residence of the Company

(a) For the purposes of maintaining and operating the Panama Canal and of conducting business operations incident thereto and incident to the civil government of the Canal Zone, the Panama Canal Company is continued as a body corporate and as an agency and instrumentality of the United States.

(b) The Company shall have perpetual succession in its corporate name, unless dissolved by Act of Congress.

(c) The principal offices of the Company shall be in the Canal Zone, but the Company may establish agencies or branch offices in such other places as it deems necessary or appropriate in the conduct of its business. Within the meaning of the laws of the United States relating to venue in civil actions, the Company is an inhabitant and resident of the Canal Zone and of the District of Columbia.

§ 62. Investment of the United States

(a) The receipt issued as of July 1, 1948, to the United States and delivered to the Secretary of the Treasury, acknowledging the transfer to the Company, as then required by law, of the net assets of the

Panama Railroad Company, a corporation created by an Act of the Legislature of the State of New York passed on April 7, 1849, as amended by an Act of that legislature passed on April 12, 1855, and which was wholly owned by the United States, shall be, either in its original amount of $1 or in the amount to which it subsequently has been or is increased as required by law, evidence of the ownership of the Panama Canal Company by the United States.

(b) The President of the United States or such officer of the United States as he designates, shall be known as the "stockholder", and shall represent the United States in its capacity as owner of the Company.

(c) The amount of the receipt referred to by subsection (a) of this section shall be increased by subsequent additional direct investments of the United States, in excess of repayments to the Treasury and extraordinary expenditures and losses applicable as offsets to such investments under the provisions of subsection (f) of this section, due to:

(1) funds advanced to the Panama Canal Company from the Treasury within such appropriations as the Congress from time to time may make for the purpose of meeting increased capital needs; and

(2) transfers to the Panama Canal Company from other Government agencies (or, conversely, decreased by transfers from the Company to other Government agencies), pursuant to applicable provisions of law, of business enterprises, facilities, appurtenances, and other assets, less liabilities assumed in connection with the transfers.

(d) Transfers of properties and other assets from or to other Government agencies pursuant to paragraph (2) of subsection (c) of this section shall be at such appropriate amounts as are agreed upon between the Panama Canal Company and the agencies concerned and approved by the Director of the Bureau of the Budget. In the determination thereof, due consideration shall be given to the cost and probable earning power of the transferred assets, or usable value to the transferee if clearly less than cost, and adequate provisions made for depreciation of properties and equipment, obsolete or otherwise unusable inventories and other reasonably determinable shrinkages in values, and, insofar as practicable, there shall be excluded from the amount any portion of the value of the transferred property which is properly allocable to national defense. The board of directors shall certify to the Secretary of the Treasury the amount of each transfer, the amount of any accumulated repayments to the Treasury or extraordinary expenditures or losses applicable as offsets to the amount of the transfer under the provisions of subsection (f) of this section, and the effective date of the transfer.

(e) In order to reimburse the Treasury, as nearly as possible, for the interest cost of the funds or other assets directly invested in it, the Panama Canal Company shall pay interest to the Treasury on the net direct investment of the Government in it as defined by subsections (a), (c) and (d) of this section, and shown by the receipt described therein, at a rate or rates determined by the Secretary of the Treasury as required to reimburse the Treasury for its cost. Payments of the interest charges shall be made annually to the extent earned, and if not earned shall be made from subsequent earnings.

(f) The Panama Canal Company shall account for its surplus, as follows:

(1) the total net income from operations from and after 1904 (when the Government acquired control of the Panama Canal Railroad Company), plus the undistributed net income prior to 1904; less

(2) payments to the Treasury as dividends from and after 1904, not applied as offsets to direct capital contributions as described below; and less

(3) extraordinary expenditures or losses incurred through directives based on national policy and not related to the operations of the Panama Canal Company, not reimbursed through specific appropriations by the Congress, and not applied as offsets to direct capital contributions as described below.

The Panama Canal Company may not be required to pay interest to the Treasury on any part of its surplus, as above defined. Repayments to the Treasury as dividends shall be applicable as offsets against directly contributed capital, past or future, in determining the base for the interest payments required by subsection (e) of this section. Extraordinary expenditures and losses, as defined by paragraph (3) of this subsection, to the extent that they are not reimbursed through specific appropriations, shall be considered as repayments to the Treasury analogous to dividends and similarly applicable as offsets against directly contributed capital.

The net costs of operation of the Canal Zone Government, which are deemed to form an integral part of the costs of operation of the Panama Canal enterprise as a whole, shall not include interest but shall include depreciation and the reimbursement of other Government agencies for expenditures made on behalf of the Canal Zone Government. The payments into the Treasury, referred to in this subsection, shall be made annually to the extent earned, and if not earned shall be made from subsequent earnings unless the Congress otherwise directs.

(g) The Panama Canal Company is further obligated to pay into the Treasury as miscellaneous receipts amounts sufficient to reimburse the Treasury, as nearly as possible, for the:

(1) annuity payments under article XIV of the convention of November 18, 1903, between the United States of America and the Republic of Panama, as modified by article VII of the treaty of March 2, 1936, between those Governments; and

(2) net costs of operation of the agency known as the Canal Zone Government.

§ 63. Board of Directors; allowances; quorum; meetings

(a) A board of directors shall manage the affairs of the Panama Canal Company. The board shall consist of not less than nine nor more than thirteen members, including:

(1) the Governor, who shall serve as a director, ex officio; and

(2) the stockholder, if he elects to serve as a director.

The stockholder shall appoint all other members of the board, and neither this chapter nor any other law prevents the appointment and service, as a director, of an officer or employee of the United States. Each director so appointed shall hold office at the pleasure of the stockholder, and, before entering upon his duties, shall take an oath faithfully to discharge the duties of his office.

(b) The directors may not be paid a salary for their services, but, under regulations and in amounts prescribed by the board of directors, with the approval of the stockholder, may be paid by the Company a reasonable per diem allowance in lieu of subsistence expenses in connection with attendance at meetings of the board or in connection with the time spent on special service of the Company, and their travel expenses to and from meetings or when on special service, without regard to the Travel Expense Act of 1949, as amended (5 U.S.C., sec. 835 et seq.), or the regulations promulgated by the Director of the Bureau of the Budget pursuant to section 7 of that Act (5 U.S.C., sec. 840).

(c) The directors, of whom a majority constitute a quorum for the transaction of business, shall hold meetings as provided by the bylaws of the Panama Canal Company.

§ 64. President of the Company

The Governor shall serve, ex officio, as president of the Panama Canal Company.

§ 65. General powers of Company

(a) The Panama Canal Company may:

(1) adopt, alter, and use a corporate seal, which shall be judicially noticed;

(2) adopt, amend, and repeal bylaws governing the conduct of its general business and the performance of the powers and duties granted to or imposed upon it by law;

(3) sue and be sued in its corporate name, but an attachment, garnishment, or similar process may not be issued against salaries or other moneys owed by the Company to its employees;

(4) enter into contracts, leases, agreements, or other transactions;

(5) determine the character of, and necessity for, its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, and incur, allow, and pay them, subject to pertinent provisions of law generally applicable to Government corporations; and

(6) purchase, lease, or otherwise acquire, and hold, own, maintain, work, develop, sell, lease, exchange, convey, mortgage, or otherwise dispose of, and deal in, lands, leaseholds, and any interest, estate, or rights in real, personal, or mixed property, and any franchises, concessions, rights, licenses, or privileges necessary or appropriate for any of the purposes expressed in this chapter.

(b) The Panama Canal Company has the priority of the United States in the payment of debts out of bankrupt estates.

§ 66. Specific powers of Company

(a) Subject to the Government Corporation Control Act (31 U.S.C., sec. 841 et seq.), the Panama Canal Company may:

(1) maintain and operate the Panama Canal;

(2) construct, maintain, and operate a railroad across the Isthmus of Panama;

(3) construct or acquire, and operate, vessels for the transportation of passengers or freight, and for other purposes;

(4) construct or acquire, establish, maintain, and operate docks, wharves, piers, harbor terminal facilities, shops, yards, marine railways, salvage and towing facilities, fuel-handling facilities, motor-transportation facilities, power systems, water systems, a telephone system, construction facilities, living quarters and other buildings, guest houses, warehouses, storehouses, a printing plant, commissaries, and manufacturing, processing or service facilities in connection therewith, laundries, dairy facilities, restaurants, amusement and recreational facilities, and other business enterprises, facilities, and appurtenances necessary and appropriate for the accomplishment of the purposes of this chapter;

(5) make or furnish sales, services, equipment, supplies, and materials, as contemplated by this chapter, to:

(A) vessels;

(B) agencies of the Government of the United States;

(C) employees of the Government of the United States; and

(D) any other governments, agencies, persons, corporations, or associations eligible to make or receive such purchases, services, supplies, or materials under the laws prevailing at the time and the policies heretofore or hereafter adopted consistently with those laws;

(6) use the United States mails in the same manner and under the same conditions as the executive departments of the Federal Government; and

(7) take such actions as are necessary or appropriate to carry out the powers specifically conferred upon it.

(b) Subject to subsection (c) of this section, the Company may not undertake any new types of activities not included in the annual budget program prescribed by section 102 of the Government Corporation Control Act (31 U.S.C., sec. 847), except those which may be transferred to it pursuant to section 62(c)(2) of this title.

(c) If, during a period when the Congress is not in session, the board of directors, or the president of the Company, with the concurrence of as many of the directors as may be consulted without loss of time unreasonable in the circumstances, declares an emergency to exist, the Company may undertake recommended appropriate action within the scope of this chapter, without regard to the restriction imposed by subsection (b) of this section. A report on the emergency activity shall be presented promptly to the Congress, when it reconvenes, for its approval and such action as it may deem necessary or desirable with respect to reimbursement through supplemental appropriation of funds to cover costs or losses arising from the emergency.

§ 67. Subjection to treaties and laws applicable to Panama Railroad Company

As far as consistent with this chapter, the Panama Canal Company is subject to all treaties and Acts of the Congress relating or applying to the Panama Railroad Company, as long as they remain in force; and has all the rights, privileges, and exemptions, and is subject to all the obligations, liabilities, and responsibilities, applicable to the Panama Railroad Company under or by virtue of those treaties or Acts.

§ 68. Rights in assets taken over upon dissolution of Panama Railroad Company; liabilities

(a) The Panama Canal Company shall possess all the right, title, and interest in and to the assets taken over, as of July 1, 1948, from the Panama Railroad Company, since dissolved, which the United States then possessed or, by virtue of the convention of November 18, 1903, between the United States and the Republic of Panama, thereafter acquired or may hereafter acquire, and which, pursuant to law, were released and transferred, as of July 1, 1948, to the Company.

(b) Subsection (a) of this section does not apply to any right, title, or interest transferred or conveyed to the Republic of Panama after July 1, 1948, under applicable provisions of law or of any convention or treaty.

(c) The Company is responsible for the payment and discharge of all remaining liabilities of the Panama Railroad Company, which, as authorized by law, the Company assumed as of July 1, 1948.

§ 69. Reimbursement of other agencies

The Panama Canal Company shall reimburse the Employees' Compensation Fund, Bureau of Employees' Compensation, Department of Labor, for the benefit payments made to the Company's employees, and shall also reimburse other Government agencies for payments of a similar nature made on its behalf.

§ 70. Payment of excess funds into Treasury

The board of directors shall appraise, at least annually, its necessary working capital requirements, together with reasonable foreseeable requirements for authorized plant replacement and expansion and pay into the Treasury as dividends the amount of funds in excess thereof. The dividends shall be treated by the Treasury as miscellaneous receipts, but shall be treated on the books of the Company as applicable to reduction of past or future direct Government capital contributions (as provided by section 62(f) of this title) in determining the base for interest payments required by section 62(e) of this title.

§ 71. Borrowing from Treasury

The Panama Canal Company may borrow from the Treasury, for any of the purposes of the Company, not more than $10,000,000 outstanding at any time. For this purpose, the Company may issue to the Secretary of the Treasury its notes, or other obligations, which shall have maturities agreed upon by the Company and the Secretary of the Treasury, but shall be redeemable at the option of the Company before maturity in such manner as may be stipulated in the obligations. Each obligation shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on current marketable obligations of the United States of comparable maturities as of the last day of the month preceding the issuance of the obligation of the Company. The Secretary of the Treasury shall purchase obligations of the Company to be issued under this section, and for such purpose the Secretary of the Treasury may use as a public-debt transaction the proceeds from the sale of any securities issued pursuant to the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued pursuant to the Second Liberty Bond Act, as amended, are extended to include any purchases of the Company's obligations pursuant to this section.

§ 72. Appropriations to cover losses

Appropriations are authorized for payment to the Panama Canal Company of such amounts as may be shown in its annual budget program as necessary to cover losses sustained in the conduct of its activities. Amounts appropriated to the Company under authority of this section may not be added to the amount of the receipt referred to in subsections (a) and (c) of section 62 of this title, and may not require payment of interest pursuant to section 62(e) of this title.

Repayments by the Company to the Treasury may not, in any case, be treated as dividends pursuant to section 62(f) and section 70 of this title, until all amounts appropriated to the Company under the authority of this section are repaid to the Treasury.

§ 73. Transfer of Canal and facilities to Company

The transfer to the Company, made by the President under authority of law, of:

(1) the Panama Canal, together with the facilities and appurtenances related thereto;

(2) the facilities and appurtenances maintained and operated, prior to the transfer, by the Panama Canal under authority of section 51 of Title 2 of the Canal Zone Code of 1934, as amended by section 2 of the Act of August 12, 1949, chapter 422, 63 Stat. 601 (since repealed); and

(3) personnel, property, records, related assets, contracts, obligations, and liabilities of or appertaining to the Canal and such facilities or appurtenances—

shall be deemed to have been accepted and assumed by the Company without the necessity of any act on the part of the Company except as otherwise stipulated by section 62 of this title.

§ 74. Insurance coverage

The Panama Canal Company may not carry insurance to cover marine or fire losses.

This section does not apply to the matter, governed by the Act of July 8, 1937 (50 Stat. 480; 5 U.S.C., sec. 134c), of insurance against loss, destruction, or damage in the shipment of valuables.

§ 75. Amendment or repeal

The right to amend or repeal sections 61–73 of this title is expressly reserved.

CHAPTER 7—EMPLOYEES OF GOVERNMENT AGENCIES

SUBCHAPTER I—CANAL ZONE GOVERNMENT EMPLOYEES

SUBCHAPTER II—PANAMA CANAL COMPANY EMPLOYEES

SUBCHAPTER III—WAGE AND EMPLOYMENT PRACTICES

SUBCHAPTER IV—RETIREMENT AND OTHER BENEFITS

SUBCHAPTER V—MISCELLANEOUS

Subchapter I—Canal Zone Government Employees

§ 101. Appointment and compensation of Government employees

(a) Except as otherwise provided by law, and subject to the supervision provided by section 31 of this title, the Governor shall:

(1) appoint all officers and employees of the Canal Zone Government; and

(2) prescribe the compensation of officers and employees of the Canal Zone Government, and establish their conditions of employment, including matters relating to transportation, medical care, leave, office hours, and hours of labor.

(b) Compensation prescribed by the Governor under this section may not exceed, in any case, by more than 25 percent, the compensation paid for the same or similar services to persons employed by the Government in the continental United States. The definition of "continental United States" contained in section 141 of this title applies to that term as used in this subsection.

(c) This section does not affect the application to employees of the Canal Zone Government of the provisions of section 23 of the Independent Offices Appropriation Act, 1935 (48 Stat. 522; 5 U.S.C., sec. 673c).

§ 102. Exemption of teachers with respect to dual offices and double salaries

Section 2 of the Legislative, Executive, and Judicial Appropriation Act, approved July 31, 1894, as amended (28 Stat. 205; 5 U.S.C., sec. 62), and section 6 of the Legislative, Executive, and Judicial Appropriation Act, approved May 10, 1916, as amended (39 Stat. 120; 5 U.S.C., sec. 58), do not apply to teachers in the public schools of the Canal Zone who are also employed in night schools or in vacation schools or programs.

§ 103. Deduction from compensation of amounts due for supplies or services

Amounts due from officers and employees, whether to the Canal Zone Government, Panama Canal Company, or contractor, for transportation, board, supplies or any other service, may be deducted from the compensation otherwise payable to them, and may be paid to the authorized parties or credited to the appropriation out of which the transportation, board, supplies, or other service was originally paid.

Subchapter II—Panama Canal Company Employees

§ 121. Appointment and compensation; duties; delegation of powers; bonds

(a) Except as provided by section 64 of this title, the Panama Canal Company may:

(1) appoint, fix the compensation of, and define the authority and duties of, officers, agents, attorneys, and employees necessary for the conduct of the business of the Company;

(2) require such of the persons appointed, whom it designates, to be bonded, and fix the penalties and pay the premiums of the bonds; and

(3) delegate to the persons appointed such of its powers as it deems necessary.

(b) Officers and employees of the United States, may, if appointed under this section, serve as officers or employees of the Company.

§ 122. Deduction from compensation of amounts due for supplies or services

Section 103 of this title applies to the Panama Canal Company and to its officers and employees.

§ 123. Hours of work for telegraph operators and train dispatchers

(a) Except as provided by subsection (b) of this section, the Panama Canal Company may not require or permit any employee of the Company who, by the use of the telegraph or telephone, dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements, to be or remain on duty for a longer period than:

(1) nine hours in a twenty-four-hour period in a tower, office, place or station continuously operated night and day; or

(2) thirteen hours in a tower, office, place or station operated only during the daytime.

(b) In case of emergency, the Panama Canal Company may permit the employees referred to in subsection (a) of this section to be and remain on duty for four additional hours in a twenty-four-hour period for not more than three days in a week.

Subchapter III—Wage and Employment Practices

§ 141. Definitions

As used in this subchapter:

"continental United States" means the several States of the United States of America existing on July 25, 1958, and the District of Columbia;

"department" means a department, agency, or independent establishment in the executive branch of the Government of the United States (including a corporation wholly owned or controlled by the United States) which conducts operations in the Canal Zone;

"employee" means an individual holding a position; and

"position" means those duties and responsibilities of a civilian nature under the jurisdiction of a department:

(1) which are performed in the Canal Zone; or

(2) with respect to which the exclusion of individuals from the Classification Act of 1949, as amended (5 U.S.C., ch. 21), is provided for by section 202(21)(B) of that Act, as amended (5 U.S.C., sec. 1082(21)(B)).

§ 142. General rules governing wage and employment practices

(a) The head of each department shall conduct the wage and employment practices in the Canal Zone of his department in accordance with the:

(1) principles established in item 1 of the Memorandum of Understandings set forth in section 1(b) of Public Law 85-550 (July 25, 1958, 72 Stat. 405);

(2) provisions of this subchapter;

(3) regulations promulgated by, or under the authority of, the President of the United States in accordance with this subchapter; and

(4) provisions of applicable law.

(b) To the extent he deems appropriate, the President may:

(1) exclude any employee or position from this subchapter or from any provision of this subchapter; and

(2) extend to any employee, whether or not the employee is a citizen of the United States, the same rights and privileges as are provided by applicable laws and regulations for citizens of the United States employed in the competitive civil service of the Government of the United States.

§ 143. Employment standards

The head of each department shall establish written standards for the:

(1) determination of the qualifications and fitness of employees and of individuals under consideration for appointment to positions; and

(2) selection of individuals for appointment, promotion, or transfer to positions.

The standards shall conform with this subchapter, the regulations referred to in section 155(a) of this title, and the Canal Zone Merit System referred to by section 149 of this title.

§ 144. Compensation

(a) The head of each department, in accordance with this subchapter, shall establish, and from time to time may revise, the rates of basic compensation for positions and employees under his jurisdiction.

(b) The rates of basic compensation may be established and revised in relation to the rates of compensation for the same or similar work performed in the continental United States or in such areas outside the continental United States as may be designated in the regulations referred to in section 155(a) of this title.

(c) The head of each department may grant increases in rates of basic compensation in amounts not to exceed the amounts of the increases granted, from time to time, by Act of Congress in corresponding rates of compensation in the appropriate schedule or scale of pay. The head of the department concerned may make the increases effective as of such date as he designates but not earlier than the effective date of the corresponding increases provided by the Act of Congress.

(d) A rate of basic compensation established under this section may not exceed by more than 25 percent, when increased by the amounts of the allowance and the differential authorized by section 146 of this title, the rate of basic compensation for the same or similar work performed in the continental United States by employees of the Government of the United States.

§ 145. Uniform application of standards and rates

The established employment standards and rates of basic compensation established pursuant to sections 143 and 144 of this title shall be applied uniformly, irrespective of whether the employee or individual concerned is a citizen of the United States or a citizen of the Republic of Panama.

§ 146. Additional allowance and differential

In addition to established basic compensation, there shall be paid to each employee who is a citizen of the United States such amounts as the head of the department concerned determines to be payable, as follows:

(1) an allowance for taxes which operate to reduce his disposable income in comparison with the disposable incomes of those employees who are not citizens of the United States; and

(2) an overseas (tropical) differential not in excess of an amount equal to 25 percent of the aggregate amount of the rate of basic compensation so established and the amount of the allowance provided in accordance with paragraph (1) of this section.

§ 147. Security positions

Notwithstanding any other provision of this subchapter but subject to the regulations referred to in section 155(a) of this title, the head of each department may designate any position under his jurisdiction as a position which for security reasons shall be filled by a citizen of the United States; including but not limited to, positions (a) involving security of property; (b) involving access to defense information not releasable to foreign nationals; or (c) requiring the use of United States citizens to insure continuity and capability of operation and administration of activities in the Canal Zone by the United States Government.

§ 148. Benefits based on compensation

For the purpose of determining:

(1) amounts of insurance under the Federal Employees' Group Life Insurance Act of 1954, as amended (5 U.S.C., sec. 2091 et seq.);

(2) amounts of compensation for death or disability under the Federal Employees' Compensation Act, as amended (5 U.S.C., sec. 751 et seq.);

(3) amounts of overtime pay or other premium compensation;

(4) benefits under the Civil Service Retirement Act, as amended (5 U.S.C., sec. 2251 et seq.);

(5) annual leave benefits; and

(6) other benefits related to basic compensation—

the basic compensation of each employee who is a citizen of the United States shall include the rate of basic compensation established for his position, and the amount of the allowance and the differential determined, in the manner respectively provided by sections 144 and 146 of this title.

§ 149. Canal Zone Merit System

(a) Subject to this subchapter, the President or his designee may, from time to time, amend or modify the provisions of the Canal Zone Merit System of selection for appointment, reappointment, reinstatement, re-employment, and retention, with respect to positions, employees, and individuals under consideration for appointment to positions, established by regulations under authority of the President.

(b) The Canal Zone Merit System, irrespective of whether the employees or individuals concerned are citizens of the United States or citizens of the Republic of Panama, shall:

(1) be based solely on the merit of the employee or individual and upon his qualifications and fitness to hold the position concerned; and

(2) apply uniformly within and among all departments to positions, employees, and individuals concerned.

(c) The Canal Zone Merit System shall:

(1) conform generally to policies, principles, and standards established by or in accordance with the Civil Service Act of January 16, 1883, as amended and supplemented; and

(2) include provision for appropriate interchange of citizens of the United States employed by the Government of the United States between the merit system and the competitive civil service of the Government of the United States.

§ 150. Salary protection upon conversion of compensation base

Whenever the rate of basic compensation of an employee heretofore or hereafter established in relation to rates of compensation for the same or similar work in the continental United States is converted under authority of section 144 of this title to a rate of basic compensation established in relation to rates in areas other than the continental United States in the manner provided by section 144(b) of this title, he shall, pending transfer to a position for which the rate of basic compensation is established in relation to rates of compensation in the continental United States in the manner provided by section 144(b) of this title, and as long as he remains in the same position or in a position of equal or higher grade, continue to receive a rate of basic compensation not less than that to which he was entitled immediately prior to the conversion.

§ 151. Review and adjustment of classifications, grades, and pay level; by department

An employee may request at any time that the department in which he is employed:

(1) review the classification of his position or the grade or pay level for his position, or both; and

(2) revise or adjust such classification, grade, and pay level, or any of them, as the case may be.

The request for review and revision or adjustment shall be submitted and adjudicated in accordance with the regularly established appeals procedure of the department.

§ 152. Same; Board of Appeals; duties

There shall be, in conformity with this subchapter, and as prescribed by regulations promulgated by the President or his designee, a Canal Zone Board of Appeals. The regulations shall provide for, in accordance with this subchapter, the number of members of the Board, and their appointment, compensation, and terms of office, the selection of a Chairman of the Board, and the appointment and compensation of the Board's employees, and for other relevant and appropriate matters.

The Board shall review and determine the appeals of employees in accordance with section 153 of this title, and its decisions shall conform with the provisions of this subchapter.

§ 153. Same; appeals to Board; procedure; finality of decisions

(a) An employee may appeal to the Canal Zone Board of Appeals from an adverse determination made under section 151 of this title. The appeal shall be made in writing within a reasonable time, as prescribed in regulations promulgated by, or under the authority of, the President, after the date of the transmittal by the department to the employee of written notice of the adverse determination.

(b) The Board may authorize, in connection with an appeal pursuant to subsection (a) of this section, a personal appearance before the Board by the employee, or by his representative designated for the purpose.

(c) After investigation and consideration of the evidence submitted, the Board shall:

(1) prepare a written decision on the appeal;

(2) transmit its decision to the department concerned; and

(3) transmit copies of the decision to the employee concerned or to his designated representative.

(d) The decision of the Board on any question or other matter relating to an appeal is final and conclusive. The department concerned shall take action in accordance with the decision of the Board.

§ 154. Participation in training programs

Training programs established by a department shall be applied uniformly to each employee irrespective of whether he is a citizen of the United States or the Republic of Panama. Employees who are citizens of the Republic of Panama shall be afforded opportunity to participate in training programs on the same basis as that upon which opportunity to participate therein is afforded to employees who are citizens of the United States.

§ 155. Administration by President; regulations; delegation of authority

(a) The President shall coordinate the policies and activities of the respective departments under this subchapter, and may promulgate regulations necessary and appropriate to carry out the provisions and accomplish the purposes of this subchapter.

(b) The President may delegate any authority vested in him by this subchapter, and may provide for the redelegation of any such authority.

§ 156. Applicability of other laws

This subchapter does not affect the applicability of:

(1) the Veterans' Preference Act of 1944, as amended (5 U.S.C., sec. 851 et seq.);

(2) section 6 of the Act of August 24, 1912 (37 Stat. 555), as amended (5 U.S.C., sec. 652); and

(3) section 23 of the Independent Offices Appropriation Act, 1935 (48 Stat. 522), as amended (5 U.S.C., sec. 673c), or section 205 of the Federal Employees Pay Act of 1945, as amended (5 U.S.C., sec. 913), to those classes of employees within the scope of those two sections on July 25, 1958.

Subchapter IV—Retirement and Other Benefits

§ 181. Cash relief to certain former employees; applicability of Civil Service Retirement Act to certain employees

(a) The Governor of the Canal Zone, under the regulations prescribed by the President pursuant to the Act of July 8, 1937, as amended (50 Stat. 478; 68 Stat. 17), may continue the payments of cash relief to those individual former employees of the Canal Zone Government not coming within the scope of the former Canal Zone Retirement Act whose services were terminated prior to October 5, 1958, because of unfitness for further useful service by reason of mental or physical disability resulting from age or disease. Subject to subsection (b) of this section, such cash relief may not exceed $1.50 per month for each year of service of the employees so furnished relief, with a maximum of $45 per month, nor be paid to any employee who, at the time of termination for disability prior to October 5, 1958, had less than ten years' service with the Canal Zone Government and its predecessor agencies, including any service with the Panama Canal Company and its predecessor agencies, on the Isthmus of Panama.

(b) An additional amount of $10 per month, as authorized by the Public Law 86-672 (July 14, 1960, 74 Stat. 552), effective July 1, 1960, shall:

(1) be paid to each person who, on January 2, 1963, is receiving payment of cash relief under authority of the Act of July 8, 1937, as amended (50 Stat. 478; 68 Stat. 17); and

(2) be paid to each person who receives, or, after January 2, 1963, becomes entitled to receive, payment of cash relief under subsection (a) of this section.

The monthly payment of $10 herein provided for shall be in addition to any payments received before January 2, 1963, under the Act of July 8, 1937, as amended, or received under subsection (a) of this section, and shall be made without regard to the limitations contained therein.

(c) The Civil Service Retirement Act applies with respect to those individuals who were in the service of the Canal Zone Government or the Panama Canal Company on October 5, 1958, and who, except for the operation of section 13(a)(1) of the Act of July 25, 1958 (72 Stat. 410), would have been within the classes of individuals subject to the Act of July 8, 1937.

§ 182. Appliances for employees injured prior to September 7, 1916

The Governor may purchase artificial limbs or other appliances for persons who were injured in the service of the Isthmian Canal Commission or of the Panama Canal prior to September 7, 1916.

Subchapter V—Miscellaneous

§ 201. Compensation of persons in military, naval, or Public Health Service who serve Canal Zone Government or Panama Canal Company

(a) If the person appointed as Governor of the Canal Zone and President of the Panama Canal Company, or as Lieutenant Governor of the Canal Zone and Vice President of the Panama Canal Company, is in the military service of the United States, the amount of the official salary paid to him as a military officer shall be deducted from the amount of salary or compensation which is fixed by or pursuant to law for those respective offices.

(b) Except as provided in subsection (a) of this section, persons appointed to or employed in positions in the Canal Zone Government or the Panama Canal Company, who are under assignment for those purposes by the military, naval, or Public Health Service, shall not be paid by the Canal Zone Government or the Panama Canal Company any amount in excess of their military, naval, or Public Health Service pay for the period of that service.

(c) The Canal Zone Government and the Panama Canal Company shall annually pay to the military, naval, and Public Health services of the United States amounts sufficient to reimburse each of those services for the official salary paid to any person in their service for the period of appointment or employment by the Canal Zone Government or the Panama Canal Company.

(d) In the case of persons retired as members of a regular component of the armed forces or the Public Health Service of the United States who are appointed to or employed in positions in the Canal Zone Government or the Panama Canal Company, the amount of their retired pay shall be deducted from the amount of their civilian salary or compensation. This subsection does not require the deduction of the retired pay of any warrant officer or enlisted man.

CHAPTER 9—FUNDS AND ACCOUNTS

Sec.

§ 231. Consolidation of functions in relation to certain funds

The consolidation of the functions of receiving, disbursing and accounting for the funds of the Canal Zone Government and the Panama Canal Company with the functions of receiving, disbursing and accounting for the funds appropriated for the Canal Zone Government is authorized insofar as may be practicable, but separate accounts shall be kept of the transactions under each fund.

§ 232. Reimbursement of amounts expended in maintaining defense facilities and furnishing certain services

(a) Notwithstanding any other law:

(1) the Department of Defense shall reimburse the Panama Canal Company for amounts expended by the Company in maintaining defense facilities in standby condition for the Department of Defense; and

(2) amounts expended by the Canal Zone Government for furnishing education, and hospital and medical care to employees of agencies of the United States and their dependents, other than the Panama Canal Company and Canal Zone Government, less

amounts payable by the employees and their dependents, shall be fully reimbursable to the Canal Zone Government by those agencies.

(b) The appropriation or fund of the agency bearing the cost of the compensation of the employee concerned is made available for reimbursements under subsection (a)(2) of this section.

(c) Appropriations of the Department of Defense available for medical care are made available for the reimbursement of the Canal Zone Government for the cost of providing medical care for dependents of military personnel (to the extent that the care is authorized by chapter 55 of title 10, U.S. Code) in facilities operated by the Canal Zone Government.

§ 233. Use of funds for free medical and hospital care prohibited

Funds of the Canal Zone Government or the Panama Canal Company may not be used for providing free medical and hospital care to employees of the Panama Canal Company or the Canal Zone Government.

§ 234. Sale of water to Republic of Panama

Pending the establishment by the Republic of Panama of an independent water-supply system, and as long as the Republic desires to utilize a supply of water from the Canal Zone, the Republic of Panama shall pay to the Panama Canal Company, for the water so supplied, at such reasonable rate as may be agreed upon by the United States and the Republic of Panama.

§ 235. Disaster relief

If an emergency arises because of disaster or calamity by flood, hurricane, earthquake, fire, pestilence, or like cause, not foreseen or otherwise provided for, and occurring in the Canal Zone, or occurring in the Republic of Panama in such circumstances as to constitute an actual or potential hazard to health, safety, security, or property in the Canal Zone, the Canal Zone Government and the Panama Canal Company may expend available funds and utilize or furnish materials, supplies, equipment, and services for relief, assistance, and protection.

CHAPTER 11—CLAIMS FOR INJURIES TO PERSONS OR PROPERTY

SUBCHAPTER I—CLAIMS ARISING FROM CIVIL GOVERNMENT

SUBCHAPTER II—CLAIMS ARISING FROM OPERATIONS OF CANAL

Subchapter I—Claims Arising From Civil Government

§ 271. Claims for losses of, or damages to, property

The Governor, or his designee, may adjust and pay claims for losses of, or damages to, property arising from the civil government, including health, sanitation and protection, of the Canal Zone.

An award made to a claimant pursuant to this section shall be payable out of any moneys appropriated or made available for the civil government, including health, sanitation and protection, of the Canal

Zone; and the acceptance by the claimant of the award shall be final and conclusive on the claimant, and shall constitute a complete release by him of his claim against the United States.

This section does not apply to tort claims cognizable under section 1346(b) of Title 28, United States Code.

Subchapter II—Claims Arising From Operations of Canal

§ 291. Injuries in locks of Canal

The Panama Canal Company shall promptly adjust and pay damages for injuries to vessels, or to the cargo, crew, or passengers of vessels, which may arise by reason of their passage through the locks of the Panama Canal under the control of officers or employees of the company. Damages may not be paid where the injury was proximately caused by the negligence or fault of the vessel, master, crew, or passengers. If the negligence or fault of the vessel, master, crew, or passengers proximately contributed to the injury, the award of damages shall be diminished in proportion to the negligence or fault attributable to the vessel, master, crew, or passengers. Damages may not be allowed and paid for injuries to any protrusion beyond the side of a vessel, whether it is permanent or temporary in character. A vessel is considered to be passing through the locks of the Canal, under the control of officers or employees of the Company, from the time the first towing line is made fast on board before entrance into the locks and until the towing lines are cast off upon, or immediately prior to, departure from the lock chamber.

§ 292. Injuries outside locks

The Panama Canal Company shall promptly adjust and pay damages for injuries to vessels, or to the cargo, crew, or passengers of vessels which may arise by reason of their presence in the waters of the Canal Zone, other than the locks, when the injury was proximately caused by negligence or fault on the part of an officer or employee of the Company acting within the scope of his employment and in the line of his duties in connection with the operation of the canal. If the negligence or fault of the vessel, master, crew, or passengers proximately contributed to the injury, the award of damages shall be diminished in proportion to the negligence or fault attributable to the vessel, master, crew, or passengers. In the case of a vessel which is required by or pursuant to regulations prescribed pursuant to section 1331 of this title to have a Panama Canal pilot on duty aboard, damages may not be adjusted and paid for injuries to the vessel, or its cargo, crew, or passengers, incurred while the vessel was under way and in motion, unless at the time the injuries were incurred the navigation or movement of the vessel was under the control of a Panama Canal pilot.

§ 293. Measure of damages generally

In determining the amount of the award of damages for injuries to a vessel for which the Panama Canal Company is determined to be liable, there may be included:

(1) actual or estimated cost of repairs;

(2) charter hire actually lost by the owners, or charter hire actually paid, depending upon the terms of the charter party, for the time the vessel is undergoing repairs;

(3) maintenance of the vessel and wages of the crew, if they are found to be actual additional expenses or losses incurred outside of the charter hire; and

(4) other expenses which are definitely and accurately shown to have been incurred necessarily and by reason of the accident or injuries.

Agent's fees, or commissions, or other incidental expenses of similar character, or any items which are indefinite, indeterminable, speculative, or conjectural may not be allowed. The Panama Canal Company shall be furnished such vouchers, receipts, or other evidence as may be necessary in support of any item of a claim. If a vessel is not operated under charter but by the owner directly, evidence shall be secured if available as to the sum for which vessels of the same size and class can be chartered in the market. If the charter value can not be determined, the value of the use of the vessel to its owners in the business in which it was engaged at the time of the injuries shall be used as a basis for estimating the damages for the vessel's detention; and the books of the owners showing the vessel's earnings about the time of the accident or injuries shall be considered as evidence of probable earnings during the time of detention. If the books are unavailable, such other evidence shall be furnished as may be necessary.

§ 294. Delays for which no responsibility assumed

The Panama Canal Company is not responsible, and may not consider any claim, for demurrage or delays caused by:

(1) landslides or other natural causes;

(2) necessary construction or maintenance work on Canal locks, terminals, or equipment;

(3) obstructions arising from accidents;

(4) time necessary for admeasurement;

(5) congestion of traffic; or

(6) except as specially set forth in this subchapter, any other cause.

§ 295. Settlement of claims

The Panama Canal Company, by mutual agreement, compromise, or otherwise, may adjust and determine the amounts of the respective awards of damages pursuant to sections 291–293 of this title. Acceptance by a claimant of the amount awarded to him shall be deemed to be in full settlement of his claims.

§ 296. Actions on claims

A claimant for damages pursuant to section 291 or 292 of this title who considers himself aggrieved by the findings, determination, or award of the Panama Canal Company in reference to his claim may bring an action on the claim against the Company in the United States District Court for the District of the Canal Zone. In the action, the provisions of this subchapter, relative to the determination, adjustment, and payment of claims, and the provisions of the regulations established pursuant to section 1331 of this title, relative to navigation of Canal Zone waters and to transiting the Panama Canal, shall apply. An action for damages cognizable under this section shall not lie against the Company, otherwise, nor in any other court, than as provided in this section; nor may it lie against any officer or employee of the Company.

This section does not prohibit actions against the Company's officers or employees for damages for injuries resulting from their acts outside the scope of their employment or not in the line of their duties, or from their acts committed with intent to injure the person or property of another.

Actions under this section shall be tried by the court without a jury.

§ 297. Investigation of accident or injury giving rise to claim

Notwithstanding any other law, a claim may not be considered under this subchapter, or an action for damages lie thereon, unless, prior to the departure from Canal Zone waters of the vessel involved:

(1) the investigation by the competent authorities of the accident or injury giving rise to the claim has been completed; and

(2) the basis for the claim has been laid before the Panama Canal Company.

CHAPTER 13—PUBLIC LANDS

Sec.

§ 331. Acquisition by United States of title to land in Canal Zone

The President may declare by executive order that land and land under water within the limits of the Canal Zone is necessary for the construction, maintenance, operation, sanitation or protection of the Panama Canal, and extinguish, by agreement when advisable, claims and titles of adverse claimants and occupants. Upon failure to secure by agreement title to such a parcel of land or land under water the adverse claim or occupancy shall be disposed of and title thereto secured in the United States and compensation therefor fixed and paid in the manner provided in the convention with the Republic of Panama signed November 18, 1903, or such modification of that convention as may be made.

§ 332. Withdrawal of certain tract from effect of section 331

The tract of land situated within the Canal Zone, and more particularly described as lots numbered 641, 643, 645, and 647, in the town of Cristobal, Canal Zone, bounded on the north by Eleventh Street, on the east by Bolivar Street, on the south by lot numbered 649, and on the west by a vacant lot, having an extension from north to south of 120 feet and from east to west of 100 feet, and measuring in superficial area 12,000 square feet, is withdrawn from the operation of section 331 of this title and the Executive Order of December 5, 1912, relating thereto.

§ 333. Revocable licenses for lands outside town sites

(a) Whenever the Governor deems the action to be necessary to, or in the interest of, the Government of the United States and of the efficient maintenance, operation, sanitation, government, and protection of the Panama Canal and the Canal Zone, he or his designee may issue revocable licenses covering the use of tracts of land situated outside of town sites in the Canal Zone.

(b) The Governor shall prescribe the terms and conditions of licenses issued under this section, except that the licenses shall be revocable at the pleasure of the Governor and except that, upon revocation of a license hereunder, the licensee shall, immediately or upon such reasonable notice as the Governor prescribes, vacate the licensed area, remove therefrom all improvements which he may have placed upon the licensed area, and restore the licensed area to a condition satisfactory to the Governor, and the licensee may not be entitled to indemnification for the value of the improvements.

(c) Licenses issued by authority of the Governor prior to August 10, 1949, and still in force, covering the use of tracts of land for agricultural purposes are ratified and confirmed in accordance with the terms and conditions applicable to them, respectively. Upon the rev-

ocation of any of such licenses the terms and conditions applicable to which are such as to provide for compensation to the licensee in the reasonable value of the improvements made by him on said tract, to be determined in such manner as the Governor may direct, the compensation is authorized so to be determined and to be paid out of any moneys appropriated for that purpose, except that no compensation may be paid in the case of a license revoked on account of a material breach by the licensee of the terms and conditions applicable to his license, or where the licensee has abandoned the license, or in case of the death of the licensee.

§ 334. Revocable licenses for lots in town sites

The Governor or his designee may execute licenses for lots in town sites in the Canal Zone, revocable at the pleasure of the Governor. Upon revocation of a license, the licensee shall vacate and remove improvements at once without indemnity.

CHAPTER 15—PUBLIC PROPERTY AND PROCUREMENT

Sec.

§ 371. Acquisition or construction of structures, equipment, and improvements

Within the limits of available funds, the Governor may:

(1) purchase or otherwise acquire equipment; and

(2) within the Canal Zone, purchase or otherwise acquire, construct, repair, replace, alter, or enlarge any building, structure, or other improvement—

when in his judgment the action is necessary for the civil government, including health, sanitation, and protection of the Canal Zone.

§ 372. Transfers of properties between departments and agencies

(a) In the interest of economy and maximum efficiency in the utilization of Government property and facilities, there are authorized to be transferred between departments and agencies, with or without exchange of funds, all or so much of the facilities, buildings, structures, improvements, stock and equipment, of their activities located in the Canal Zone, as may be mutually agreed upon by the departments and agencies involved and approved by the Director of the Bureau of the Budget.

(b) With respect to transfers without exchange of funds, transfers:

(1) to or from the Panama Canal Company are subject to section 62 of this title; and

(2) to or from the Canal Zone Government shall be at such appropriate amounts as are agreed upon between the Canal Zone Government and the departments or agencies concerned and approved by the Director of the Bureau of the Budget.

(c) In determining the amounts referred to in paragraph (2) of subsection (b) of this section, due consideration must be given to the cost of the transferred assets, or usable value to the transferee if clearly less than cost, and adequate provision made for depreciation of properties and equipment, obsolete or otherwise unusable inventories, and other reasonably determinable shrinkages in values. The amounts shall be added to or deducted from the investment of the United States in the Canal Zone Government as applicable.

CHAPTER 17—TOLLS FOR USE OF CANAL

Sec.

§ 411. Prescription of measurement rules and tolls

The Panama Canal Company may prescribe, and from time to time change:

(1) the rules for the measurement of vessels for the Panama Canal; and

(2) subject to section 412 of this title, the tolls that shall be levied for the use of the Canal.

The rules of measurement and the tolls prevailing on January 2, 1963, shall continue in effect until changed as provided in this section.

The Company shall give six months' notice, by publication in the Federal Register, of proposed changes in basic rules of measurement and of changes in rates of tolls, during which period a public hearing shall be conducted.

Changes in basic rules of measurement and changes in rates of tolls shall be subject to, and shall take effect upon, the approval of the President of the United States, whose action in such matters shall be final.

§ 412. Bases of tolls

(a) Tolls on merchant vessels, army and navy transports, colliers, tankers, hospital ships, supply ships, and yachts shall be based on net vessel-tons of one hundred cubic feet each of actual earning capacity determined in accordance with the rules for the measurement of vessels for the Panama Canal, and tolls on other floating craft shall be based on displacement tonnage. The tolls on vessels in ballast without passengers or cargo may be less than the tolls for vessels with passengers or cargo.

(b) Tolls shall be prescribed at rates calculated to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal, together with the facilities and appurtenances related thereto, including interest and depreciation, and an appropriate share of the net costs of operation of the agency known as the Canal Zone Government. In the determination of the appropriate share, substantial weight shall be given to the ratio of the estimated gross revenues from tolls to the estimated total gross revenues of the Panama Canal Company exclusive of the cost of commodities resold, and exclusive of revenues arising from transactions within the Company or from transactions with the Canal Zone Government.

(c) The President of the United States may require vessels operated by the United States, including warships, naval tenders, colliers, tankers, transports, hospital ships, and other vessels owned or chartered by the United States for transporting troops or supplies, and ocean-going training ships owned by the United States and operated by State nautical schools, to pay tolls. If, however, they are not required to pay tolls, the tolls thereon shall nevertheless be computed and the amounts thereof shall be treated as revenues of the Panama Canal Company for the purpose of prescribing the rates of tolls, and shall be offset against the obligations of the Company under subsections (e) and (g) of section 62 of this title.

(d) The levy of tolls is subject to the provisions of section 1 of article III of the treaty between the United States of America and Great Britain signed November 18, 1901, of articles XVIII and XIX of the convention between the United States of America and the Republic of Panama concluded on November 18, 1903, and of article I of the treaty between the United States of America and the Republic of Colombia signed April 6, 1914.

(e) Capital investment for interest purposes shall not include any interest during construction.

CHAPTER 19—PUBLIC WRITINGS AND RECORDS

Sec.

§ 451. Inspection by persons having legitimate interest; judicial records

(a) Except as otherwise provided by subsection (b) of this section, section 271(b) of Title 3, or any other law, every person, who has a legitimate interest therein, has the right to inspect and take a copy of any public writing or record of the Canal Zone.

(b) Attorneys admitted to practice in the Canal Zone and other officers of the court may examine judicial records without the necessity for showing a legitimate interest therein.

§ 452. Public officers must give copies

Every public officer having the custody of a public writing or record that a person has a right to inspect pursuant to section 451 of this title must give him, on demand, a certified copy of it, on payment of the legal fees therefor.

§ 453. Removal of public records

The record of a conveyance of real property, or any other record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court, in cases where the inspection of the record is shown to be essential to the just determination of the cause of proceeding pending, or where the court is held in the same building with such office.

CHAPTER 21—BRIDGES

§ 471. Declaration and findings

It is declared that:

(1) the United States is obligated under the terms of point 4 of the General Relations Agreement between the United States and the Republic of Panama, effected by an exchange of notes signed at Washington on May 18, 1942 (Executive Agreement Series Numbered 452), to construct a tunnel under, or a bridge over, the Panama Canal at Balboa;

(2) a high-level bridge at that point would be more desirable than a tunnel;

(3) the Panama Canal Company should administer the construction, maintenance, and operation of the bridge and the approaches thereto; and

(4) the expenses of construction, maintenance, and operation of the bridge and the approaches thereto should be treated as extraordinary expenses incurred through a direction based on national policy and not related to the operations of the Panama Canal Company.

§ 472. Construction, maintenance, and operation of bridge

The Panama Canal Company shall construct, maintain, and operate a high-level bridge, including approaches, over the Panama Canal at Balboa, Canal Zone.

PART 2—REGULATION

CHAPTER 51—AERONAUTICS

§ 701. Air navigation; regulations

The Government of the United States possesses, to the exclusion of all foreign nations, sovereign rights, power, and authority over the air space above the lands and waters of the Canal Zone. Until Congress otherwise provides, the President shall prescribe, and from time to time may amend, regulations governing aircraft, air navigation, air-navigation facilities, and aeronautical activities within the Canal Zone.

§ 702. Penalties for violation

Whoever violates a regulation issued under section 701 of this title shall be fined not more than $500 or imprisoned in jail not more than one year, or both.

CHAPTER 53—ALCOHOLIC BEVERAGES

§ 731. Regulation of manufacture, sale, etc.

The President shall prescribe, and from time to time may amend, regulations relating to the:

(1) manufacture and sale of alcoholic beverages in the Canal Zone, and licenses and fees therefor; and

(2) importation of alcoholic beverages into, and exportation thereof from, the Canal Zone.

§ 732. Penalties for violation

Whoever violates a regulation issued pursuant to section 731 of this title shall be fined not more than $500 or imprisoned in jail not more than six months, or both, and, in addition, his license may be revoked or suspended as the President may prescribe by the regulations so issued.

CHAPTER 55—CUSTOMS SERVICE

SUBCHAPTER I—GENERALLY

SUBCHAPTER II—OFFENSES AND PENALTIES; OTHER ENFORCEMENT PROVISIONS

Subchapter I—Generally

§ 761. Control, by Governor, of articles or merchandise; regulations

The Governor has control, for customs purposes, over all articles introduced into the Canal Zone, including passengers' baggage, and shall establish, and from time to time may amend, regulations governing the:

(1) entry and importation of goods into the Canal Zone; and

(2) disposition of goods brought into the Canal Zone in violation of the regulations.

§ 762. Powers of customs officers

Customs officers in the Canal Zone, including deputy shipping commissioners and boarding officers when performing duties in relation to customs, have general powers of search, seizure, and arrest. In the exercise of these powers, they may:

(1) enter any building other than a dwelling house;

(2) stop vessels and vehicles;

(3) search vessels, vehicles, and their contents; and

(4) stop and search persons and packages carried by them.

Rights of entry, stopping, search, seizure, and arrest conferred by this section shall be exercised only when there are reasonable grounds for suspecting violations of the customs regulations issued pursuant to section 761 of this title or of the United States applicable in the Canal Zone.

§ 763. Fees of customs officers

A customs officer of the Canal Zone may collect a fee, equivalent to the fee prescribed by the United States consular regulations for the same act or service when performed by consular officials, whenever he:

(1) certifies an invoice, landing certificate, or other similar document;

(2) registers a marine note of protest; or

(3) performs any notarial service.

Subchapter II—Offenses and Penalties; Other Enforcement Provisions

§ 781. Customs offenses generally; penalties

Whoever:

(1) enters or imports, or attempts to enter or import, any articles or merchandise into the Canal Zone before the entry or importation thereof has been approved by the proper officers of the Canal Zone; or

(2) passes, or attempts to pass, a false, forged, or fraudulent invoice, bill, or other paper, for the purpose of securing the entry

or importation of any articles or merchandise into the Canal Zone in violation of the regulations issued pursuant to section 761 of this title; or

(3) violates a regulation issued pursuant to section 761 of this title—shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 782. Seizure and confiscation of articles illegally imported or obtained

Articles brought into or obtained in the Canal Zone in violation of regulations issued pursuant to section 761 of this title may be seized and held, and, unless entered in conformity with the regulations within a period of 30 days from the date of seizure, may be confiscated and disposed of as provided in the regulations.

§ 783. Penalty for omitting merchandise from manifest; forfeiture; exception

If a vessel arriving at the Canal Zone from a port, other than a port in the Canal Zone or the Republic of Panama, is found to have on board merchandise not manifested, the master of the vessel shall be liable to a penalty equal in amount to the value of the merchandise not manifested, and the merchandise belonging to or consigned to or for the officers or crew of the vessel shall be forfeited. The penalty may not be imposed if it is made to appear to the customs officers, or to the court in which the trial is held, that no part of the cargo has been unloaded except as accounted for in the master's report, and that the errors and omissions in the manifest were made without fraud or collusion. In that case the master may be allowed to correct his manifest by means of a post entry. A permit may not be granted to unload merchandise so omitted from the manifest before post entry or addition to report or manifest has been made.

§ 784. Penalty for omission of sea stores from list or landing of sea stores; forfeiture

If sea stores are found on board a vessel from a port, other than a port in the Canal Zone or the Republic of Panama, which are not specified in the list furnished the boarding officer, or if a greater quantity of sea stores is found than that specified in the list, or if sea stores are landed without a permit being first obtained from the customs officer for that purpose, the master of the vessel shall be liable to a penalty treble the value of the sea stores so omitted or landed, and the sea stores so omitted or landed shall be seized and forfeited.

CHAPTER 57—DOMESTIC ANIMALS

Sec.

§ 811. Regulations relating to the keeping and impounding of domestic animals

The Governor shall prescribe, and from time to time may amend, regulations:

(1) governing the keeping of domestic animals within the Canal Zone;

(2) prescribing where and under what conditions domestic animals may be permitted to be at large, and when, where and under what conditions domestic animals shall be confined; and

(3) providing for the:

(A) impounding of animals;

(B) charges to be paid for the impounding and care of animals if claimed by the owner;

(C) disposition of unclaimed animals; and

(D) disposition of the proceeds of the sale of unclaimed animals, if sold.

§ 812. Penalties for violation

Whoever violates a regulation issued pursuant to section 811 of this title shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 59—EXCLUSION AND DEPORTATION OF PERSONS

Sec.

§ 841. Regulations governing entry, passage, detention, and deportation of persons; penalties

(a) The President shall prescribe, and from time to time may amend, regulations governing the:

(1) rights of persons to enter, remain upon or pass over any part of the Canal Zone; and

(2) detention of persons entering the Canal Zone in violation of the regulations, and their return to the countries whence they came, on the vessels bringing them to the Canal Zone, or other vessels belonging to the same owners or interests, and at the expense of the owners or interests.

(b) Whoever violates a regulation issued pursuant to this section shall be fined not more than $500 or imprisoned in jail not more than one year, or both.

(c) The Canal Zone Government may withhold the clearance of a vessel referred to in subsection (a) (2) of this section until any fine imposed pursuant to subsection (b) of this section and the cost of maintenance of the person convicted are paid.

§ 842. Punishment for returning after imprisonment and deportation

Except as provided by section 843 of this title, whoever, after having served a sentence of imprisonment in the Canal Zone and having been deported therefrom, voluntarily enters the Canal Zone for any purpose, shall be imprisoned in the penitentiary not more than two years, or in jail not more than one year.

§ 843. Revocation of deportation order or permission to re-enter temporarily; punishment for violation

(a) The Governor may:

(1) at any time, for good cause shown, revoke an order deporting a person following service of a sentence of imprisonment in the Canal Zone; or

(2) by permit or regulations, authorize a person who has been deported following service of a sentence of imprisonment in the Canal Zone to pass through or return temporarily to the Canal Zone, and prescribe the route over which he must travel while in the Canal Zone.

(b) Whoever violates the terms of a permit or of a regulation issued pursuant to subsection (a) (2) of this section, or remains in the Canal Zone after the expiration of his permit, shall be punished as provided by section 842 of this title.

CHAPTER 61—FOREIGN CORPORATIONS GENERALLY

§ 871. Corporation; joint stock company

As used in this chapter, "corporation" includes joint stock companies.

§ 872. Application for license to do business; service of process; filing fee

(a) A corporation organized under the laws of a State of the United States or of a foreign country may not do business in the Canal Zone or maintain an office therein until it has filed with the executive secretary of the Canal Zone Government:

(1) an application for a license setting forth:

(A) the name of the corporation;

(B) the names of its officers and directors; and

(C) the general nature of the business in which it desires to engage in the Canal Zone;

(2) a copy, duly certified by the officer authorized by law to certify it, of the:

(A) articles of incorporation;

(B) charter; or

(C) statutory, executive, or governmental acts creating the corporation, when it has been so created;

(3) an affidavit sworn by an authorized officer of the corporation stating the amount of its authorized capital stock at or within 60 days prior to the filing.

(4) a designation of a person residing within the Canal Zone upon whom process issued under any law of the Canal Zone may be served, and his place of business or residence, and a certified copy of the minutes of the board of directors of the corporation authorizing the designation.

(b) Process served on the person designated by the corporation or, if he can not be found at the place designated, or if a person is not designated, on the executive secretary of the Canal Zone Government, is a valid service on the corporation. When the executive secretary is served with process he shall without delay communicate the same to the corporation concerned at its last known address. A default judgment may not be entered against the corporation in an action in which process is served on the executive secretary until at least 60 days after the date of the service.

(c) A corporation licensed pursuant to this chapter shall also file with the executive secretary any change in the provisions of its original articles of incorporation.

(d) With the application for license there shall also be paid $10, which shall cover the filing fee and annual license fee for the remainder of the calendar year during which the license is issued.

§ 873. Additional requirements for insurance companies

In addition to the other requirements of this chapter, an insurance company organized under the laws of a State of the United States or of a foreign country shall file the following documents:

(1) a certificate of an authorized official, showing that the company is authorized to transact business in the State or country under whose laws the company is organized;

(2) a duly certified copy of the last annual statement of the insurance company to an authorized official in the State or country where the company is organized;

(3) a deposit with the executive secretary of the Canal Zone Government of $10,000 in cash or current marketable securities, which shall be held in trust by the executive secretary for the account of the company, to satisfy any judgment that may be rendered against the company, under insurance policies that it may issue.

§ 874. Annual statement and license tax for insurance companies

An insurance company licensed pursuant to this chapter shall file with the executive secretary of the Canal Zone Government before March 1 of each year a verified statement showing the business transacted within the Canal Zone by the company during the previous calendar year and a duly certified copy of its annual report to an authorized official of the State or country in which the company is organized. Upon a showing of good cause therefor, the executive secretary may extend the time for filing the statement for a period not exceeding two months after March 1.

An insurance company licensed pursuant to this chapter shall pay before March 1 of each year, in lieu of all other taxes except the annual fee provided for by section 876 of this title, a license tax equal to 1½ percent of its net premium receipts in the Canal Zone for the preceding calendar year.

§ 875. Issuance of license

Upon compliance by a corporation with the conditions prescribed by sections 872–874 of this title, and if the Governor is satisfied that the business desired to be transacted is proper, legitimate and permissible under the laws of the Canal Zone, and not in conflict with the policy of administering the Canal Zone as an adjunct of the Panama Canal, he may issue a license to do business in the Canal Zone.

§ 876. Continuance after first license period

The right of a corporation to continue to do business for the calendar year, and the successive calendar years, after the calendar year during which the original license was issued, shall be contingent upon:

(1) compliance with the provisions of this chapter applicable to corporations licensed under it;

(2) payment of a license fee of $10, payable in advance, on January 1 of each year; and

(3) designation of a new process agent before March 1, if the process agent previously designated has ceased during a preceding calendar year to reside within the Canal Zone.

§ 877. Revocation of license

The Governor may revoke a license issued pursuant to this chapter if, upon examination, he is satisfied that the operations of the corporation are conducted in an illegal manner, or in a manner contrary to public policy or to the policy of administering the Canal Zone as an adjunct of the Panama Canal.

§ 878. Loss of benefit of statute of limitations

Corporations doing business in the Canal Zone which fail to comply with this chapter are not entitled to the benefit of the laws of the Canal Zone limiting the time for the commencement of civil actions.

§ 879. Penalties for violation; validity of contracts

(a) A corporation which does business in the Canal Zone without having complied with this chapter shall be fined not more than $500.

(b) Whoever acts as an officer of, or agent for, a corporation which has not complied with this chapter, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(c) Every contract made by or on behalf of such a corporation affecting the liability thereof or relating to property within the Canal Zone is void on its behalf and on behalf of its assigns, but is enforceable against it or them.

§ 880. Corporations dealing in securities

A corporation licensed pursuant to chapter 79 of this title is not required to comply with sections 871–879 of this title.

§ 881. Surrender of license to do business

(a) A corporation licensed to do business in the Canal Zone may surrender its license by filing with the executive secretary of the Canal Zone Government a certificate signed and acknowledged by its president or a vice president and its secretary or an assistant secretary or treasurer, setting forth:

(1) the name of the corporation as shown on the records of the executive secretary, and the State or place of incorporation;

(2) that it revokes its designation of agent for the service of process;

(3) that it surrenders its authority to do business in the Canal Zone and returns its license for cancellation, or that the license has been lost or destroyed, if such is the fact;

(4) that it consents that process against it in any action upon a liability or obligation incurred within the Canal Zone prior to the filing of the certificate of surrender may be served upon the executive secretary of the Canal Zone Government;

(5) a post office address to which the executive secretary may mail a copy of any process served upon him, which address may be changed from time to time by filing a certificate entitled "certificate of change of address of surrendered foreign corporation" signed and acknowledged by the president, a vice president, secretary, assistant secretary, or treasurer.

(b) The license shall be attached to the certificate of surrender unless the license has been lost or destroyed, in which case there shall be attached an affidavit of the president, vice president, secretary, assistant secretary, or treasurer to that effect.

(c) Mere retirement from doing business in the Canal Zone without filing a certificate of surrender of license does not revoke the appointment of any agent for the service of process within the Canal Zone.

§ 882. Service of process after revocation or surrender of license

(a) After the license of a corporation has been revoked or surrendered, process against the corporation may be served upon the executive secretary of the Canal Zone Government in any action upon a liability or obligation incurred within the Canal Zone prior to the revocation or the filing of the certificate of surrender.

(b) Section 872(b) of this title applies to service of process upon the executive secretary pursuant to this section.

(c) The revocation or surrender of a license does not affect any action pending at the time.

CHAPTER 63—HEALTH AND SAFETY

SUBCHAPTER I—HEALTH, SANITATION, AND QUARANTINE

SUBCHAPTER II—FIRE PREVENTION

SUBCHAPTER III—FIREWORKS

Subchapter I—Health, Sanitation, and Quarantine

§ 911. Regulations of the President

The President shall prescribe, and from time to time may amend, regulations governing matters of health, sanitation and quarantine for the Canal Zone.

§ 912. Penalties for violation

Whoever violates a regulation issued pursuant to section 911 of this title shall:

(1) if it is a health or sanitation regulation, be fined not more than $100 or imprisoned in jail not more than 30 days, or both; or

(2) if it is a quarantine regulation, be fined not more than $500 or imprisoned in jail not more than 90 days, or both.

Each day the violation continues constitutes a separate offense.

Subchapter II—Fire Prevention

§ 931. Regulations for fire protection

The Governor shall prescribe, and from time to time may amend, regulations for the prevention of, and protection against, fires in the Canal Zone.

Regulations issued pursuant to this section have no force within the boundaries of military or naval reservations in the Canal Zone, unless they are prescribed with the concurrence of the officers commanding the military and naval forces in the Canal Zone, as to the reservations within their respective jurisdictions.

§ 932. Penalties for violation

Whoever violates a regulation issued pursuant to section 931 of this title shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

Subchapter III—Fireworks

§ 951. Regulations prohibiting or governing sale or use of fireworks

The Governor may prescribe, and from time to time amend, such regulations prohibiting, limiting, or otherwise governing the sale and use of fireworks within the Canal Zone, or any parts thereof, as he deems necessary to public safety.

§ 952. Penalties for violation

Whoever violates a regulation issued pursuant to section 951 of this title shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 65—HIGHWAYS, ROADS, AND VEHICLES

§ 1001. Regulations by the President

(a) Until otherwise provided by the Congress, the President may make, publish, and enforce, and from time to time amend, rules and regulations for the use of the public highways and roads in the Canal Zone, and for the regulation, licensing, and taxing of the use and operation of all self-propelled vehicles using the public highways and roads, including speed limit, signals, tags, license fees, and all detailed regulations which may, from time to time, be deemed necessary in the exercise of the authority hereby conferred.

(b) The taxes on automobiles may be graded according to the value or the power of the machine.

§ 1002. Agreements with Panama for reciprocal regulations

The President may make mutual agreements with the Republic of Panama concerning:

(1) the reciprocal use of the public highways and roads of the Canal Zone and the Republic of Panama by self-propelled vehicles;

(2) taxes and license fees; and

(3) other matters of regulation to establish comity for the convenience of the residents of the two jurisdictions.

§ 1003. Penalties for violation

Whoever violates a regulation issued pursuant to section 1001 or 1002 of this title shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 67—INTERNAL SECURITY

§ 1051. Photographing, etc., and possession of cameras in Canal Zone areas

Whenever, in the interests of the protection of the Panama Canal and the Canal Zone, the Governor determines that a part or feature of the Panama Canal, or an area, object, installation, or structure within the Canal Zone, requires protection against the general dissemination of information relative thereto, he may prescribe, and from time to time amend, regulations prohibiting or restricting the:

(1) making of a photograph, sketch, drawing, map, or graphical representation of, within, or upon that part or feature of the Panama Canal, or that area, object, installation, or structure within the Canal Zone; and

(2) possession of a camera within any area in the Canal Zone which the Governor designates.

Regulations issued pursuant to this section do not apply to activities of the kind covered by this section which are conducted or performed in the course of their official duties by persons in the service or employ of the United States.

§ 1052. Penalties for violating regulations pursuant to section 1051

Whoever violates a regulation issued pursuant to section 1051 of this title shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

CHAPTER 69—NOTARIES PUBLIC

Sec.

§ 1071. Appointment and regulation by Governor

The Governor shall:

(1) appoint all notaries public; and

(2) prescribe their powers and duties, their official seal, and the fees to be charged and collected by them.

CHAPTER 71—OATHS AND WITNESSES

Sec.

§ 1101. Powers of certain officers and boards with respect to oaths, witnesses, etc.

Members of the board of local inspectors, customs officers, quarantine officers, admeasurers, the coroner and deputy coroners, officers designated by the Governor or his designee to conduct hearings in reference to the exclusion and deportation of persons from the Canal Zone, and all administrative boards or officers authorized to take testimony, may, in connection with any investigation, hearing or inquest held by them, or with any other performance of their official duties:

(1) summon witnesses to testify in matters within their respective jurisdictions;

(2) administer oaths; and

(3) require the production of books and papers necessary thereto.

§ 1102. Compelling attendance of witnesses and production of papers

The district court may:

(1) issue process at the request of the officers or boards designated by section 1101 of this title to compel the attendance of witnesses and the production of books and papers; and

(2) punish for contempt of court a person who refuses to obey the process, or who refuses to be sworn or to answer a material or proper question after being duly sworn.

CHAPTER 73—POSTAL SERVICE

Sec.

§ 1131. Application of Federal laws, rules, etc.; additional regulations

(a) Except as otherwise provided by this Code, the postal service of the Canal Zone is governed by:

(1) the laws, rules, regulations, and conventions of the postal service of the United States which by their terms apply in the Canal Zone; and

(2) such additional laws, rules, and regulations as the Governor determines to be applicable to conditions existing in the Canal Zone.

(b) The Governor may prescribe regulations necessary for the maintenance and operation of the Canal Zone postal service.

§ 1132. Maintenance and operation of postal service

(a) The Governor shall:

(1) maintain and operate a postal service in the Canal Zone, including a money-order system, a parcel-post system, a postal-saving system, and other services necessary or convenient in connection with the postal service;

(2) establish and discontinue post offices;

(3) except as provided by subsection (b) of this section, prescribe the postage rates; and

(4) prescribe the postage stamps and other stamped paper which shall be used in the service.

(b) Domestic postage rates in the United States are applicable in the Canal Zone to regular mail exchanged with the United States.

§ 1133. Acceptance of postal-savings deposits

Under regulations prescribed by the Governor, post offices in the Canal Zone designated by him may receive postal-savings deposits, and issue therefor postal-savings certificates in the form prescribed by him.

§ 1134. Rate of interest on postal-savings certificates

Postal-savings certificates issued as provided by this chapter shall bear interest at such rate, not exceeding 3 percent per annum, as shall be established by the President.

§ 1135. Faith of United States pledged to payment of deposits

The faith of the United States is pledged to the payment of postal-savings certificates issued as provided by this chapter, with accrued interest thereon, in the same manner as such faith is pledged by law with respect to deposits made in postal-savings depository offices in the United States.

§ 1136. Control of money-order and postal-savings fees

The Governor shall control the funds, exclusive of fees, received from the issuance of money orders and postal-savings certificates by the Canal Zone postal service.

§ 1137. Deposit of money-order and postal-savings funds in the United States Treasury

The Governor may cause to be deposited in the United States Treasury for safekeeping, but subject to his control, any of the funds, excluding interest and fees therefrom, received from the issuance of money orders and postal-savings certificates. Under regulations prescribed by the Governor, the funds so deposited may be withdrawn from time to time.

§ 1138. Deposit of money-order and postal-savings funds in banks; security

The Secretary of the Treasury shall designate one or more national-banking associations to be depositories, under regulations prescribed by him, of funds received from the issuance of money orders and postal-savings certificates, excluding interest and fees therefrom, and shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the funds deposited with them. The associations shall give the security required.

§ 1139. Investment of money-order and postal-savings funds in securities of United States

(a) The Governor may:

(1) invest any of the funds specified by sections 1137 and 1138 of this title in securities of the United States;

(2) deposit the securities with the Treasurer of the United States for safekeeping; and

(3) sell any of the securities when the sale is necessary or desirable in the interest of the postal service.

(b) Before making purchases or sales of securities, the Governor shall request the advice of the Secretary of the Treasury.

§ 1140. Interest and profits on money-order and postal-savings funds

The interest and profits received from the deposit in banks or the investment, as provided by this chapter, of money-order and postal-savings fund form a part of the Canal Zone postal revenues.

§ 1141. Application of chapter to prior deposit money orders

The provisions of this chapter relating to postal-savings certificates and the funds received therefrom apply equally to money orders issued in lieu of postal-savings certificates prior to August 12, 1940, and to the funds received therefrom.

§ 1142. Money orders unpaid after twenty years

Money orders issued by the Canal Zone postal service may not be paid after 20 years from the last day of the month of original issue. Claims for unpaid money orders are forever barred unless received by the Canal Zone postal service within the 20-year period. Funds accrued because of money orders remaining unpaid shall be treated as revenues of the Canal Zone postal service. The records of the service shall serve as the basis for adjudicating claims for payment of money orders.

§ 1143. Payment of revenues into Treasury

Revenues from operation of the Canal Zone postal service shall be paid into miscellaneous receipts of the United States Treasury.

CHAPTER 75—PROFESSIONS AND OCCUPATIONS

SUBCHAPTER I—ARCHITECTS AND ENGINEERS

SUBCHAPTER II—HEALING ART

Subchapter I—Architects and Engineers

§ 1171. Practice of architecture and engineering as subject to regulation

To safeguard life, health, and property and to promote the public welfare, the practice of architecture and engineering in the Canal Zone is subject to regulation in the public interest. It is further a matter of public interest and concern that the professions of architecture and engineering merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of architecture and engineering.

§ 1172. Regulations authorized

The Governor shall prescribe, and from time to time may amend, regulations for the Canal Zone governing the registration and practice of architects and professional engineers. The regulations may cover the:

(1) issuance, suspension, revocation, and reissuance of certificates of registration;

(2) certification of architects-in-training and engineers-in-training; and

(3) levying of appropriate fees.

§ 1173. Investigations; subpoenas; witness fees

(a) In the administration and enforcement of this subchapter and of the regulations prescribed thereunder, the Governor or his designee may:

(1) investigate for unauthorized and unlawful practice;

(2) require the attendance of witnesses and the production of books and papers;

(3) require the witnesses to testify as to matters within his jurisdiction; and

(4) issue subpoenas and administer oaths.

(b) Upon failure of a person to attend as a witness when duly subpoenaed, or to produce documents or to testify when duly directed, the Governor or his designee may refer the matter to the district court, and the court may order the attendance of the witnesses or the production of the documents or require the witnesses to testify, as the case may be. Upon failure to comply with the order of the district court, the witness may be punished for contempt of court as for failure to obey a subpoena issued, or to testify, in a case pending before the court.

(c) Witnesses in proceedings before the Governor or his designee shall be paid the same fees that are paid witnesses in the district court.

§ 1174. Injunctions to restrain violations

The United States attorney may apply for relief by injunction to restrain a person from the commission of any act prohibited by the regulations established pursuant to section 1172 of this title. He need not allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation of the regulations.

§ 1175. Penalties for violation of regulations

Whoever violates a regulation issued pursuant to section 1172 of this title shall be fined not more than $500 or imprisoned in jail not more than one year, or both.

Subchapter II—Healing Art

§ 1191. Regulations as to practice of healing art

The President shall prescribe, and from time to time may amend, regulations governing the issuance of licenses to practice the healing art, and the conditions under which the licenses may be revoked for cause.

§ 1192. Penalties for violation

Whoever violates a regulation issued pursuant to section 1191 of this title shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both. Each day the violation continues constitutes a separate offense.

CHAPTER 77—RAILROADS

Sec.
1261. Application of Safety Appliance Acts.
1262. Running boards, ladders, sill steps, roof handholds, and brake shafts.
1263. Maintenance of appliances in good and working order.

§ 1261. Application of Safety Appliance Acts

The requirements of the Safety Appliance Acts (45 U.S.C., secs. 1–10), relating to the use on trains of certain described and approved driving-wheel and train brakes, couplers, handholds, and draw bars of required height for freight cars, apply in the Canal Zone.

§ 1262. Running boards, ladders, sill steps, roof handholds, and brake shafts

The various appliances for the protection of trainmen on freight train cars, with reference to running boards, ladders, sill steps, roof handholds, and the position of brake shafts, as designated in the standards of the Association of American Railroads—Mechanical Division, shall be used by all carriers in the Canal Zone.

§ 1263. Maintenance of appliances in good and working order

The equipment and appliances required by sections 1261 and 1262 of this title to be used shall be maintained in good and working order, at all times, by every railroad engaged in the business of a common carrier and operating in the Canal Zone.

CHAPTER 79—SECURITIES SALES LAW

Sec.
1291. Definitions.
1292. Permit to sell securities.
1293. Process agent; service of process; surrender of permit.
1294. Examination of application; issuance and revocation of permit.
1295. Certificate of agent or broker.
1296. Issuance and revocation of broker's or agent's certificate.
1297. Report on sale of securities.
1298. Fees.
1299. Penalties for violation.

§ 1291. Definitions

In this chapter unless otherwise provided or apparent from the context:

"agent" includes every person or company employed or appointed by a company or broker who, within the Canal Zone, either as an employee or otherwise, for a compensation, sells, offers for sale, negotiates for the sale of, or takes a subscription for the sale of a security;

"broker" includes every person or company, other than an agent, who for a commission in the Canal Zone engages either wholly or in part in the business of:

(1) selling, offering for sale, negotiating for the sale of, or otherwise dealing in securities issued by others;

(2) underwriting an issue of securities; or

(3) purchasing securities for the purpose of reselling them or offering them for sale to the public;

"company" includes corporations, associations, joint stock companies, and partnerships;

"security" includes stocks, bonds, or other evidences of property or interest in a company.

§ 1292. Permit to sell securities

(a) A company may not sell, offer for sale, negotiate for the sale of, or take subscriptions for a security of its own issue until it applies for and secures from the Governor a permit to do so.

(b) The application for the permit shall be in writing, verified, and shall set forth:

(1) the names and addresses of its officers;

(2) the location of its principal office;

(3) the name of its Canal Zone representative;

(4) an itemized account of its financial condition;

(5) the amount and character of its assets and liabilities;

(6) a detailed statement of the plan upon which it proposes to transact business;

(7) a copy of any prospectus or advertisement, or other description of the securities, then prepared by or for it, for distribution or publication; and

(8) additional information required by the Governor concerning the company, its condition, or affairs.

(c) If the applicant is a partnership, an unincorporated association, or joint stock company, it shall file with its application a copy of its articles of partnership or association, and all other papers pertaining to its organization.

(d) If the applicant is a corporation, it shall file with its application:

(1) a copy of all minutes of proceedings of its directors, stockholders, or members relating to or affecting the issue of the securities;

(2) a copy of its articles of incorporation and bylaws, and amendments thereto; and

(3) a certificate, dated not more than 60 days before the filing of the application, executed by the proper officer of the State or country in which the corporation is organized, showing that the applicant is authorized to transact business there.

§ 1293. Process agent; service of process; surrender of permit

(a) At the time of filing its application, a company shall file with the executive secretary of the Canal Zone Government a designation of a person residing within the Canal Zone upon whom process issued under a law of the Canal Zone may be served and his place of business or residence, and a certified copy of the minutes of the board of directors of the company authorizing the designation.

(b) Process may be served on the person designated by the company or, if he can not be found at the place designated, or if no person is designated, on the executive secretary of the Canal Zone Government, and it shall be a valid service on the company. When the executive secretary has been served with process he shall without delay communicate the same to the company concerned at its last known address. A default judgment may not be entered against the company in an action in which process is served on the executive secretary until at least 60 days after the date of the service.

(c) Sections 881 and 882 of this title apply to the surrender of the permit of a company issued pursuant to this chapter, and to service of process upon a company after revocation or surrender of its permit.

§ 1294. Examination of application; issuance and revocation of permit

(a) Upon the filing of an application, the Governor shall examine or cause to be examined the application and the papers and documents filed with it. He may make or cause to be made a detailed examination, audit and investigation of the applicant and its affairs.

(b) The Governor may issue to the applicant a permit authorizing it to issue and dispose of securities in the Canal Zone as therein provided, if he finds that:

(1) the proposed plan of business of the applicant is not unfair, unjust, inequitable, or contrary to the policy of administering the Canal Zone as an adjunct of the Panama Canal;

(2) the applicant intends to transact its business fairly and honestly; and

(3) the securities that the applicant proposes to issue and the methods to be used in issuing or disposing of them will not, in the Governor's opinion, work a fraud on the purchaser.

Otherwise the Governor shall deny the application, refuse the permit, and notify the applicant in writing of his decision.

(c) Each permit shall expire on December 31 next following its issuance unless sooner revoked.

(d) Each permit shall recite that the issuance thereof is permissive only and not a recommendation or indorsement of the securities permitted to be sold.

(e) The Governor may impose the conditions he deems necessary to the issue of the securities. He may establish reasonable or necessary rules and regulations to insure the disposition of the proceeds of the securities in the manner and for the purposes provided in the permit. From time to time for cause, the Governor may amend or revoke a permit issued by him, or temporarily suspend the rights of the applicant under the permit.

§ 1295. Certificate of agent or broker

(a) A person or company may not act as an agent or broker, other than for a company holding a permit pursuant to section 1294 of this title before securing from the Governor a certificate, then in effect, authorizing the person or company to do so. Each certificate expires on December 31 next following its issuance, unless sooner revoked.

(b) To secure the certificate, the applicant shall make and file in the office of the Governor an application in writing, verified by or in behalf of the applicant. The application shall set forth, in addition to other information that the Governor may require:

(1) the name and address of the applicant; and, if it is a corporation, association, or joint stock company, the name and address of each of its managing officers and agents; and, if it is a partnership, the name and address of each of the partners:

(2) a succinct statement of facts showing that the applicant, and its managing officers and agents, if it is a corporation, or members, if it is a partnership, have a good business reputation; and

(3) if the applicant is a broker, the general plan and character of the business.

(c) If the applicant is a corporation or association it shall file with its application a designation of a process agent, as provided by section 1293 of this title.

§ 1296. Issuance and revocation of broker's or agent's certificate

(a) The Governor shall examine or cause to be examined the application for a broker's or agent's certificate and shall make any further investigation that he deems advisable of the applicant or its affairs.

(b) The Governor may issue the certificate only if he is satisfied from his examination that:

(1) the business reputation of the applicant and of its officers and members, if any, is good; and

(2) the conduct of the business will not conflict with the policy of administering the Canal Zone as an adjunct of the Panama Canal.

If the Governor denies the application and refuses the certificate, he shall notify the applicant of his decision.

(c) The Governor at any time may revoke a broker's or agent's certificate issued by him if he finds that:

(1) the conduct of the business conflicts with the policy of administering the Canal Zone as an adjunct of the Panama Canal; or

(2) the holder of the certificate:

(A) is of bad business repute;

(B) has violated a provision of this chapter; or

(C) has engaged, or is about to engage, in any fraudulent transaction.

§ 1297. Report on sale of securities

A company or broker authorized under this chapter to sell securities shall, at the times required by the executive secretary and in the form prescribed by him, make and file in the office of the executive secretary a report setting forth:

(1) the securities sold under the authority of a permit issued by the Governor;

(2) the proceeds derived from the securities;

(3) the disposition of the proceeds; and

(4) other information required by the executive secretary concerning its property, officers, or affairs, relating to or affecting the value of the securities.

§ 1298. Fees

With its application for a permit or certificate, a company or broker shall remit $10, which shall cover the filing fee and the annual license fee for the remainder of the calendar year during which the permit or certificate is issued. No part of the fee may be returned if the application is disapproved.

The annual fee for renewal of a permit or certificate issued under this chapter is $10, payable in advance on or before January 1 of each year.

§ 1299. Penalties for violation

(a) A company, agent, or broker, which directly or indirectly issues or causes to be issued, or solicits the sale of a security contrary to this chapter, shall be fined not more than $500.

(b) Whoever acts as an officer of, or agent for, a company, agent or broker, in the issuance, or solicitation for the sale, of a security contrary to this chapter, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(c) In addition to the penalties provided for in this section, every contract made by or on behalf of such a company, agent, or broker affecting the liability thereof is void on its behalf and on behalf of its assigns, but enforceable against it or them.

CHAPTER 81—SHIPPING AND NAVIGATION

SUBCHAPTER I—GENERAL PROVISIONS

Subchapter I—General Provisions

§ 1331. Regulations governing navigation, transiting, pilotage, and licensing of officers; penalties for violation

The President may prescribe, and from time to time amend, regulations governing:

(1) the navigation of the harbors and other waters of the Canal Zone;

(2) the passage and control of vessels through the Panama Canal or any part thereof, including the locks and approaches thereto;

(3) pilotage in the Canal or the approaches thereto through the adjacent waters; and

(4) the licensing of officers or other operators of vessels navigating the waters of the Canal Zone.

Whoever violates a regulation issued pursuant to this section shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

Subchapter II—Inspection of Vessels

§ 1351. Vessels subject to inspection generally

With the exception of private vessels merely transiting the Panama Canal, and of public vessels of all nations, vessels navigating the waters of the Canal Zone are subject to an annual inspection of hulls, boilers, machinery, equipment, and passenger accommodations.

§ 1352. Inspection of foreign vessels

A foreign vessel of a country which has inspection laws approximating those of the United States, having an unexpired certificate of inspection duly issued by the authorities of that country, is not subject to an inspection other than that necessary to determine whether the vessel, boilers and lifesaving equipment are as stated in the certificate of inspection. A certificate of inspection may not be accepted as evidence of lawful inspection unless like privileges are granted to vessels of the United States under the laws of the country to which the vessel belongs.

§ 1353. Regulations governing inspection

The Governor shall prescribe, and from time to time may amend, regulations concerning the inspection of vessels conforming as nearly as practicable to the laws and regulations governing marine inspection by the United States Coast Guard.

§ 1354. Issuance and display of certificate of inspection

When the board of local inspectors of the Canal Zone Government approves a vessel and its equipment, a certificate of inspection, in triplicate, shall be issued by the Canal Zone Government. Two copies of the certificate shall be displayed in conspicuous places in the vessel where they are most likely to be observed by passengers and others, and there kept at all times framed under glass.

§ 1355. Refusal of certificate of inspection

When the board of local inspectors does not approve a vessel or its equipment, a certificate of inspection shall be refused, and the board of local inspectors shall make a statement in writing giving the reason for refusal to approve, filing the statement in the records of the board, and giving a copy thereof to the owner, agent or master of the vessel.

§ 1356. Fines for failing to have or display certificate, or for receiving excess passengers; recovery

(a) A vessel, other than one excepted by section 1351 of this title, that navigates the waters of the Canal Zone without having an unexpired certificate of inspection issued by the Canal Zone Government or by the United States Coast Guard, or an unexpired certificate accepted by the Canal Zone Government pursuant to section 1352 of this title, shall be fined not more than $1,000.

(b) If a passenger is received on board a vessel not having certified copies of the certificate of inspection placed and kept as required by section 1354 of this title, or if passengers are received on board a vessel in excess of the number authorized by the certificate of inspection, the vessel shall be fined not more than $100 for each passenger so received.

(c) Fines may be recovered in the district court, and the amount so recovered shall be a lien upon the vessel, and it may be seized and sold to satisfy the lien, as well as the costs of the court proceedings.

§ 1357. Revocation of certificate for changes in conditions of vessel

If a vessel holding an unexpired certificate issued by the Canal Zone Government changes its condition as to hull, boilers, machinery, equipment or accommodations for passengers in such manner as not to conform to the regulations under which the certificate was issued, the board of local inspectors shall make an inspection and may recommend revocation of the certificate of inspection. Upon approval of the recommendation by the supervising inspector or such other person as the Governor designates, a notice of revocation shall be issued to the owner, agent or master of the vessel. After the notice of revocation the navigation of Canal Zone waters by the vessel shall subject it to the penalty prescribed by section 1356 of this title.

§ 1358. Registration, etc., of small vessels propelled by machinery; licensing of operators; fine for violation

Vessels not more than sixty-five feet in length, measuring from end to end over the deck excluding sheer, and propelled in whole or in part by machinery, shall be registered, certificated, and numbered, and shall display the numbers assigned in a conspicuous place in prescribed form. Such vessels are subject to annual inspection, and the cer-

tificate referred to herein shall be issued for a term of one year and shall specify the number of passengers which the vessel may carry, and the number of life preservers and the fire-fighting apparatus and other equipment which the vessel shall carry.

Such vessels may be operated only by persons holding operators' licenses, issued after examination by the board of local inspectors and approved by the supervising inspector or such other person as the Governor designates.

Whoever, as owner, hirer, or borrower of such a vessel, causes or permits it to be operated in Canal Zone waters in violation of a requirement of this section or of the certificate issued hereunder, shall be fined not more than $100.

This section does not apply to public vessels of the United States or of the Republic of Panama, or to tugboats or towboats propelled by steam.

§ 1359. Registration and numbering of small vessels not propelled by machinery; fine for violation

Vessels not more than sixty-five feet in length and not propelled in whole or in part by machinery, shall be registered and numbered, and when numbers have been assigned they shall be displayed in a conspicuous place in prescribed form.

Whoever, as owner, hirer, or borrower of such a vessel, causes or permits it to be operated in Canal Zone waters in violation of a requirement of this section shall be fined not more than $100.

Subchapter III—Seamen

§ 1381. Laws applicable to seamen of vessels of United States

The laws relating to seamen of vessels of the United States on foreign voyages apply to seamen of all vessels of the United States at the Canal Zone, whether the vessels are registered or enrolled and licensed.

§ 1382. Powers of shipping commissioner and deputies

The shipping commissioner and deputy shipping commissioners in the Canal Zone have the same powers with respect to the seamen referred to in section 1381 of this title as the powers conferred by law upon consular officers of the United States in foreign ports and upon United States Coast Guard officials to whom the duties of shipping commissioner have been delegated in ports of the United States.

CHAPTER 83—SPORTS AND AMUSEMENTS

Sec.

§ 1411. Regulations governing swimming

The Governor may prescribe, and from time to time amend, regulations governing swimming in the Canal Zone.

§ 1412. Penalties for violation

Whoever violates a regulation issued pursuant to section 1411 of this title shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 85—TAXES AND LICENSES

Sec.

§ 1441. Regulations for levying, assessing, and collecting taxes

The President may prescribe, and from time to time amend, regulations for levying, assessing and collecting ad valorem, excise, license and franchise taxes in the Canal Zone. Ad valorem taxes imposed may not exceed one per centum of the value of the property, nor shall franchise or excise taxes exceed two per centum of gross earnings.

§ 1442. Penalties for violation

Whoever commits an act or carries on a business, trade, or occupation in the Canal Zone without complying with the regulations issued pursuant to section 1441 of this title shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 87—WILDLIFE; HUNTING AND FISHING

SUBCHAPTER I—PROTECTION OF WILDLIFE; HUNTING

SUBCHAPTER II—FISHING

SUBCHAPTER III—OFFENSES AND PENALTIES

Subchapter I—Protection of Wildlife; Hunting

§ 1471. Regulations governing protection of wildlife and hunting

(a) The Governor shall:

(1) prescribe, and from time to time may amend, general or special regulations for the protection of wild animals and birds and their nests in the Canal Zone; and

(2) prescribe the form and manner in which wild animals and birds may be hunted in the Canal Zone, and the kinds thereof which may be hunted and which may not be molested.

(b) In the regulations issued pursuant to subsection (a) of this section, the Governor may:

(1) designate the areas of the Canal Zone in which hunting is permitted;

(2) designate the class or type of arms that may be used in hunting in the areas designated by paragraph (1) of this subsection; and

(3) impose such other conditions with respect to hunting as he deems necessary in the interests of public order and to prevent injury to persons or property.

§ 1472. Granting and revocation of hunting permits

When an application for a permit to hunt is granted under this chapter, the Governor shall indorse his approval thereon, file the application, and cause a permit to be issued to the applicant upon payment by him of a fee of $1. The permit shall run for the fiscal year in which it is issued except that it may be revoked by the Governor for cause.

§ 1473. Hunting pursuant to permit

Hunting permits issued under this chapter shall allow the holder thereof to have, carry and use firearms in the areas prescribed by the Governor, and on the conditions imposed by him in the regulations issued pursuant to section 1471 of this title.

§ 1474. Prohibited acts

A person may not:

(1) hunt outside the areas designated in the regulations issued pursuant to section 1471 of this title; or

(2) hunt between the hours of sunset and sunrise with the use of an artificial light; or

(3) hunt by the use of a gun or other firearm intended to be discharged by an animal or bird by means of a spring, trap, or other similar mechanical device; or

(4) except in the form and manner permitted by regulations issued pursuant to this chapter, hunt, trap, capture, willfully disturb, or kill a bird, or take the eggs of a bird.

Subchapter II—Fishing

§ 1491. Regulations governing fishing

The Governor may prescribe, and from time to time amend, regulations governing fishing in the Canal Zone.

Subchapter III—Offenses and Penalties

§ 1511. Enumeration of offenses; punishment

(a) Whoever:

(1) engages in hunting without first obtaining the permit provided for by this chapter; or

(2) after obtaining a hunting permit, engages in hunting in violation of this chapter; or

(3) violates a regulation issued by the Governor pursuant to this chapter; or

(4) commits any other act prohibited by this chapter—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) The penalties imposed by this section are in addition to the punishments authorized by the law against carrying arms without a permit.

CHAPTER 89—PUBLICATION OF REGULATIONS

Sec.

§ 1541. Manner of publishing regulations; constructive notice; effective date

(a) Regulations issued under the authority of sections 701, 731, 761, 841, 911, 1131, 1172, 1191, 1331, 1353, and 1441 of this title shall be published in accordance with, and shall be subject to, the provisions of the Federal Register Act, as amended (44 U.S.C. sec. 301 et seq.).

(b) Regulations issued under the authority of sections 811, 931, 951, 1001, 1051, 1071, 1411, 1471 and 1491 of this title, and sections 1281, 1601, 2061, 4782, 6501 and 6225 of Title 6, shall, when issued, be published in one or more of the daily newspapers having a general circulation in the Canal Zone. The publication shall be deemed to give notice of the contents of the regulations to all persons subject thereto or affected thereby. Unless a later date is specified, the regulations shall be effective upon such publication, but a penalty prescribed for violation of a regulation may not be enforced until 30 days after publication.

TITLE 3—JUDICIARY

CHAPTER 1—DISTRICT COURT

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—UNITED STATES ATTORNEY AND MARSHAL

Subchapter I—General Provisions

§ 1. Establishment and designation of district court

There shall be in the Canal Zone one district court, designated as the "United States District Court for the District of the Canal Zone."

§ 2. Divisions of district court

There shall be two divisions of the district court, one including Balboa and the other including Cristobal. The President shall determine the boundaries of the divisions.

§ 3. Terms of district court

Terms of the district court shall be held in the Balboa and Cristobal divisions at such times as the judge designates by rule or order.

§ 4. Seal of district court

(a) The district court shall have a seal, which shall be kept by the clerk of the court.

(b) Except as otherwise expressly provided by law, the seal of the district court need not be affixed to any paper or document in any proceeding therein, except to:

(1) a writ or process;

(2) a certificate of probate of a will or of the appointment of an executor, administrator, or guardian; or

(3) an authentication of a copy of a record or other proceeding of the court, or of an officer thereof, or of a copy of a document on file in the office of the clerk.

§ 5. Appointment, tenure, compensation, leave, and residence of district judge

(a) The President shall, by and with the advice and consent of the Senate, appoint one district judge for the United States District Court for the District of the Canal Zone, who shall hold office for a term of eight years and until his successor is chosen and qualifies, unless sooner removed by the President for cause.

(b) The salary of the district judge shall be at the rate prescribed for judges of the United States district courts.

(c) The district judge shall be allowed 60 days' leave of absence with pay each year, under regulations prescribed by the President.

(d) The district judge shall reside within the Canal Zone.

§ 6. Special district judge

(a) The President may appoint a special district judge, to act when necessary:

(1) during the absence of the district judge from the Canal Zone; or

(2) during his disability or disqualification from sickness or otherwise to discharge his duties.

(b) The special district judge shall receive the same rate of compensation and the same traveling expenses and maintenance expenses as are paid to the district judge.

§ 7. Clerk of court

(a) The district court may appoint a clerk who shall be subject to removal by the court.

(b) The clerk may appoint, with the approval of the court, necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts, subject to removal by the clerk with the approval of the court.

(c) The clerk shall receive, deposit, and account for all public moneys collected by him in accordance with the laws, rules, and regulations governing the receipt and disposition of moneys by clerks of United States district courts.

(d) The clerk shall reside within the Canal Zone.

§ 8. Clerk as registrar of property

The clerk of the district court is ex officio registrar of property in the Canal Zone. The deputy clerks shall have and exercise like powers in the name of the clerk. The clerk and his deputies shall have the duties of registrar so as to give constructive notice in all cases where provision is made for such notice by law. They shall keep proper books of record, which shall at all reasonable hours be open to the public.

§ 9. Court reporter; secretary to district judge

The court reporter appointed by the district court pursuant to section 753 of Title 28, United States Code, shall also act in a dual capacity as secretary to the district judge. The reporter-secretary shall receive the salary fixed by the Judicial Conference of the United States, which shall not be subject to the limits specified by subsection (e) of that section. In addition to his salary, he shall be entitled to retain the fees allowed by subsection (f) of that section. He shall be allowed leave of absence with pay in accordance with the regulations governing leave of absence of Canal Zone Government employees.

§ 10. Public defender

The Governor shall appoint a qualified member of the bar of the Canal Zone as a public defender. The public defender shall receive such compensation and such of the privileges of a Canal Zone Government employee as are fixed and granted by the Governor.

The public defender shall represent, in the district court, any person charged with the commission of a crime within the original jurisdiction of the district court who is unable to obtain counsel for his defense, unless, in an exceptional case, the court assigns other counsel.

Subchapter II—United States Attorney and Marshal

§ 41. Appointment, tenure, leave, and residence of United States attorney

(a) The President shall, by and with the advice and consent of the Senate, appoint a United States attorney for the District of the Canal Zone, who shall hold office for a term of eight years and until his successor is chosen and qualifies, unless sooner removed by the President.

(b) In case of a vacancy in the office of United States attorney, the district court may appoint a person to exercise the duties of the vacant office until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of court.

(c) The United States attorney shall be allowed 60 days' leave of absence with pay each year, under regulations prescribed by the President.

(d) The United States attorney shall reside within the Canal Zone.

§ 42. Assistant United States attorneys; attorneys; clerical assistants; messengers

Sections 502, 503, and 510 of Title 28, United States Code, apply to the office of the United States attorney for the District of the Canal Zone. The assistant United States attorneys shall reside within the Canal Zone.

§ 43. Salaries

The salaries of the United States attorney, assistant United States attorneys, and attorneys appointed pursuant to section 503 of Title 28, United States Code, are subject to section 508 of Title 28, United States Code.

§ 44. Duties of United States attorney

(a) The United States attorney shall:

(1) conduct all legal proceedings, civil and criminal, for the Government of the United States and for the Government of the Canal Zone;

(2) prosecute all recognizances forfeited and all cases for the recovery of fines, penalties, debts, and forfeitures accruing to the Government of the United States, the Government of the Canal Zone, or the Canal Zone Government; and

(3) advise the Governor, upon request of the latter, on matters pertaining to the office of the Governor.

(b) During the absence or disability of the United States attorney or during a vacancy in his office, a reference in this Code to the United States attorney includes an assistant United States attorney.

§ 45. Appointment, tenure, leave, and residence of United States marshal; deputies and assistants; salaries

(a) The President shall, by and with the advice and consent of the Senate, appoint a United States marshal for the District of the Canal Zone, who shall hold office for a term of eight years and until his successor is chosen and qualifies, unless sooner removed by the President.

(b) In case of a vacancy in the office of United States marshal, the district court may appoint a person to exercise the duties of the vacant office until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of court.

(c) The United States marshal shall be allowed 60 days' leave of absence with pay each year, under regulations prescribed by the President.

(d) The United States marshal shall reside within the Canal Zone.

(e) The appointment and tenure of deputies and clerical assistants and the salaries of the United States marshal and his deputies and clerical assistants are subject to sections 542 and 552 of Title 28, United States Code.

§ 46. Powers and duties of United States marshal; supervision by Attorney General

(a) The United States marshal shall be the marshal of the district court and may, in its discretion, be required to attend any session of the court.

(b) The marshal shall execute all lawful writs, process, and orders issued under authority of the United States or of the Government of the Canal Zone, except:

(1) those returnable to the magistrates' courts; or

(2) those issued pursuant to section 1101 of Title 2—

and he shall command all necessary assistance to execute his duties.

(c) The Attorney General shall supervise and direct the marshal in the performance of public duties and accounting for public moneys. The marshal shall report his official proceedings, receipts and disbursements, and the condition of his office as the Attorney General directs.

§ 47. Fees of United States marshal

The United States marshal shall receive, deposit, and account for all public moneys collected by him in accordance with the laws, rules, and regulations governing the receipt and disposition of moneys by United States marshals of judicial districts of the United States.

CHAPTER 3—MAGISTRATES' COURTS

Sec.

§ 81. Establishment of magistrates' courts

There shall be at least one magistrate's court in each subdivision established pursuant to section 3 of Title 2.

§ 82. Appointment, term, and compensation of magistrates, constables, and other employees

(a) The President or his designee shall appoint a sufficient number of magistrates, who shall hold office for terms of four years and until their successors are chosen and qualify, unless sooner removed for cause. The President or his designee may appoint relief magistrates, or may assign a magistrate to another magistrate's court, to act when necessary:

(1) during the absence of a magistrate from the Canal Zone;

(2) during any period of disability or disqualification of a magistrate from sickness or otherwise to discharge his duties; or

(3) for a temporary period only, during the existence of a vacancy in a magistrate's court.

(b) The Governor shall appoint a sufficient number of constables and other employees necessary to conduct the business of the magistrates' courts. Section 101 of Title 2 applies to appointments under this subsection and to the fixing of compensation and the establishment of conditions of employment for magistrates, constables, and other employees of the magistrates' courts. The constables shall perform such clerical and other duties as the magistrates prescribe.

(c) Only citizens of the United States may be appointed magistrates or constables. Magistrates and constables shall reside within the Canal Zone.

§ 83. Authority of one magistrate to act for another

Upon request of a magistrate who is unable to act in any proceeding because of sickness, disability, disqualification, absence, or other cause, another magistrate may act for him. In such cases the proper entry of the proceedings of the magistrate so acting shall be made in the docket of the magistrate for whom he acts. If the inability to act ceases while the proceedings are pending, the magistrate who made the request may resume jurisdiction.

§ 84. Oaths of magistrates and constables

Before assuming office, magistrates and constables shall take and subscribe an oath of office to the effect that they will faithfully and impartially discharge the duties of their respective offices.

§ 85. Depositing records with successor

Upon the expiration of their terms of office, magistrates shall deposit with their successors their official dockets and the papers filed in their offices, and any others which may be in their custody to be kept as records.

§ 86. Administrative regulations governing magistrates' courts

The President shall prescribe regulations governing the administration of magistrates' courts and prescribing:

(1) the duties of magistrates and constables;
(2) oaths and bonds;
(3) the times and places of holding magistrates' courts; and
(4) the disposition of fines, costs and forfeitures.

CHAPTER 5—JURISDICTION AND VENUE

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—JURISDICTION OF DISTRICT COURT

SUBCHAPTER III—JURISDICTION OF MAGISTRATES' COURTS

SUBCHAPTER IV—VENUE OF CIVIL ACTIONS

SUBCHAPTER V—VENUE OF CRIMINAL ACTIONS

Subchapter I—General Provisions

§ 121. Actions between nonresidents

A civil action or special proceeding may not be brought in the courts of the Canal Zone where all the parties are nonresidents of the Canal Zone, unless the claim for relief or cause of action is one which arose within the territorial limits of the Canal Zone, or one of the parties proceeded against has property within the territorial limits subject to attachment or execution, or is engaged in business or is employed within the territorial limits.

Subchapter II—Jurisdiction of District Court

§ 141. General jurisdiction of district court

The district court has jurisdiction of all:

(1) civil and criminal actions, except those within the original jurisdiction of the magistrates' courts;

(2) cases in admiralty;

(3) appeals from the magistrates' courts;

(4) actions and proceedings involving laws of the United States applicable to the Canal Zone; and

(5) other matters and proceedings wherein jurisdiction is conferred by this Code or any other law.

§ 142. Admiralty jurisdiction

The jurisdiction in admiralty conferred upon the district court and the district judge is the same as is exercised by the United States district courts and the United States district judges.

§ 143. Jurisdiction of offenses committed within special maritime and territorial jurisdiction of United States

In addition to the jurisdiction specifically conferred on it by this Code and other laws, the district court has jurisdiction of offenses under the criminal laws of the United States when such offenses are committed beyond the territorial limits of the Canal Zone but within the special maritime and territorial jurisdiction of the United States as defined by section 7 of Title 18, United States Code, and the offenders are found in the Canal Zone or are brought into the Canal Zone after the commission of the offense.

This section does not deprive the United States district courts of any jurisdiction now provided by law.

Subchapter III—Jurisdiction of Magistrates' Courts

§ 171. General jurisdiction of magistrates' courts

The magistrates' courts have exclusive original jurisdiction coextensive with the subdivision in which each is situated of all:

(1) civil actions in which the principal sum claimed does not exceed $500;

(2) criminal actions wherein the punishment which may be imposed does not exceed a fine of $100, or imprisonment in jail for 30 days, or both;

(3) criminal actions under section 1692 of Title 6 for reckless driving, where bodily injury to a person is not involved, and under section 1693 of Title 6 for driving while intoxicated; and

(4) actions involving the forcible entry and detainer of real estate.

§ 172. Preliminary examinations

The magistrates' courts have jurisdiction to hold preliminary examinations in charges of crime within the original jurisdiction of the district court, to commit offenders to the district court, and to grant bail in bailable cases.

Subchapter IV—Venue of Civil Actions

§ 201. Venue of district court civil actions

(a) Except as otherwise provided by law, all civil actions in the district court may be brought in the division where the defendant or necessary party defendant resides or is found, or in the division where the plaintiff or one of the plaintiffs resides, at the election of the plaintiff.

(b) If neither the plaintiff nor the defendant resides within the Canal Zone, and the action is brought to seize or obtain title to property of the defendant within the Canal Zone, the action shall be brought in the division where the property is situated or is found.

(c) Actions against executors, administrators, and guardians touching the performance of their official duties, and actions for account and settlement by them, and actions for the distribution of the estates of deceased persons among the heirs and distributees, and actions for the payment of legacies, shall be brought in the division in which the will was admitted to probate, or letters of administration were granted, or the guardian was appointed.

(d) Actions to obtain possession of real property, or to recover damages for injuries to real property, or to establish an interest or right in or to real property shall be brought in the division where the property, or some part thereof, is situated.

§ 202. Transmittal of record upon change of venue

When a change of venue from one division of the district court to the other division thereof has been ordered by the court pursuant to section 1404 or 1406 of Title 28, United States Code, the clerk shall immediately make out a true transcript of all docket entries made in the action, and certify thereto under his official seal, and transmit the transcript with all the papers in the action to the other division, and the case shall be tried therein as if it had been instituted there originally.

§ 203. Venue of civil actions in magistrates' courts

Actions in magistrates' courts must be commenced and, subject to the right to change the place of trial as provided in this subchapter, must be tried:

(1) when two or more persons are jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different subdivisions—in either subdivision;

(2) in cases of injury to the person or property—in the subdivision where the injury was committed, or where the defendant resides;

(3) if for the recovery of personal property, or the value thereof, or damages for taking or detaining the same—in the subdivision in which the property may be found, or in which the property was taken, or in which the defendant resides;

(4) when neither plaintiff nor defendant resides within the Canal Zone, and the action is brought to seize or obtain title to property of the defendant within the Canal Zone—in the subdivision where the property is situated or found;

(5) when the defendant is a nonresident of the Canal Zone—in either subdivision;

(6) when a person has contracted to perform an obligation at a particular place, and resides in the other subdivision—in the subdivision in which the obligation is to be performed, or in which he resides; and the subdivision in which the obligation is incurred is deemed to be the subdivision in which it is to be performed, unless there is a special contract in writing to the contrary;

(7) when the parties voluntarily appear and plead without summons—in either subdivision;

(8) in all other cases—in the subdivision in which the defendant resides.

§ 204. Change of venue in magistrates' courts

(a) At any time a magistrate may change the place of trial in a civil action to another magistrate's court if:

(1) he is disqualified from acting for any cause;

(2) the action is brought in the wrong subdivision; or

(3) in his opinion, the transfer is necessary in the interest of justice.

(b) After an order has been made, transferring the action for trial to another magistrate's court:

(1) the magistrate ordering the transfer shall immediately transmit to the magistrate of the court to which it is transferred, on payment by the party applying of all the costs that have accrued, all the papers in the action, together with a certified transcript from his docket of the proceedings therein;

(2) upon the receipt by him of the papers, the magistrate to whom the case is transferred has thereafter the same jurisdiction over the action as though it had been commenced in his court.

(c) In lieu of changing the place of trial under this section, a magistrate who is disqualified may request another magistrate to act for him as provided by section 83 of this title.

Subchapter V—Venue of Criminal Actions

§ 231. Venue of offenses in magistrates' courts

The jurisdiction of an offense triable in the magistrates' courts is in the subdivision where the offense was committed.

§ 232. Change of venue in criminal actions in magistrates' courts

(a) Upon motion of the defendant in a criminal action, or with the written consent of the defendant, a magistrate who is disqualified may transfer the proceeding to the other subdivision. In lieu of such a transfer, the magistrate may request another magistrate to act for him as provided by section 83 of this title.

(b) Upon motion of the defendant, a magistrate shall transfer the proceeding to the other subdivision if it appears that the offense was committed in both subdivisions and if the magistrate is satisfied that in the interest of justice the proceeding should be transferred to another subdivision.

(c) Upon motion of the prosecution and with the written consent of the defendant, a magistrate shall transfer the proceeding to another subdivision if it appears that such a transfer will be for the convenience of the prosecution and of the defendant.

(d) When a transfer is ordered the magistrate shall transmit to the magistrate of the subdivision to which the proceeding is transferred all papers in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that subdivision.

§ 233. Transfer of custody of defendant in district and magistrates' courts

If the defendant is in custody, an order of the district court or a magistrate for transfer of a criminal action shall direct his removal and he shall be forthwith removed by the jailer or warden where he is imprisoned to the custody of the jailer or warden of the division or subdivision to which the action is transferred.

CHAPTER 7—GENERAL PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS

Sec.

§ 271. Proceedings to be public; exceptions; impounding records in certain cases

(a) Except as otherwise provided by this subsection, section 1637(b) of Title 5, and section 36(c) of Title 8, the sittings of every court of justice shall be public. In an action for divorce or in a civil action for seduction the court may direct the trial of an issue of fact joined therein to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel. Witnesses may be excluded in any action as provided by section 2683 of Title 5.

(b) Section 451 of Title 2 does not prevent a court from impounding its files and records in a case, or any part of them, and denying inspection of them to persons other than the parties in the case or the attorneys therein, whenever the court determines, in the exercise of a sound discretion, that justice or the public interest requires.

§ 272. Powers of courts in conduct of proceedings

Every court has power to:

(1) preserve and enforce order in its immediate presence;

(2) enforce order in the proceedings before it or a person empowered to conduct a judicial investigation under its authority;

(3) provide for the orderly conduct of proceedings before it or its officers:

(4) compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein;

(5) control, in furtherance of justice, the conduct of its ministerial officers and all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto;

(6) compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided by law;

(7) administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties; and

(8) amend and control its process and orders so as to make them conformable to law and justice.

§ 273. Powers of judicial officers in conduct of proceedings

Every judicial officer has the power to:

(1) preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty;

(2) compel obedience to his lawful orders;

(3) compel the attendance of persons to testify in a proceeding before him, in the cases and manner provided by law;

(4) administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and duties.

§ 274. Powers of judicial officers to punish for contempt

For the effectual exercise of the powers conferred by section 273 of this title, a judicial officer may punish for contempt in the cases provided by law.

§ 275. Disqualification of judge or magistrates

(a) The disqualification of the district judge and magistrates for bias or prejudice or interest are governed by sections 144 and 455 of Title 28, United States Code, except that an affidavit pursuant to section 144 thereof shall be filed at least one day before the day set for trial of the action, or good cause shall be shown for failure to file it within that time.

(b) If the district judge is disqualified, the special district judge shall act for him as provided by section 6 of this title.

(c) If a magistrate is disqualified, another magistrate shall act for him as provided by section 83 of this title, or the action shall be transferred to another subdivision as provided by section 204 of this title in a civil action or section 232 of this title in a criminal action.

§ 276. Practice of law by partner of judge or magistrate

A judge or magistrate may not have a partner acting as attorney or counsel in any court of the Canal Zone.

§ 277. Review of orders made out of court

An order made out of court, without notice to the adverse party, may be vacated or modified, without notice, by the judge who made it; or may be vacated or modified on notice, in the manner in which other motions are made.

§ 278. Proceedings in English language

Every proceeding in a court of justice in the Canal Zone shall be conducted and preserved in the English language.

§ 279. Means to carry jurisdiction into effect

When jurisdiction is conferred on a court or judicial officer by this Code or by any other statute, all the means necessary to carry it into effect are also given. In the exercise of this jurisdiction, if the course of proceeding is not specifically prescribed by this Code, by the statute, or by applicable rule of the Supreme Court of the United States or other governing rule, any suitable process or mode of proceeding may be adopted, by rule or by a ruling in the particular case, which appears most conformable to the spirit of this Code and in the furtherance of justice.

CHAPTER 9—FEES AND COSTS

SUBCHAPTER I—FEES AND COSTS GENERALLY

SUBCHAPTER II—FEES

SUBCHAPTER III—COSTS

SUBCHAPTER IV—SECURITY FOR COSTS

Subchapter I—Fees and Costs Generally

§ 321. Each party responsible for his costs; advance payment of fees

Each party to a civil action instituted in the district court or a magistrate's court shall be responsible for the costs incurred by him in the action. The marshal, constable, or other officer authorized to execute any process in civil actions, may not execute the same until the fees allowed by law for the service of the process are paid by the party seeking the process, unless the party is entitled to prosecute the action in forma pauperis, as provided by section 322 of this title.

§ 322. Proceedings in forma pauperis

A person entitled to commence an action in a court in the Canal Zone may commence and prosecute or defend it to conclusion without being required to prepay fees or costs or give security therefor, before or after bringing the action, upon filing in the court a statement, under oath, in writing, that because of his poverty he is unable to pay the costs of the action, or to give security for costs, and that he believes that he is entitled to the redress he seeks by the action, and setting forth the nature of the cause of action.

The opposing party in the action, the clerk of the district court, or his deputy, or the magistrate, as the case may be, may contest the inability of the party to pay costs or his inability to furnish security for costs; and the contest shall be heard at such time as the court or magistrate determines.

If a contest is not made upon the affidavit, or if it is admitted by the court or magistrate after the contest, the officers of the court thereafter shall issue and serve all processes and perform all duties on behalf of the party as in other cases.

§ 323. Governmental exemption from fees

The United States, any agency thereof, or any officer thereof who sues or is sued in his official capacity, is liable for fees for the bringing or defending of an action only when the liability is expressly provided for by Act of Congress.

Subchapter II—Fees

§ 341. Collection and disposition of fees generally

(a) The clerk of the district court, commissioners appointed by the district court, the United States marshal, magistrates, constables, other officers referred to by this chapter, and their assistants and deputies, may demand and receive only the fees prescribed by law.

(b) All fees collected by officers drawing a salary or compensation from the Government, other than fees collected by the clerk of the district court, the United States marshal, and the district court reporter, shall be paid over to the Canal Zone Government.

§ 342. Fees of clerk of district court in civil actions

(a) Upon the filing of the complaint in a civil action in the district court, the plaintiff shall deposit with the clerk of the district court the following docket fee:

(1) civil action generally	$8.00
(2) habeas corpus, certiorari, prohibition, or other special proceeding, except a probate or guardianship proceeding	3.00

(b) Upon the filing of a motion to intervene, an intervener shall deposit $5.

(c) The fees deposited under this section are full compensation for all services of the clerk in the action, except fees for furnishing copies of papers and records, and commissions for care of funds deposited in the registry of the court as provided by section 415 of Title 5.

§ 343. Fees of clerk of district court in probate and guardianship matters

(a) The fees for the services of the clerk of the district court in probate and guardianship matters shall be computed according to the value of the estate as follows:

(1) not over $1,000	$5.00
(2) over $1,000 and not over $5,000	10.00
(3) over $5,000 and not over $10,000	15.00
(4) over $10,000	25.00

(b) The fees provided by this section are full compensation for all services of the clerk in the proceedings, except fees for furnishing copies of papers or records.

(c) Where the estate is small and the circumstances warrant, the judge of the district court may waive the payment of any fee to the clerk for services in the proceedings.

§ 344. Other fees of clerk of district court

The clerk of the district court shall collect the following fees:

(1) certified copy of any paper, record, decree, judgment, or entry, for each page of 250 words or fraction thereof,	
(A) first copy	$0.65
(B) carbon copy	.30
(2) copy of records for transmission to United States Court of Appeals, for each page of 250 words or fraction thereof	.65
(3) photographic reproduction and certification of any record or paper, per page	.50

(4) certification of copy of marriage certificate $1.00
(5) searching records and giving certificate thereto of any fact or facts contained therein ..... .50
(6) taking acknowledgments, each ..... .50
(7) administering oaths, each ..... .25
(8) recording powers of attorney, deeds, and other instruments where fee is not specified by another statute, for each page of 100 words or fraction thereof, with minimum charge of $1.00 for each instrument ..... .25

§ 345. Fees of marshal and other persons serving district court process

The United States marshal and other persons serving process of the district court shall collect the following fees:

(1) executing process, preliminary and final judgments, and decrees of any court, for each mile of travel in the service of process going one way, reckoned from the place of service to the place to which the process is returnable, 10 cents;

(2) serving an attachment against the property of the defendant, $1, together with a reasonable allowance to be made by the court for any expenses necessarily incurred in caring for the property attached;

(3) arresting each defendant in a civil action, 50 cents;

(4) serving summons and copy of complaint for each defendant, $1; but in special proceedings, testamentary or administrative, where several members of a family residing at the same place are defendants, for each defendant, 50 cents;

(5) serving subpoenas, for each witness served, 50 cents plus travel fees;

(6) each copy of any process necessarily deposited in the office of registrar of property, 10 cents for each one hundred words, but not less than 50 cents in each case;

(7) taking bonds or other instruments of indemnity or security, 25 cents each;

(8) executing a writ of process to put a person in possession of real estate, $1;

(9) attending with prisoner on habeas corpus trial, for each day, $1;

(10) transporting each prisoner on habeas corpus or otherwise, when required, for every mile going and returning, 10 cents;

(11) advertising sale, $2 plus printer's charge;

(12) taking inventory of goods levied upon, to be charged only when the inventory is necessary, a sum fixed by the court not exceeding the actual reasonable cost of the same to be shown by vouchers;

(13) levying an execution on property, $2;

(14) on all money collected by him by order of a decree, execution, attachment, or any other process, the following sums:

(A) on the first $100 or less, 2%;
(B) on the second $100, 1½%;
(C) on all sums between $200 and $1,000, 1%; and
(D) on all sums in excess of $1,000, ½%;

(15) services in a criminal case except for the summoning of witnesses, a sum to be fixed by the court not exceeding $25 where conviction is for a misdemeanor, and not exceeding $100 where conviction is for a felony.

§ 346. Fees for attempts to serve process

The following fees shall be charged for return on and mileage in attempts to serve process, or any order, judgment, or decree of the district court in civil cases:

(1) for each return, $1;

(2) for mileage going one way in attempting to serve or execute any process, order, judgment, or decree of the court, for each mile traveled one way, 10 cents.

§ 347. Fees of magistrates' courts in civil actions

(a) At the time of commencing a civil action in a magistrate's court, the plaintiff shall deposit a fee of $5. An intervener therein shall deposit at the time of appearance a fee of $3.

(b) The fees deposited under this section are full compensation for all services of the magistrate's court in the action, including the services of the magistrate and constable in filing of the complaint, service of process, and execution, except fees for furnishing copies of papers or records.

§ 348. Other fees of magistrates

(a) In addition to the fees prescribed by section 347 of this title, magistrates shall collect the following fees:

(1) administering oath upon an affidavit or other paper with certificate of oath, 25 cents;

(2) appeal, with proceedings taking bond, making and forwarding transcript of record, $1;

(3) each certificate not otherwise provided for, 25 cents;

(4) writing and certifying deposition, including the administration of oath to the witness, 65 cents per page of 250 words or fraction thereof for services of the reporter, and 25 cents per page for supervision and certification thereof by the magistrate;

(5) certified copies of a record of proceeding of which a person is entitled to receive a copy, 65 cents per page of 250 words or fraction thereof, and 30 cents per page for carbon copies.

(b) Upon receiving payment of fees allowed to him by law, a magistrate shall render to the person or persons so paying an itemized account thereof.

§ 349. Fees on appeals from magistrates' courts to district court

An appeal taken from a judgment rendered in a magistrate's court in a civil action is not effectual for any purpose unless, at the time of filing the notice of appeal, the appellant pays to the magistrate, in addition to the fee payable to the magistrate on appeal, a docket fee of $5 for filing the appeal and for placing the action on the calendar in the district court. Upon transmitting the papers on appeal, the magistrate shall transmit to the clerk of the district court the sum thus deposited for filing the appeal in the district court and for placing the action on the calendar. A notice of appeal may not be filed until the fees are paid as required by this section.

§ 350. Jury fee

A party who demands a trial by jury in a civil action in the district court shall accompany the demand with a deposit of $10 as a jury fee. Unless the deposit is made, the case shall be tried without the intervention of a jury.

§ 351. Fees fixed by rules of court

If it appears that services are required of clerks of court, marshals, magistrates, constables, or officers of a court, other than those for which specific fees are provided in this chapter, the district court shall by general rules provide for a scale of fees for those services proportionate to the fees provided in this chapter for similar services.

Subchapter III—Costs

§ 371. Costs allowed in district court

In the district court, the party entitled to costs may recover the following costs and no others:

(1) for each witness necessarily produced by him, for each day's necessary attendance of the witness at the trial, the witness' lawful fees;

(2) for each deposition lawfully taken by him, and produced in evidence, the actual cost of taking the deposition, but not to exceed $20;

(3) for original papers produced by him, nothing;

(4) for official copies of such papers, the lawful fees necessarily paid for obtaining the copies; and

(5) the lawful fees paid by him for the service of process in the action, and all lawful clerk's fees paid by him.

§ 372. Taxation of costs in district court

(a) A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

(b) Before a bill of costs is taxed, the party claiming an item of cost shall attach thereto an affidavit, made by himself or by his authorized attorney or agent having knowledge of the facts, that the item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.

§ 373. Party entitled to costs in magistrate's court

In a magistrate's court, costs shall ordinarily be allowed to the prevailing party as a matter of course, but for special reasons the court may adjudge that either party shall pay the costs of an action, or that the costs be divided as may be equitable.

§ 374. Costs allowed in magistrate's court

In a magistrate's court, the party entitled to costs may recover the following costs, and no others:

(1) for each witness produced by him, for each day's necessary attendance at the trial, the witness' lawful fees;

(2) for each deposition lawfully taken by him and produced in evidence, the actual cost of taking the deposition, but not to exceed $20;

(3) for original papers produced by him, nothing;

(4) for official copies of such papers, the lawful fees necessary paid for obtaining the copies; and

(5) the lawful fees paid by him for the services of the magistrate's court in the action.

§ 375. Taxation of costs in magistrate's court

(a) The magistrate may tax and include in the judgment the costs allowed by law to the prevailing party.

(b) The costs in a magistrate's court, if allowed, shall be taxed by the magistrate without the filing and service of a bill of costs as provided by section 372 of this title, and upon such information as the magistrate requires.

§ 376. Costs on continuance

When an application is made to a court or master to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the court or master, as a condition of granting the same.

§ 377. Costs on dismissal for want of jurisdiction

If an action is dismissed for want of jurisdiction, courts nevertheless may render judgment for costs as justice may require.

§ 378. Costs in criminal actions in district court

(a) The costs in criminal actions shall be paid by the defendant in cases of appeal from a magistrate's court if the appeal is not prosecuted or if the appeal is prosecuted and the judgment of the magistrate is affirmed, and shall be paid in cases other than appeals from the magistrates' courts when a judgment of guilty is entered.

(b) The costs shall be taxed as follows:

(1) fees for witnesses produced by the Government or the defense, as fixed by law;

(2) for a deposition of a witness for the defendant, $1;

(3) for issuing a warrant of arrest, 25 cents;

(4) for every adjournment of a trial on motion of the defendant, $2;

(5) for filing each paper required by law or pleading, 5 cents;

(6) for furnishing copies to the defendant of pleadings except the information, 15 cents per folio;

(7) for swearing each witness on trial, 10 cents;

(8) for a subpoena, including all the names contained therein, 25 cents, and in no case may more than six subpoenas be allowed for;

(9) for receiving and entering a judgment, 25 cents;

(10) for warrant of commitment on sentence, 75 cents;

(11) for record of conviction and filing the same, 75 cents;

(12) for a return of any writ of certiorari, 25 cents; and

(13) fee for services of the marshal as provided by item (15) of section 345 of this title.

Subchapter IV—Security for Costs

§ 391. Requirement of security for costs

(a) The plaintiff in a civil action or proceeding in the district court or in a magistrate's court may be required to give security for the costs upon motion of the opposing party or of an officer of the court interested in the costs accruing in the action or proceeding; and the court shall require the plaintiff to give security for costs within a reasonable time thereafter and not later than 10 days after the motion is presented to the court. If the plaintiff fails to comply with the order within the time prescribed by the court, the action or proceeding shall be dismissed.

(b) Magistrates may in all cases require a deposit of money or an undertaking, as security for costs of court, before issuing a summons.

§ 392. Form of security; new or additional undertaking

(a) The security for costs required by this subchapter may consist of a money deposit, bond of a surety company, or cost bond with two or more good and sufficient sureties. The form of the security shall be determined by the court before which the proceedings are pending. If personal security is furnished, the sureties must be residents of the Canal Zone, and an officer of the court or attorney practicing before the court may not be accepted as surety.

(b) Upon proof that the original undertaking is insufficient security, the court may order the giving of a new or additional undertaking within such time as the court prescribes. If the plaintiff fails to comply with the order within the time prescribed by the court, the proceedings shall be dismissed.

(c) All bonds given as security for costs shall authorize judgment against all of the obligors of the bonds, jointly and severally, for such costs, to be entered in the final judgment of the action or special proceeding.

§ 393. Governmental exemptions

Security for costs may not be required of the United States, an agency thereof, an officer thereof who sues in his official capacity, or the public administrator.

§ 394. Security by intervener or counterclaimant

This subchapter applies to an intervener. It also applies to a defendant who seeks a judgment against the plaintiff on a counterclaim, after the plaintiff has discontinued his action.

§ 395. Costs secured by attachment or other bond

When the costs are secured by the provisions of an attachment or other bond, filed by the party required to give satisfactory security for costs, further security may not be required.

CHAPTER 11—SURETY BONDS AND UNDERTAKINGS

Sec.

§ 431. Undertakings or bonds; requisites

(a) When an undertaking or bond is authorized or required by a law of the Canal Zone, the officer taking it shall, except as provided by section 432 of this title, require the sureties to include with the undertaking an affidavit stating that each one is:

(1) a resident of the Canal Zone;

(2) worth the sum specified in the undertaking or bond, over and above all their just debts and liabilities, exclusive of property exempt from execution.

(b) When an undertaking or bond is in an amount exceeding $2,000, the affidavit shall also state:

(1) the affiant's place of residence;

(2) a description sufficient for identification of property, real or personal, belonging to the affiant and relied upon by him as qualifying him on the bond or undertaking, and the nature of affiant's interest or estate therein;

(3) the affiant's best estimate of the actual cash value of each property;

(4) any charge or lien against the property, including the amount thereof, known to the affiant, whether of public record or not; and

(5) any other impediment or cloud known to the affiant on the free right of possession, use, benefit or enjoyment of the property.

(c) When the amount specified in the undertaking or bond exceeds $3,000 and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that specified in the undertaking or bond, if the whole amount is equivalent to that of two sufficient sureties. A corporation covered by section 432 of this title may become sole surety in a bond.

(d) When an undertaking has been given and approved in an action or proceeding and it is thereafter made to appear to the satis-

faction of the court that any of its sureties is or has become insufficient, the court, upon notice, may order the giving of a new undertaking, with sufficient sureties, in lieu of the insufficient one. All rights obtained by the filing of the original undertaking shall immediately cease if:

(1) the new undertaking is not given within the time required by the order; or

(2) the sureties thereon fail to justify when required.

§ 432. Corporations as sureties

When an undertaking or bond, with any number of sureties, is authorized or required by a law of the Canal Zone, a corporation with a paid-up capital of not less than $100,000, incorporated under the laws of a State of the United States for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law; or which, by the laws of the State where it was incorporated has that power; and which shall have complied with all the requirements of the law for the admission of corporations to transact that business in the Canal Zone, may become and shall be accepted as security or as sole and sufficient surety upon the undertaking or bond, and it shall be subject to all the liabilities and entitled to all the rights of natural person sureties.

§ 433. Justification by corporate sureties

(a) When the surety on a bond or undertaking authorized or required by a law of the Canal Zone is a foreign corporation, authorized to be a surety on bonds or undertakings in the Canal Zone, and exception is taken to its sufficiency as required by law, the corporate surety may justify on the bond or undertaking as provided in this section.

An agent, attorney in fact, or officer of the corporation shall submit to the court, judge, officer, board, or other person before whom the justification is to be made:

(1) the original, or a certified copy of the power of attorney, bylaws, or other instrument showing the authority to execute the bonds or undertakings of the person or persons who executed them;

(2) a certified copy of the certificate of authority showing that the corporation is authorized to transact business;

(3) a certificate from the executive secretary showing that the certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that it has been, that renewed authority to act under it has been granted;

(4) a financial statement verified under oath by the president, or a vice president and attested by the secretary or an assistant secretary of the corporation, showing the assets and liabilities of the corporation at the end of the quarter calendar year prior to the 45 days preceding the date of the execution of the bond or undertaking.

(b) The justification of the surety shall be complete and it shall be accepted as the sole and sufficient surety on the bond or undertaking if, upon complying with subsection (a) of this section, it appears that:

(1) the bond or undertaking was duly executed;

(2) the corporation is authorized to transact business in the Canal Zone; and

(3) its assets exceed its liabilities in an amount equal to, or in excess of the amount of the bond or undertaking.

§ 434. Cash deposit in lieu of bond

In proceedings in which a bond is required the clerk of the district court may accept a cash deposit in the sum of the bond. Where a

cash bond is given, the moneys or any part thereof may be withdrawn only upon order of the court.

§ 435. Copies of bonds

Bonds required in civil actions or proceedings, except bonds for arrest or appeal from inferior courts, shall be copied in full by the clerk in an appropriate book, and a copy, authenticated by him, shall have the force and effect of the original.

§ 436. Governmental exemption from bonds and undertakings

The United States, an agency thereof, or an officer thereof in his official capacity, as a party plaintiff or defendant to a civil action or proceeding, may not be required to give a bond, written undertaking, or security; and on complying with the other provisions of this Code, has the same rights, remedies, and benefits as if the bond, undertaking, or security, had been given or approved.

§ 437. Subrogation of surety to rights of judgment creditor

When a surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmance by the appellate court, he is substituted to the rights of the judgment creditor, and is entitled to control, enforce, and satisfy the judgment, in all respects as if he had recovered the same.

§ 438. Enforcement of liability of surety

A surety upon a bond or undertaking given in a civil action or special proceeding in the district court submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if his address is known.

§ 439. Attorneys as sureties

Attorneys may not be accepted as sureties upon bonds or recognizances required to be filed in court.

CHAPTER 13—JURORS

Sec.

§ 471. Selection, summoning and service of jurors

The district court shall provide for the selection, summoning and serving of jurors from among the citizens of the United States subject to jury duty to serve in the division of the district in which the jurors reside.

§ 472. Compensation of jurors

(a) Jurors who are employed by the United States or an agency or instrumentality thereof in the Canal Zone shall receive their full pay for the time spent attending court and shall not receive compensation from the court for their attendance as jurors. Their periods of service as jurors may not be deducted from the time allowed for any leave of absence authorized by law.

(b) Jurors who are not employed as provided by subsection (a) of this section shall be allowed a jury fee of $7 per diem during the time of their attendance.

CHAPTER 15—PROBATION OFFICER

Sec.
511. Appointment of probation officer and deputies.
512. Duties of probation officer.
513. Arrest of probationer or parolee.

§ 511. Appointment of probation officer and deputies

(a) The Governor shall appoint a qualified person to serve as probation officer of the district court and the magistrates' courts, and may appoint as many deputy probation officers as he deems necessary. The probation officer and deputies shall also serve as parole officer and deputy parole officers, respectively, and, when so serving, shall be referred to by those designations. The probation officer and deputies shall serve at the pleasure of the Governor, and the deputies shall be under the immediate direction and control of the probation officer.

(b) If the Governor deems it necessary, he may appoint a qualified person, who may be an officer or employee of the Canal Zone Government assigned for the purpose, to act as probation officer or deputy probation officer, whenever the probation officer or deputy probation officer is unable to perform his duties because of temporary disability or absence.

(c) Section 101 of Title 2 applies to the fixing of compensation and establishment of conditions of employment of the probation officer and deputies, and acting probation officer.

§ 512. Duties of probation officer

The probation officer shall:

(1) furnish to each probationer under his supervision a written statement of the conditions of probation, and instruct him regarding them;

(2) keep informed concerning the conduct and condition of each probationer under his supervision and report thereon to the proper court;

(3) use all suitable methods, not inconsistent with the conditions imposed by the court, to aid probationers and to bring about improvements in their conduct and condition;

(4) keep records of his work;

(5) keep accurate and complete accounts of all moneys collected from persons under his supervision, and give receipts for the moneys so collected and make at least monthly returns thereof to the proper court;

(6) make such reports to the courts as they may at any time require;

(7) make pre-sentence investigations when directed by the courts concerned:

(8) perform such duties with respect to parole as the Governor directs;

(9) perform such duties with respect to unofficial probation as the United States attorney directs; and

(10) perform such other duties as the Governor or the Judge of the district court directs.

§ 513. Arrest of probationer or parolee

Within the probation or parole period, the probation officer may for cause arrest the probationer or parolee wherever found, without a warrant.

CHAPTER 17—ATTORNEYS AT LAW

SUBCHAPTER I—ADMISSION, REMOVAL, AND SUSPENSION OF ATTORNEYS

SUBCHAPTER II—POWERS AND DUTIES OF ATTORNEYS

Subchapter I—Admission, Removal, and Suspension of Attorneys

§ 541. Admission to practice

(a) The following persons may, on motion in open court, be admitted by the district judge to practice as an attorney of the district court:

(1) a person who is admitted to practice in the Supreme Court of the United States, or in the highest court of a State of the United States;

(2) a person who is admitted to practice in the highest court of a foreign country the jurisprudence of which is based upon the principles of the English common law, if, in the case provided by this paragraph:

(A) the education requirements for practice in the foreign country are a Bachelor of Laws degree, or equivalent, granted for successful passage of at least a three-year law course in residence;

(B) the law school from which the person received the degree is a law school acceptable to the district judge for the purposes of this subsection; and

(C) the person has practiced law for at least three years within the period of five years immediately prior to making application in the Canal Zone.

(b) A person may be admitted by the district judge to practice as an attorney of the district court upon satisfactorily passing an examination in the law to be prescribed and conducted by the district judge or by a committee of the bar appointed by him for that purpose, if the applicant shall establish that he has attained the age of 21 years and that he has received a Bachelor of Laws degree, or equivalent, granted for the successful passage of at least a three-year law course, in residence, by a law school acceptable to the district judge for the purposes of this subsection, either in a:

(1) State of the United States; or

(2) foreign country the jurisprudence of which is based on the English common law; or

(3) foreign country the jurisprudence of which is not based upon the English common law, if, in the case provided in this paragraph, the applicant establishes that:

(A) he is admitted to practice in the highest court of either the country in which he received the degree or the country of which he is a citizen or subject; and

(B) subsequent to the receipt of the degree, he has satisfactorily completed at least one year's study, in residence, including a suitable schedule of instruction in practice and procedure, in an acceptable law school in the United States, or has studied law for a period of two years in the office of an attorney having an active practice in the Canal Zone.

(c) An applicant under this section shall establish that he is a person of good moral character, that he is a resident of the Isthmus of Panama, and that it is his good faith intention to engage in the actual and present practice of law before the courts of the Canal Zone if admitted to the bar.

(d) The district court may prescribe and from time to time amend such rules as it deems necessary or desirable governing the qualifications of candidates, the form and content of applications, and the procedures governing applications, examinations, and admissions, subject to the requirements of this chapter. An applicant for admission shall upon the filing of his application pay to the clerk of court a fee of $15. The fee shall be accounted for by the clerk as miscellaneous receipts.

§ 542. Certificate of admission

Upon admission of an applicant to the bar, the district court shall direct that an order be entered to that effect upon its records, and that a certificate of admission be given to him by the clerk of the court, which certificate shall be his license.

§ 543. Oath

Before receiving a certificate the applicant shall take and subscribe in court the following oath:

"I, ——— recognize and accept the supreme authority of the United States of America in the Canal Zone, and I do swear that I will obey the existing laws which rule in the Canal Zone, as well as the legal orders and decrees of the duly constituted authorities therein; that I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion.

"I do solemnly swear that I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, but will conduct myself in the office of a lawyer within the courts according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients. So help me God."

§ 544. Roll of attorneys

The clerk of the district court shall keep a roll of attorneys admitted to practice, signed by the persons admitted before they receive their licenses.

§ 545. Grounds for removal, suspension or discipline

An attorney may be removed, suspended or otherwise disciplined by the district court for any of the following causes arising after his admission to practice:

(1) conviction of a crime involving moral turpitude, in which case the record of conviction is conclusive evidence;

(2) willful disobedience or violation of an order of the district court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and violation of the oath taken by him, or of his duties as attorney;

(3) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(4) lending his name to be used as attorney by another person who is not an attorney;

(5) commission of any act involving moral turpitude, dishonesty, or corruption, whether committed in the course of his relations as an attorney or otherwise, and whether or not it constitutes a crime; and if the act constitutes a crime, conviction thereof in a criminal proceeding is not a condition precedent to disbarment or suspension from practice therefor.

§ 546. Proceedings for removal, suspension or discipline generally

The proceedings to remove or suspend an attorney pursuant to section 545(1) of this title shall be taken by the district court on the receipt of a certified copy of the record of conviction. The proceedings pursuant to any other paragraph of section 545 of this title may be taken by the court for the matters within its knowledge, or may be taken upon the information of another.

§ 547. Accusation

If the proceedings are upon the information of another, the accusation shall be in writing and shall state the matters charged, verified by the oath of some person to the effect that the charges therein contained are true. The verification may be made upon information and belief when the accusation is presented by an organized bar association.

§ 548. Service on accused; citation by publication

(a) Upon receiving the accusation, the district court shall make an order requiring the accused to appear and answer it at a specified time, and shall cause a copy of the order and of the accusation to be served upon the accused at least five days before the day appointed in the order.

(b) The court may direct the service of a citation to the accused, requiring him to appear and answer the accusation, to be made by publication for 30 days in a newspaper of general circulation in the Canal Zone, if it appears by affidavit to the satisfaction of the court that the accused:

(1) resides out of the Canal Zone:

(2) has departed from the Canal Zone;

(3) can not, after diligence, be found within the Canal Zone; or

(4) conceals himself to avoid the service of the order to show cause.

(c) The citation shall be directed to the accused, recite the date of the filing of the accusation, the name of the accuser, and the general nature of the charges against him, and require him to appear and answer the accusation at a specified time.

(d) On proof of the publication of the citation as required by this section, the court has jurisdiction to proceed to hear the accusation and render judgment with like effect as if an order to show cause and a copy of the accusation had been personally served on the accused.

§ 549. Appearance

The accused shall appear at the time appointed in the order, and answer the accusation, unless, for sufficient cause, the court assigns another day for that purpose. If he does not appear, the court may proceed and determine the accusation in his absence.

§ 550. Answer

The accused may answer to the accusation either by objecting to its sufficiency or by denying it.

If he objects to the sufficiency of the accusation, the objection must be in writing, but need not be in any specific form. It is sufficient if it presents intelligibly the grounds of the objection.

If he denies the accusation, the denial may be oral and without oath, and shall be entered upon the minutes.

If an objection to the sufficiency of the accusation is not sustained, the accused shall answer within the time designated by the court.

§ 551. Trial

If the accused pleads guilty, or refuses to answer the accusation, the court shall proceed to judgment.

If he denies the matters charged, the court shall, at such time as it appoints, proceed to try the accusation.

§ 552. Reference to take depositions

The court may order a reference to a committee to take depositions in the matter.

§ 553. Judgment

(a) Upon the receipt of a certified copy of the record of conviction of an attorney of a crime involving moral turpitude, the district court shall suspend the attorney until judgment in the case has become final. When judgment of conviction becomes final the court shall order the attorney suspended or disbarred.

(b) When the attorney has been found guilty of the charges made in proceedings not based upon a record of conviction, judgment shall be rendered disbarring him, suspending him from practice for a limited time, or otherwise disciplining him, according to the gravity of the offense charged.

(c) During a suspension or disbarment the attorney shall be precluded from practicing as an attorney at law or as an attorney or agent of another in and before all courts, commissions, and tribunals in the Canal Zone, and from practicing as attorney at law in any manner and from holding himself out to the public as an attorney at law. When disbarred his name shall be struck from the roll of attorneys.

§ 554. Disqualified attorney as plaintiff

During a suspension or disbarment, a person who has been an attorney may not appear on his own behalf as plaintiff in the prosecution of an action where the subject of the action has been assigned to him subsequent to the entry of the judgment of suspension or disbarment.

§ 555. Reinstatement of suspended or disbarred attorneys

The district court may reinstate suspended or disbarred attorneys in accordance with such rules governing the procedures therefor as it prescribes.

Subchapter II—Powers and Duties of Attorneys

§ 571. Who may conduct litigation

In either the district court or magistrates' courts, a person may conduct his litigation personally or by the aid of an attorney admitted to the practice of law in the Canal Zone. Other attorneys who are admitted to practice in the Supreme Court of the United States, or in the highest court of a State or any foreign country, and who are in good standing in that court, may be permitted to prosecute or defend in an action on motion of an attorney admitted to practice in the Canal Zone.

§ 572. Duties generally

Every attorney shall:

(1) support the laws of the Canal Zone and the applicable laws of the United States;

(2) maintain the respect due to the courts of justice and judicial officers;

(3) counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just, except the defense of a person charged with a public offense;

(4) employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law;

(5) maintain inviolate the confidence, and at every peril to himself, preserve the secrets, of his client;

(6) abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

(7) not encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest; and

(8) never reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

§ 573. Authority

An attorney may:

(1) bind his client in any of the steps of an action or proceeding by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise; and

(2) receive money claimed by his client in an action or proceeding during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon the payment thereof, and not otherwise, discharge the claim or acknowledge satisfaction of the judgment.

§ 574. Change of attorney; consent; contingent fee cases

(a) The attorney in an action or special proceeding may be changed before or after judgment or final determination:

(1) upon consent of both client and attorney, filed with the clerk, or entered upon the minutes; or

(2) upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

(b) When, under paragraph (2) of subsection (a) of this section, an attorney is changed in a civil case in which the fee or compensation of the attorney is contingent upon the recovery of money, the court shall determine the amount and terms of payment of the fee or compensation to be paid by the party.

§ 575. Notice of change

When an attorney is changed, as provided in section 574 of this title, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party. Until then, he shall recognize the former attorney.

§ 576. Death or removal of attorney

When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney, must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person.

§ 577. Reasonable compensation; contract for services

An attorney is not entitled to have and recover from his client more than a reasonable compensation for the services rendered, having in view the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. In such cases the court is not bound by the opinion of attorneys as expert witnesses as to the proper compensation, and may disregard the testimony and base its conclusion on its own professional knowledge. A written contract for services controls the amount of recovery if found by the court not to be unconscionable or unreasonable.

TITLE 4—CIVIL LAWS

CHAPTER 1—GENERAL PROVISIONS

Sec.
1. Construction of title.

§ 1. Construction of title

The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this title. This title establishes the law of the Canal Zone respecting the subjects to which it relates.

CHAPTER 3—PERSONS

Sec.
31. Minors; married persons over 18; effect of annulment.
32. Periods of minority.
33. Adults.
34. Unborn child as existing person; limitation of actions for injuries.
35. Delegation of powers by minors; incapacities.
36. Contracts by minors.
37. Disaffirmance by minors; rights of innocent purchaser.
38. Contracts and obligations of minors which may not be disaffirmed.
39. Contracts by persons without understanding.
40. Contracts by persons of unsound mind.
41. Powers of persons whose incapacity is adjudged.
42. Liability of minors and mentally unsound persons for wrongs.
43. Enforcement of minors' rights.

§ 31. Minors; married persons over 18; effect of annulment

(a) Except as otherwise provided by this section, and subject to the provisions of Title 8 relating to marriage, minors are all persons under 21 years of age.

(b) A person who has reached the age of 18 years and thereafter contracts a lawful marriage, or who has contracted a lawful marriage and thereafter reaches the age of 18 years, is, in the first instance upon contracting the marriage, and in the second instance upon reaching the age of 18 years, of the age of majority and an adult person for the purpose of:

(1) entering into an engagement or transaction respecting property or his estate;

(2) entering into a contract; or

(3) maintaining or defending an action affecting his marital status, including an action or proceeding involving his support or the support or custody of children of the marriage, or determination of property rights—

the same as if he were 21 years of age.

(c) Subsequent annulment of a marriage referred to by subsection (b) of this section does not deprive the person of his adult status once attained under the provisions of that subsection, unless the judgment of annulment is obtained in an action commenced prior to his reaching the age of 18 years. In the latter case, he has remained a minor at all times notwithstanding the marriage.

(d) This section does not limit section 343 of Title 8.

§ 32. Periods of minority

The periods specified by section 31 of this title are calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

§ 33. Adults

All persons who are not minors, as provided by this chapter, are adults.

§ 34. Unborn child as existing person; limitation of actions for injuries

A child conceived, but not yet born, is to be deemed an existing person, as far as may be necessary for its interests in the event of its subsequent birth.

An action by or on behalf of a minor for personal injuries sustained prior to or in the course of his birth is barred unless brought within six years from the date of the birth of the minor; and the time the minor is under a disability provided by section 73 of Title 5 may not be excluded in computing the time limited for the commencement of the action.

§ 35. Delegation of powers by minors; incapacities

A minor can not give a delegation of power, nor, under the age of 18, make a contract relating to real property, or an interest therein, or relating to personal property not in his immediate possession or control.

§ 36. Contracts by minors

Except as provided by section 35 of this title, a minor may make contracts in the same manner as an adult, subject only to:

(1) a minor's power of disaffirmance under the provisions of this chapter; and

(2) the provisions of Title 8 relating to marriage.

§ 37. Disaffirmance by minors; rights of innocent purchaser

(a) Except as provided by section 38 of this title, the contract of a minor, if made while he is under the age of 18 years, may be disaffirmed:

(1) by the minor himself, either before his majority or within a reasonable time afterwards; or

(2) in case of his death within the period referred to in paragraph (1) of this subsection, by his heirs or personal representatives.

If the contract is made by the minor while he is over the age of 18 years, he may disaffirm it in like manner upon restoring the consideration, or paying its equivalent, to the party from whom it was received.

(b) If, before the contract of a minor is disaffirmed, the goods which he has sold are transferred to another purchaser who bought them in good faith for value and without notice of the transferor's defect of title, the minor may not recover the goods from an innocent purchaser.

§ 38. Contracts and obligations of minors which may not be disaffirmed

(a) A minor may not disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them, if these things have been actually furnished to him or his family.

(b) A minor may not disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

§ 39. Contracts by persons without understanding

A person entirely without understanding may not make a contract, but he is liable for the reasonable value of things furnished to him necessary for his support or that of his family.

§ 40. Contracts by persons of unsound mind

A contract of a person of unsound mind, but not entirely without understanding, made before his incapacity is judicially determined, is subject to rescission, as provided by sections 1291–1294 of this title.

§ 41. Powers of persons whose incapacity is adjudged

After his incapacity is judicially determined, a person of unsound mind may not make a contract, nor delegate any power or waive any right, until his restoration to capacity by the court.

§ 42. Liability of minors and mentally unsound persons for wrongs

A minor, or a person of unsound mind of whatever degree, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

§ 43. Enforcement of minors' rights

A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian must conduct the action or proceedings.

CHAPTER 5—PERSONAL RIGHTS

Sec.
71. General personal rights.
72. Defamation.
73. Libel.
74. Slander.
75. Privileged publications; inference of malice.
76. Abduction and seduction.
77. Wrongs not actionable.
78. Right to use force.

§ 71. General personal rights

In addition to the personal rights recognized by section 31 of Title 1, and by Part 2 of Title 6, and subject to the qualifications and restrictions provided by law, every person has the right of protection from:

(1) bodily restraint or harm;
(2) personal insult;
(3) defamation; and
(4) injury to his personal relations.

§ 72. Defamation

Defamation is effected by libel or slander.

§ 73. Libel

Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which:

(1) exposes a person to hatred, contempt, ridicule, or obloquy; or
(2) causes him to be shunned or avoided; or
(3) has a tendency to injure him in his occupation.

§ 74. Slander

Slander is a false and unprivileged publication other than libel, which:

(1) charges a person with crime, or with having been indicted, convicted, or punished for crime; or
(2) imputes to him the present existence of an infectious, contagious, or loathsome disease; or
(3) tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits; or
(4) imputes to him impotence or a want of chastity; or
(5) by natural consequence, causes actual damage.

§ 75. Privileged publications; inference of malice

(a) A privileged publication is one made:
(1) in the proper discharge of an official duty;

(2) except as provided by subsection (b) of this section, in a judicial proceeding or other official proceeding authorized by law;

(3) in a communication, without malice, to a person interested therein, by one who:

(A) is also interested; or

(B) stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent; or

(C) is requested by the person interested to give the information;

(4) by a fair and true report, without malice, in a public journal, of:

(A) a judicial or other public official proceeding; or

(B) anything said in the course thereof; or

(C) a verified charge or complaint made by a person to a public official, upon which a warrant has been issued;

(5) by a fair and true report of the proceedings of a public meeting, without malice, if:

(A) the meeting was lawfully convened for a lawful purpose; or

(B) the publication of the matter complained of was for the public benefit.

(b) An allegation or averment contained in a pleading or affidavit filed in an action for divorce or an action prosecuted pursuant to section 234 of Title 8, made about a person by or against whom no affirmative relief is not prayed in the action, is not a privileged publication as to the person making the allegation or averment within the meaning of this section, unless:

(1) the pleading is verified or the affidavit is sworn to, and is made without malice by a person having reasonable and probable cause for believing the truth of the allegation or averment; and

(2) the allegation or averment is material and relevant to the issues in the action.

(c) In the cases provided for by clauses (3), (4) and (5) of subsection (a) of this section, malice is not inferred from the communication or publication.

§ 76. Abduction and seduction

The rights of personal relations forbid the:

(1) abduction or enticement of a child from a parent, or from a guardian entitled to its custody; or

(2) seduction of a person below 21 years of age, or of a person who, through unsoundness of mind, temporary or permanent, is incapable of giving legal consent.

§ 77. Wrongs not actionable

A cause of action does not arise for:

(1) alienation of affections;

(2) criminal conversation;

(3) the seduction of a person over 21 years of age, unless she was incapable of giving legal consent through unsoundness of mind, temporary or permanent:

(4) breach of promise of marriage; or

(5) a fraudulent promise to marry or to cohabit after marriage.

§ 78. Right to use force

Necessary force may be used to protect from wrongful injury the person or property of oneself, or of a spouse, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

CHAPTER 7—NATURE OF PROPERTY

Sec.
111. Ownership; property defined.
112. Things subject to ownership.
113. Wild animals.
114. Classification of property as real or personal.
115. Real property defined.
116. Land defined.
117. Fixtures defined.
118. Personal property defined.

§ 111. Ownership; property defined

The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this title, the thing of which there may be ownership is called property.

§ 112. Things subject to ownership

There may be ownership of:

(1) inanimate things which are capable of appropriation or of manual delivery;

(2) domestic animals;

(3) obligations;

(4) products of labor or skill such as the composition of an author, the goodwill of a business, trademarks and signs; and

(5) rights created or granted by statute.

§ 113. Wild animals

Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

§ 114. Classification of property as real or personal

Property is either:

(1) real or immovable; or

(2) personal or movable.

§ 115. Real property defined

Real or immovable property consists of:

(1) land;

(2) that which is affixed to land;

(3) that which is incidental or appurtenant to land; and

(4) that which is immovable by law.

§ 116. Land defined

Land is the solid material of the earth, whatever may be its ingredients.

§ 117. Fixtures defined

A thing is affixed to the land when it is:

(1) attached to it by roots, as in the case of trees, vines or shrubs;

(2) imbedded in it, as in the case of walls;

(3) permanently resting upon it, as in the case of buildings; or

(4) permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws.

§ 118. Personal property defined

Every kind of property that is not real is personal.

CHAPTER 9—OWNERS OF PROPERTY

Sec.
151. Ownership.
152. Persons who may own property.

§ 151. Ownership

All property has an owner, whether that owner is the government, and the property public, or the owner an individual, and the property private.

§ 152. Persons who may own property

Any person, whether citizen or alien, may take, hold, and dispose of property within the Canal Zone.

CHAPTER 11—MODIFICATIONS OF OWNERSHIP

SUBCHAPTER I—INTERESTS IN PROPERTY

SUBCHAPTER II—CONDITIONS OF OWNERSHIP

SUBCHAPTER III—RESTRAINTS UPON ALIENATION

SUBCHAPTER IV—ACCUMULATIONS

Subchapter I—Interests in Property

§ 181. Ownership as absolute or qualified

The ownership of property is either:

(1) absolute; or

(2) qualified.

§ 182. Absolute ownership

The ownership of property is absolute when one person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

§ 183. Qualified ownership

The ownership of property is qualified when:

(1) it is shared with one or more persons;
(2) the time of enjoyment is deferred or limited; or
(3) the use is restricted.

§ 184. Several ownership

The ownership of property by one person is designated as a sole or several ownership.

§ 185. Ownership of several persons

The ownership of property by several persons is either of:

(1) joint interests;
(2) partnership interests;
(3) interests in common; or
(4) community interest of husband and wife.

§ 186. Joint interest

A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or by transfer from a sole owner to himself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from a husband and wife, when holding title as community property or otherwise to themselves or to themselves and others or to one of them and to another or others, when expressly declared in the transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. A joint tenancy in personal property may be created by a written transfer, instrument, or agreement.

§ 187. Partnership interest

A partnership interest is one owned by several persons, in partnership, for partnership purposes.

§ 188. Interest in common

An interest created in favor of several persons in their own right is an interest in common, unless:

(1) acquired by them in partnership, for partnership purposes;
(2) declared in its creation to be a joint interest, as provided by section 186 of this title; or
(3) acquired as community property.

§ 189. Community property

Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either or as joint interests or interests in common.

§ 190. Interests classified as to time

In respect to the time of enjoyment, an interest in property is either:

(1) present or future; and
(2) perpetual or limited.

§ 191. Present interest

A present interest entitles the owner to the immediate possession of the property.

§ 192. Future interest

A future interest entitles the owner to the possession of the property only at a future time.

§ 193. Perpetual interest

A perpetual interest has a duration equal to that of the property.

§ 194. Limited interest

A limited interest has a duration less than that of the property.

§ 195. Kinds of future interests

A future interest is either:

(1) vested; or

(2) contingent.

§ 196. Vested future interests

A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest.

§ 197. Contingent future interests

A future interest is contingent while the person in whom, or the event upon which, it is limited to take effect remains uncertain.

§ 198. Two or more future interests

Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

§ 199. Future interests; improbability of contingency

A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

§ 200. Same; posthumous children

When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

§ 201. Same; transfer of title

Future interests pass by succession, will, and transfer, in the same manner as present interests.

§ 202. Same; possibilities

A mere possibility, such as the expectancy of an heir apparent, is not an interest.

§ 203. Future interests which are recognized

A future interest in property is recognized by the law only as defined in this title.

§ 204. United States bonds or obligations; title upon death of owner or co-owner

United States bonds or obligations, however designated, or whenever issued, which are registered in the names of two persons as co-owners in the alternative, shall, upon the death of either of the registered co-owners, become the sole and absolute property of the surviving co-owner, unless the Federal laws under which the bonds or other obligations were issued or the regulations governing the issuance thereof, provide otherwise.

United States bonds or obligations, however designated, or whenever issued, which are registered in the name of one person payable on death to a named survivor, shall, upon the death of the registered owner, become the sole and absolute property of the surviving beneficiary named therein, unless the Federal laws under which the bonds or other obligations were issued or the regulations governing the issuance thereof, provide otherwise.

This section may not be construed to mean that prior to the enactment hereof the law of the Canal Zone was otherwise than as herein provided.

Subchapter II—Conditions of Ownership

§ 231. Time of enjoyment of property

The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is upon condition.

§ 232. Conditions precedent or subsequent

Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

§ 233. Conditions precedent requiring wrongful or unlawful acts

If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

§ 234. Conditions in restraint of marriage

Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage.

§ 235. Conditions restraining alienation

Conditions restraining alienation, when repugnant to the interest created, are void.

Subchapter III—Restraints Upon Alienation

§ 251. Rule against perpetuities; vesting of interest in property

An interest in real or personal property is not valid unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest and any period of gestation involved in the situation to which the limitation applies. The lives selected to govern the time of vesting must not be so numerous nor so situated that evidence of their deaths is likely to be unreasonably difficult to obtain. This section makes effective in the Canal Zone the American common-law rule against perpetuities.

§ 252. Same; determination of permissible period for vesting of future interest

The period of time during which an interest is destructible pursuant to the uncontrolled volition and for the exclusive personal benefit of the person having such a power of destruction is not to be included in determining the permissible period for the vesting of an interest within the rule against perpetuities.

Subchapter IV—Accumulations

§ 271. Dispositions of income

Disposition of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating the disposition, are governed by the rules prescribed in this chapter in relation to future interests.

§ 272. Accumulations which are void

Directions for the accumulation of the income of property, except such as are allowed by this chapter, are void.

§ 273. Accumulation of income

An accumulation of the income of property may be directed by a will, trust, or transfer in writing sufficient to pass the property or create the trust out of which the fund is to arise, for the benefit of one or more persons, objects, or purposes, but may not extend beyond the time permitted by this title for the vesting of future interests.

§ 274. Directions for accumulation beyond limit

If the direction for an accumulation of the income of property is for a longer term than is limited by section 273 of this title, the direction only, whether separable or not from the other provisions of the instrument, is void as respects the time beyond the limit prescribed in that section, and no other part of the instrument is affected by the void portion of the direction.

§ 275. Destitute beneficiaries

When a person for whose benefit an accumulation of income has been directed is destitute of other sufficient means of support or education, the proper court, upon application, may direct a suitable sum to be applied thereto out of the fund directed to be accumulated for his benefit.

CHAPTER 13—RIGHTS OF OWNERS

Sec.
311. Increase of property.
312. Income of property with respect to future interests.

§ 311. Increase of property

The owner of a thing owns also all its products and accessories.

§ 312. Income of property with respect to future interests

When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership, during the continuation of which the income is undisposed of, and a valid direction for its accumulation is not given, the income belongs to the person presumptively entitled to the next eventual interest.

CHAPTER 15—TERMINATION OF OWNERSHIP

Sec.
341. Defeat of future interests.
342. Alienation or loss of precedent interest as affecting future interest.
343. Premature determination of precedent interest as affecting future interest.

§ 341. Defeat of future interests

(a) A future interest, depending on the contingency of the death of a person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of that person, capable of taking by succession.

(b) A future interest may be defeated in a manner or by an act or means which the party creating it provided for or authorized in the creation thereof. A future interest, thus liable to be defeated, is not, on that ground, void in its creation.

§ 342. Alienation or loss of precedent interest as affecting future interest

A future interest is not defeated or barred by an alienation or other act of the owner of the intermediate or precedent interest, or by destruction of the precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by section 343 of this title, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

§ 343. Premature determination of precedent interest as affecting future interest

A future interest, valid in its creation, is not defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but if the contingency afterwards happens, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

CHAPTER 17—GENERAL DEFINITIONS AFFECTING PROPERTY

§ 371. Definition of income

The income of property, as the term is used in chapters 7, 9, 11, 13, and 15 of this title, includes the rents and profits of real property, the interest on money, dividends upon stock, and other produce of personal property.

§ 372. Time of creation of limitation, condition, or interest

The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is the time of the creation of the limitation, condition, or interest within the meaning of chapters 7, 9, 11, 13, and 15 of this title.

CHAPTER 19—PERSONAL PROPERTY

Subchapter I—General Provisions

§ 401. Law governing

If there is no law to the contrary in the place where personal property is situated, the property follows the person of its owner, and is governed by the law of his domicile.

Subchapter II—Things in Action

§ 421. Definition

A thing in action is a right to recover money or other personal property by a judicial proceeding.

§ 422. Transfer and survivorship

The owner of a thing in action arising out of the violation of a right of property, or out of an obligation, may transfer it. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided by Title 7, it passes to his devisees or successor in office.

§ 423. Survival of thing in action after death of tort feasor or other person liable

(a) A thing in action sounding in tort is not lost because of the death of the tort feasor or other person liable. An action thereon may be brought or continued against the personal representative of the deceased person, but punitive or exemplary damages may not be awarded nor penalties adjudged in the action. This section extends to a thing in action for wrongfully causing death arising pursuant to section 126 of Title 5, and an action pursuant to that section may be bought or continued against the personal representative of the tort feasor or other person liable.

(b) Where a thing in action arises simultaneously with or after the death of the tort feasor or other person who would have been liable if his death had not (1) occurred simultaneously with the act, omission, circumstance, or event giving rise to the thing in action; or (2) intervened between the wrongful act, omission, circumstance, or event and the coming into being of the thing in action, an action to enforce it may be maintained against the personal representative of the tort feasor or other person.

§ 424. Survival of thing in action after death of person injured

(a) A thing in action sounding in tort is not lost because of the death of the person in whose favor the thing in action arose. An action thereon may be brought or continued by the personal representative of the deceased person. The damages recovered in an action under this section shall form a part of the estate of the deceased.

(b) A thing in action for damages caused by an injury or wrong to a third person is not lost because of his death.

(c) If an action is brought for physical injuries to a person, and a separate action is brought for his wrongful death arising out of the same wrongful act, omission, circumstances, or event, the actions shall be consolidated for trial on the motion of an interested party, but the award of damages appertaining to physical injuries may not include prospective profits or earnings after the date of death of the person injured.

§ 425. Transfer or assignment of actions under sections 423 and 424

Sections 423 and 424 of this title do not authorize the transfer of a thing in action arising out of a tort against the person, but they do not preclude assignment pursuant to section 26 of the Federal Employees' Compensation Act (5 U.S.C., sec. 776), by beneficiaries under that Act or their legal representatives, of causes of action saved by those sections.

Subchapter III—Products of the Mind

§ 441. Ownership; composition in letters or art; invention or design

(a) The author or proprietor of a composition in letters or art has an exclusive ownership in the representation or expression thereof as against all persons except one who originally and independently creates the same or a similar composition.

(b) The inventor or proprietor of an invention or design, with or without delineation, or other graphical representation, has an exclu-

sive ownership therein, and in the representation or expression thereof, which continues so long as the invention or design and the representations or expressions thereof made by him remain in his possession.

§ 442. Joint ownership

Unless otherwise agreed, a composition in letters or art, or an invention or design, in the production of which several persons are jointly concerned, is owned by them as follows:

(1) in equal proportions, if the composition in letters or art is indivisible or the invention or design is single; or

(2) in proportion to the contribution of each, if the composition in letters or art is divisible or the invention or design is not single.

§ 443. Transfer of ownership

The owner of a right in a composition in letters or art, or of an invention or design, or of a representation or expression thereof, may transfer his ownership or property therein.

§ 444. Effect of publication or making public

Subject to the law of copyright, if the owner of a composition in letters or art publishes it, or the owner of an invention or design intentionally makes it public, any person, without responsibility to the owner, may use the composition in any manner or make public a copy or reproduction of the invention or design.

§ 445. Subsequent and original inventors

If the owner of an invention or design, does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior inventor, which is exclusive to the same extent against all persons except the prior inventor, or those claiming under him.

§ 446. Private writings

Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but, except by authority of law, they may not be published against the will of the writer.

Subchapter IV—Patents, Trademarks and Copyrights

§ 471. Laws extended to the Canal Zone

The patent, trademark, and copyright laws of the United States have the same force and effect in the Canal Zone as in the continental United States, and the district court has the same jurisdiction in actions arising under those laws as is exercised by the United States district courts.

CHAPTER 21—MODES OF ACQUIRING PROPERTY

Sec.

§ 501. Modes of acquisition generally

Property is acquired by:

(1) accession;
(2) transfer;
(3) will; or
(4) succession.

CHAPTER 23—ACCESSION

Sec.
531. Fixtures.
532. Removal of fixtures by tenant.
533. Accession by uniting several things.
534. Principal part; separation; value; bulk.
535. Uniting materials and workmanship.
536. Inseparable materials.
537. Materials of several owners.
538. Willful trespassers.
539. Election between thing and value.
540. Liability of wrongdoer for damages.

§ 531. Fixtures

Except as provided by section 532 of this title, when a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it.

§ 532. Removal of fixtures by tenant

A tenant may remove from the demised premises, at any time during the continuance of his term, anything affixed thereto for the purposes of trade, manufacture, ornament, or domestic use, unless:

(1) the removal would cause injury to the premises; or

(2) the thing has become an integral part of the premises by the manner in which it is affixed.

§ 533. Accession by uniting several things

When things belonging to different owners have been united to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part. He must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

§ 534. Principal part; separation; value; bulk

(a) That part is to be deemed the principal to which the other has been united only for the use, ornament, or completion of the former, unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

(b) If neither part can be considered the principal, within the rule prescribed by subsection (a) of this section, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

§ 535. Uniting materials and workmanship

If a person makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

§ 536. Inseparable materials

If a person makes use of materials which in part belong to him and in part to another, to form a thing of a new description, without destroying any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

§ 537. Materials of several owners

If a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

§ 538. Willful trespassers

Sections 531–537 of this title do not apply to cases in which a person willfully uses the materials of another without his consent. In those cases, the product belongs to the owner of the material, if its identity can be traced.

§ 539. Election between thing and value

Where a person whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest therein, he may demand:

(1) restitution of his material in kind, in the same quantity, weight, measure, and quality; or

(2) the value of the material.

If he is entitled to the product, he may claim the value thereof in place of the product.

§ 540. Liability of wrongdoer for damages

A person who wrongfully employs materials belonging to another is liable to him in damages, as well as under the foregoing provisions of this chapter.

CHAPTER 25—TRANSFER OF PROPERTY

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—MODE OF TRANSFER

SUBCHAPTER III—INTERPRETATION OF GRANTS

SUBCHAPTER IV—GIFTS

SUBCHAPTER V—GIFTS TO MINORS

Subchapter I—General Provisions

§ 571. Definitions

Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

A voluntary transfer is an executed contract, and, except that a consideration is not necessary to its validity, is subject to all rules of law concerning contracts in general.

A transfer in writing is called a grant or bill of sale, and, as used in this chapter, "grant" includes both these instruments.

§ 572. Property which may be transferred

Except as provided by section 573 of this title, property of any kind may be transferred.

§ 573. Possibility as transferable

A mere possibility, not coupled with an interest, may not be transferred.

§ 574. Right of repossession as transferable

A right of repossession for breach of condition subsequent may be transferred.

§ 575. Vesting of title

A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has, unless a different intention is expressed or necessarily implied.

§ 576. Incidents to a thing transferred

The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

Subchapter II—Mode of Transfer

§ 591. Oral transfer

If a writing is not expressly required by statute, a transfer may be made without writing.

§ 592. Interest in an existing trust

An interest in an existing trust may be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

§ 593. Transfer of other personal property by sale

The mode of transferring other personal property by sale is regulated by chapter 45 of this title.

§ 594. Necessity for delivery

A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor.

§ 595. Date of delivery

A grant duly executed is presumed to have been delivered at its date.

§ 596. Delivery as necessarily absolute

A grant cannot be delivered conditionally to the grantee. Delivery to him, or to his agent, as such, is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery was made.

§ 597. Delivery in escrow

A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is an escrow.

§ 598. Constructive delivery

Though a grant is not actually delivered into the possession of the grantee, it is constructively delivered where it is:

(1) by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or

(2) delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

Subchapter III—Interpretation of Grants

§ 621. Interpretation as contracts

Except as otherwise provided in this subchapter, grants shall be interpreted in like manner as contracts in general.

§ 622. Limitation in grant

A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

§ 623. Recourse to recitals

If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

§ 624. Interpretation against grantor; exceptions

(a) Except as provided by subsection (b) of this section, a grant shall be interpreted in favor of the grantee.

(b) A reservation in a grant, and a grant by a public officer or body, as such, to a private party, shall be interpreted in favor of the grantor.

§ 625. Irreconcilable provisions

If several parts of a grant are absolutely irreconcilable, the former part prevails.

§ 626. "Heirs" and "issue" in certain remainders

Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, those words mean successors, or issue living at the death of the person named as ancestor.

Subchapter IV—Gifts

§ 651. Definition of gift

A gift is a transfer of personal property, made voluntarily, and without consideration.

§ 652. Requisites of a gift

A verbal gift is not valid unless:

(1) the means of obtaining possession and control of the thing are given; or

(2) if the thing is capable of being delivered, there is actual or symbolical delivery thereof to the donee.

§ 653. Revocability of gifts

A gift, other than a gift in view of death, cannot be revoked by the giver.

§ 654. Gift in view of death

A gift in view of death is one made in contemplation, fear, or peril of death, with intent that it shall take effect only in case of the death of the giver.

§ 655. Gift presumed to be in view of death

A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death.

§ 656. Revocation of gift in view of death

(a) Except as provided by subsection (b) of this section, a gift in view of death may be revoked by the giver at any time, and is revoked by:

(1) the giver's recovery from his illness, or escape from the peril, under the presence of which the gift was made; or

(2) the occurrence of an event which would operate as a revocation of a will made at the same time.

(b) When a gift in view of death has been delivered to the donee, the rights of a bona fide purchaser from the donee before a revocation of the gift are not affected by the revocation.

§ 657. Effect of will upon gift

A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

§ 658. Gift treated as legacy

A gift in view of death is treated as a legacy, as far as relates only to the creditors of the giver.

Subchapter V—Gifts to Minors

§ 681. Definitions

In this subchapter, unless the context otherwise requires:

"adult" means a person who has attained the age of 21 years;

"bank" means a bank, trust company, national banking association, or savings bank;

"broker" means a person lawfully engaged in the business of effecting transactions in securities for the account of others; and the term includes a bank which effects such transactions; and term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as part of a regular business;

"court" means the United States District Court for the District of the Canal Zone;

"custodial property" includes:

(1) all securities and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this subchapter;

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money and income;

"custodian" is a person so designated in a manner prescribed in this subchapter;

"guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person;

"issuer" means a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person;

"legal representative" of a person means his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate;

"member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption;

"minor" means a person who has not attained the age of 21 years.

"security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing; but the term does not include a security of which the donor is the issuer; and a security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer;

"transfer agent" means a person who acts an authenticating trustee transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities;

"trust company" means a corporation or association authorized to exercise trust powers.

§ 682. Manner of making gift

(a) An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift:

(1) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "as custodian for_____ under the Canal
(name of minor)

Zone Uniform Gifts to Minors Act";

(2) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor, or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE CANAL ZONE UNIFORM GIFTS TO MINORS ACT

I, _____, hereby deliver to _____ as custodian
(name of donor) (name of custodian)
for _____ under the Canal Zone Uniform Gifts to Minors Act, the following security(ies): (insert an appropriate description of the security or securities delivered sufficient to identify it or them)
(name of minor)

_____
(signature of donor)

_____ hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Canal Zone Uniform Gifts to Minors Act.
(name of custodian)

Dated:_____

_____
(signature of custodian)"

(3) If the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account (or to a savings and loan association for investment in an account in an insured savings and loan association) in the name of the donor, another adult person, or a bank with trust powers, followed, in substance, by the words: "as custodian for _____ under the Canal Zone Uniform Gifts to Minors Act".
(name of minor)

(b) A gift made in a manner prescribed by subsection (a) of this section may be made to only one minor and only one person may be the custodian.

(c) A donor who makes a gift to a minor in a manner prescribed by subsection (a) of this section shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

§ 683. Effect of gift

(a) A gift made in a manner prescribed in this subchapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money given, but a guardian of the minor does not have any right, power, duty or authority with respect to the custodial property except as provided by this subchapter.

(b) By making a gift in a manner prescribed by this subchapter, the donor incorporates in his gift all the provisions of this subchapter and grants to the custodian, and to any issuer, transfer agent, bank, savings and loan association, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this subchapter.

§ 684. Duties and powers of custodian

(a) A custodian shall collect, hold, manage, invest and reinvest the custodial property.

(b) A custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of 14 years, may order the custodian to pay over to the minor for expenditure by him or to expend as much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of 21 years or, if the minor dies before attaining the age of 21 years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) A custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this subchapter.

(f) A custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) A custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for _____ under
(name of minor)
the Canal Zone Uniform Gifts to Minors Act". The custodian shall hold all money which is custodial property in an account with a broker or in a bank or in an account in an insured savings and loan association in the name of the custodian, followed, in substance, by the words: "as custodian for _____ under the Canal Zone Uniform
(name of minor)
Gifts to Minors Act". The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(h) A custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of 14 years.

(i) A custodian has and holds as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in this subchapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

§ 685. Custodian's expenses, compensation, bond, and liabilities

(a) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(b) A custodian may act without compensation for his services.

(c) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated:

(1) A direction by the donor when the gift is made;

(2) Provisions of this Code applicable to guardians;

(3) An order of the court.

(d) Except as otherwise provided in this subchapter, a custodian shall not be required to give a bond for the performance of his duties.

(e) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this subchapter.

§ 686. Exemption of third persons from liability

No issuer, transfer agent, bank, savings and loan association, broker or other person acting on the instructions of or otherwise dealing with a person purporting to act as a donor or in the capacity of a custodian is not responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether a purchase, sale or transfer to or by or any other act of a person purporting to act in the capacity of custodian is in accordance with or authorized by this subchapter, and is not obliged to inquire into the validity or propriety under this subchapter of an instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, is not bound to see to the application by a person purporting to act in the capacity of a custodian of money or other property paid or delivered to him.

§ 687. Resignation, death, or removal of custodian; bond; appointment of successor custodian

(a) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this subchapter.

(b) A custodian, other than the donor, may resign and designate his successor by:

(1) executing an instrument of resignation designating the successor custodian; and

(2) causing each security which is custodial property and in registered form to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for ---------- under the Canal Zone Uniform Gifts to
(name of minor)
Minors Act"; and

(3) delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian and all other custodial property, together with any additional instruments required for the transfer thereof.

(c) A custodian, whether or not a donor, may petition the court for permission to resign and for the designation of a successor custodian.

(d) If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of 21 years, the guardian of the minor shall be successor custodian. If the minor has no guardian, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family, or the minor, if he has attained the age of 14 years, may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of 14 years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable

on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

§ 688. Accounting by custodian

(a) The minor, if he has attained the age of 14 years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(b) The court, in a proceeding under this subchapter or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

§ 689. Construction

(a) This subchapter shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

(b) This subchapter shall not be construed as providing an exclusive method for making gifts to minors.

§ 690. Short title

This subchapter may be cited as the Canal Zone Uniform Gifts to Minors Act.

CHAPTER 27—PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS

Sec.

§ 721. By whom acknowledgments taken in Canal Zone

The proof or acknowledgment of an instrument required by law to be proved or acknowledged may be made in the Canal Zone before:

(1) the district judge;
(2) the clerk of the district court;
(3) a magistrate; or
(4) a notary public of the Canal Zone.

§ 722. By whom acknowledgments taken outside Canal Zone

The proof or acknowledgment of an instrument may be made outside the Canal Zone, but within the United States, and within the jurisdiction of the respective officer, before:

(1) the judge of a court of record or the clerk thereof; or
(2) a notary public within any State.

§ 723. By whom acknowledgments taken in foreign countries

An instrument executed in a foreign country may be acknowledged before a diplomatic or consular officer or commercial agent of the United States accredited to it, or before an officer of the foreign country authorized to take acknowledgments. The signature and official character of the foreign officer shall be certified by a diplomatic, consular, or commercial official of the United States.

§ 724. Issuance of proper certificates

The officers authorized to take acknowledgments pursuant to sections 721–723 of this title may issue proper certificates thereof.

§ 725. Notarial acts; armed forces

(a) A commissioned officer of a component of the Army or Air Force of the United States on active duty in federal service with the Judge Advocate General's Department, a law specialist in the United States Navy and in the United States Coast Guard, a staff judge advocate or acting staff judge advocate, and the adjutant, assistant adjutant, personnel adjutant or commanding officer of a command; or

A commanding officer or executive officer of a ship, shore station or establishment and any officer of or above the rank of lieutenant, senior grade, on active duty with the Navy or Coast Guard of the United States; or

An officer of or above the rank of captain on active duty with the United States Marine Corps—

may administer and certify oaths or affirmations, attest documents, take acknowledgments, and perform all other notarial acts, for any person serving in or with the armed forces of the United States, wherever located within or without the Canal Zone or for the spouse of a member of the armed forces wherever located within or without the Canal Zone.

(b) An instrument acknowledged by such an officer or an oath or affirmation made before him is not rendered invalid by the failure to state therein the place of execution or acknowledgment. An authentication of the officer's certificate of acknowledgment or of any jurat signed by him is not required but the officer taking the acknowledgment shall indorse thereon or attach thereto a certificate substantially in a form authorized by the laws of the Canal Zone or in the following form:

On this the _____ day of _____, 19__, before me _____ _____, the undersigned officer, personally appeared _____ _____ known to me (or satisfactorily proven) to be serving in or with the armed forces of the United States (or to be the spouse of a member of the armed forces of the United States) and to be the person whose name is subscribed to the within instrument and acknowledged that ____ he ____ executed the same. And the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the armed forces of the United States.

_____

_____

Signature of officer and serial number, rank, branch of service and capacity in which signed.

(c) To an affidavit subscribed and sworn to before such an officer there shall be attached a jurat substantially in the following form:

Subscribed and sworn to before me this _____ day of _____, 19____.

_____

_____

Signature of officer and serial number, rank, branch of service and capacity in which signed.

(d) The recitals contained in such a certificate or jurat are prima facie evidence of the truth thereof, and a certificate of acknowledgment, oath or affirmation purporting to have been made by a commissioned officer of the Army, Air Force, Navy, Marine Corps or Coast Guard, notwithstanding the omission of any specific recitals therein, constitutes presumptive evidence of the existence of the facts necessary to authorize the acknowledgment, oath or affirmation to be taken by the certifying officer pursuant to this section.

§ 726. Requisites for acknowledgment

The acknowledgment of an instrument may not be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness that the person making the acknowledgment is the individual who is described in and who executed the instrument; or if executed by a corporation that the person making the acknowledgment is the president or secretary of the corporation, or other person who executed it on its behalf.

§ 727. Certificate of acknowledgment

An officer taking the acknowledgment of an instrument shall indorse thereon or attach thereto a certificate substantially in the forms prescribed by sections 728–732 of this title.

§ 728. General form of certificate

(a) Unless it is otherwise provided in this chapter, the certificate of acknowledgment shall be substantially in the following form:

UNITED STATES OF AMERICA,

Canal Zone, *ss:*

On this —— day of ——, in the year ——, before me (here insert name and quality of the officer), personally appeared ————, known to me (or proved to me on the oath of ————) to be the person whose name is subscribed to the within instrument, and acknowledged that he (she or they) executed the same.

(b) An acknowledgment taken without the Canal Zone in accordance with the laws of the place where the acknowledgment is made is sufficient in the Canal Zone. The certificate of the clerk of a court of record of the county or district where the acknowledgment is taken, that the officer certifying to it is authorized by law so to do, and that the signature of the officer to the certificate is his true and genuine signature, and that the acknowledgment is taken in accordance with the laws of the place where the same is made, is prima facie evidence of the facts stated in the certificate of the clerk.

§ 729. Form of certificate of acknowledgment by corporation

(a) The certificate of acknowledgment of an instrument executed by a corporation shall be substantially in the following form:

UNITED STATES OF AMERICA,

Canal Zone, *ss:*

On this ——— day of ———, in the year ———, before me (here insert the name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the president (or the secretary) of the corporation that executed the within instrument (where, however, the instrument is executed in behalf of the corporation by some one other than the president or secretary insert: known to me (or proved to me on the oath of ———) to be the person who executed the within instrument on behalf of the corporation therein named) and acknowledged to me that such corporation executed the same.

(b) The certificate of acknowledgment of an instrument executed by a corporation, by its president or vice president and secretary or assistant secretary, other than an instrument conveying or otherwise transferring all, or substantially all, the assets of the corporation, may contain, in addition to the matters set forth in subsection (a) of this section, a statement substantially in the following form: "and acknowledged to me that the corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors"; and that recital is prima facie evidence that the instrument is the act of the corporation, and that it was duly executed pursuant to authority duly given by its by-laws or the board of directors, and conclusive evidence of those matters in favor of any good faith purchaser, lessee or encumbrancer.

§ 730. Form of certificate of acknowledgment by partnership

The certificate of acknowledgment of an instrument executed by a partnership shall be substantially in the following form:

UNITED STATES OF AMERICA,

Canal Zone, *ss:*

On this ——— day of ———, in the year ———, before me (here insert the name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be one of the partners of the partnership that executed the within instrument, and acknowledged to me that the partnership executed the same.

§ 731. Form of certificate of acknowledgment by attorney in fact

The certificate of acknowledgment by an attorney in fact shall be substantially in the following form:

UNITED STATES OF AMERICA,

Canal Zone, *ss:*

On this ——— day of ———, in the year ———, before me (here insert the name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the within instrument as the attorney in fact of ———, and acknowledged to me that he subscribed the name of ——— thereto as principal, and his own name as attorney in fact.

§ 732. Authentication of certificate of acknowledgment

Officers taking and certifying acknowledgments, or proof of instruments for record, shall authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the State or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

§ 733. Proof of execution

Proof of the execution of an instrument, when not acknowledged, may be made either by:

(1) the party executing it; or either of the parties; or

(2) a subscribing witness; or

(3) other witnesses, in cases mentioned in section 1125 of this title.

§ 734. Identity of witness

If execution is to be proved by a subscribing witness, he must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.

§ 735. Items to be proved by subscribing witness

The subscribing witness referred to in sections 733 and 734 of this title shall prove that:

(1) the person whose name is subscribed to the instrument as a party:

(A) is the person described in it; and

(B) that he executed it; and

(2) the witness subscribed his name thereto as a witness.

§ 736. Proof of handwriting

The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, when the:

(1) parties and all the subscribing witnesses are dead;

(2) parties and all the subscribing witnesses are nonresidents of the Canal Zone;

(3) place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence;

(4) subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or

(5) failure or refusal of the witness to testify continues for the space of one hour after his appearance.

§ 737. Evidence of handwriting

The evidence taken pursuant to section 736 of this title must satisfactorily prove to the officer:

(1) the existence of one or more of the conditions specified by section 736 of this title;

(2) that the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine;

(3) that the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and

(4) the place of residence of the witness.

§ 738. Contents of certificate of proof

An officer taking proof of the execution of an instrument shall, in his certificate indorsed thereon or attached thereto, set forth:

(1) all the matters required by law to be done or known by him, or proved, before him on the proceeding; and

(2) the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

§ 739. Other powers of officers

Officers authorized to take the proof of instruments may, in the proceedings:

(1) administer oaths or affirmations, as prescribed by section 2502 of Title 5;

(2) employ and swear interpreters;

(3) issue subpoenas, as prescribed by section 1101 of Title 2; and

(4) institute proceedings in the district court to compel the attendance of witnesses or the production of papers, or to punish for contempt, or for the issuance of a warrant of arrest or commitment, in the manner provided by section 1102 of Title 2, and sections 2555 and 2556 of Title 5.

§ 740. Action to correct defective instrument

When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, a party interested may have an action in the district court to obtain a judgment correcting the certificate.

§ 741. Action for judgment proving instrument

Any person interested under an instrument entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving the instrument.

§ 742. Effect of judgment

A certified copy of the judgment in a proceeding instituted pursuant to section 740 or 741 of this title, showing the proof of the instrument, and attached thereto, entitles the instrument to record, with like effect as if acknowledged.

§ 743. Instruments executed prior to effective date of Code

The legality of the execution, acknowledgment, proof, form, or record of instruments made before January 2, 1963, executed, acknowledged, proved, or recorded is not affected by the provisions of this chapter. They depend for their validity and legality upon the laws in force when the acts were performed.

§ 744. Instruments affecting land in District of Columbia, territories, etc.

Deeds and other instruments affecting land situate in the District of Columbia, or any territory or possession of the United States, or the Commonwealth of Puerto Rico, may be acknowledged in the Canal Zone:

(1) before a notary public or judge; or

(2) by an officer in the Canal Zone who has ex officio powers of a notary public.

The certificate by the notary public in the Canal Zone shall be accompanied by a certificate of the executive secretary stating that the notary taking the acknowledgment was in fact the officer he purported to be. Deeds or other instruments affecting lands so situate, so acknowledged since January 1, 1905, and accompanied by the certificate have the same effect as such deeds or other instruments so acknowledged and certified after June 28, 1906.

CHAPTER 29—OBLIGATIONS IN GENERAL

SUBCHAPTER I—DEFINITIONS

SUBCHAPTER II—INTERPRETATION OF OBLIGATIONS

Article A—General Rules of Interpretation

Article B—Joint or Several Obligations

Article C—Conditional Obligations

Article D—Alternative Obligations

SUBCHAPTER III—TRANSFER OF OBLIGATIONS

SUBCHAPTER IV—EXTINCTION OF OBLIGATIONS

Article A—Performance

Article B—Offer of Performance

Article C—Prevention of Performance or Offer

Subchapter I—Definitions

§ 781. Obligation defined

An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

§ 782. Creation and enforcement

An obligation arises either from the:

(1) contract of the parties; or
(2) operation of law.

An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action or proceeding.

Subchapter II—Interpretation of Obligations

Article A—General Rules of Interpretation

§ 811. General rules of interpretation

The rules which govern the interpretation of contracts are prescribed by chapter 35 of this title. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

Article B—Joint or Several Obligations

§ 821. Classification of obligations

An obligation imposed upon several persons, or a right created in favor of several persons, may be:

(1) joint;
(2) several; or
(3) joint and several.

§ 822. Presumption of joint obligation

An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases specified by chapter 35 of this title, relating to the interpretation of contracts. This presumption, in the case of a right, may be overcome only by express words to the contrary.

§ 823. Contribution between joint parties

A party to a joint, or joint and several, obligation who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

Article C—Conditional Obligations

§ 831. Conditional obligation defined

An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

§ 832. Kinds of conditions

Conditions may be precedent, concurrent, or subsequent.

§ 833. Conditions precedent

A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

§ 834. Conditions concurrent

Conditions concurrent are those which are mutually dependent, and are to be performed at the same time.

§ 835. Conditions subsequent

A condition subsequent is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

§ 836. Performance of conditions necessary

Before a party to an obligation can require another party to perform any act under it, he shall fulfill all conditions precedent thereto imposed upon himself and be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by section 837 of this title.

§ 837. Performance excused

If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract the notice before the time when performance upon his part is due, the other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former party.

§ 838. Impossible or unlawful conditions

A condition in a contract, the fulfillment of which is impossible or unlawful within the meaning of sections 1081–1085 of this title, or which is repugnant to the nature of the interest created by the contract, is void.

§ 839. Construction of conditions involving forfeiture

A condition involving a forfeiture shall be strictly interpreted against the party for whose benefit it is created.

Article D—Alternative Obligations

§ 851. Right of selection

If an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

§ 852. Loss of right of selection

If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is so fixed, before the time when the obligation ought to be performed, the right of selection passes to the other party.

§ 853. Indivisibility of alternatives

A party having the right of selection between alternative acts shall select one of them in its entirety, and may not select part of one and part of another without the consent of the other party.

§ 854. Nullity of alternatives

If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful, or impossible of performance, the obligation is to be interpreted as though the other stood alone.

Subchapter III—Transfer of Obligations

§ 871. Transfer of burden of obligation

The burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise.

§ 872. Transfer of rights arising from obligation

A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

This section does not authorize the transfer of a thing in action arising out of a tort against the person.

§ 873. Indorsement of nonnegotiable instrument

A nonnegotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner as negotiable instruments. The indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

Subchapter IV—Extinction of Obligations

Article A—Performance

§ 891. Extinction by performance

Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

§ 892. Performance by a joint debtor

Performance of an obligation by one of several persons who are jointly liable under it extinguishes the liability of all.

§ 893. Performance to a joint creditor

An obligation in favor of joint creditors is extinguished by performance rendered to any of them, except in the case of a deposit made by joint owners, which is regulated by chapters 49 to 53 of this title on deposit.

§ 894. Performance as directed by creditor

If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of the performance.

§ 895. Partial performance

A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof only if the benefit of the performance is voluntarily retained by the creditor. If the partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

§ 896. Payment defined

Performance of an obligation for the delivery of money only is called payment.

§ 897. Performance applicable to more than one obligation

If a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally appli-

cable to two or more of the obligations, the performance shall be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that the performance should be applied to the extinction of any particular obligation, is manifested to the creditor, it shall be so applied.

(2) If no such application is then made, the creditor, within a reasonable time after the performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of the performance; except that if similar obligations were due to him both individually and as a trustee, he shall, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion. An application once made by the creditor may not be rescinded without the consent of the debtor.

(3) If neither party makes an application within the time prescribed herein, the performance shall be applied to the extinction of obligations in the following order:

(A) interest due at the time of the performance;

(B) principal due at that time;

(C) the obligation earliest in date of maturity;

(D) an obligation not secured by a lien or collateral undertaking;

(E) an obligation secured by a lien or collateral undertaking.

If there is more than one obligation of a particular class the performance shall be applied to the extinction of all in that class ratably.

Article B—Offer of Performance

§ 911. Extinction by offer

An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

§ 912. Offer of partial performance

An offer of partial performance is of no effect.

§ 913. Person required to make offer

Only the debtor, or a person on his behalf and with his assent, may make an offer of performance.

§ 914. Person to whom offer may be made; place of offer

An offer of performance shall be made to:

(1) the creditor;

(2) any one of two or more joint creditors; or

(3) a person authorized by one or more of the creditors to receive or collect what is due under the obligation—

if the creditor or authorized person is present at the place where the offer may be made; and if not, wherever the creditor may be found.

§ 915. Place of offer

In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

(1) at any place appointed by the creditor:

(2) wherever the person to whom the offer ought to be made can be found;

(3) if the person to whom the offer ought to be made can not with reasonable diligence be found within the Canal Zone, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence or place of business, if the same can, with reasonable diligence, be found within the Canal Zone; or

(4) if this cannot be done, then at any place within the Canal Zone.

§ 916. Time of offer

(a) Where an obligation fixes a time for its performance, an offer of performance may be made only at that time.

(b) Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon a reasonable demand, has refused to perform.

§ 917. Offer of compensation for delay

Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor, or by any other person, in the meantime.

§ 918. Good faith of offer

An offer of performance shall be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

§ 919. Conditional offer

An offer of performance shall be free from any conditions which the creditor is not bound, on his part, to perform.

§ 920. Ability and willingness to perform

An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

§ 921. Production of thing to be delivered

The thing to be delivered, if any, need not in any case be actually produced, upon an offer of performance, unless the offer is accepted.

§ 922. Separation of thing offered

A thing, when offered by way of performance, may not be mixed with other things from which it cannot be separated immediately and without difficulty.

§ 923. Offer dependent upon performance of condition

When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of that condition.

§ 924. Written receipt

A debtor may require from his creditor a written receipt for any property delivered in performance of his obligation.

§ 925. Extinction of pecuniary obligation by offer, deposit, and notice

An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with a bank of deposit within the Canal Zone, of good repute, and notice thereof is given to the creditor.

§ 926. Objections to mode of offer

All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated.

§ 927. Title to thing offered

The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

§ 928. Custody of thing offered

A person offering a thing, other than money, by way of performance, shall, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with the depositary.

§ 929. Effect of offer on interest and incidents of obligation

An offer of payment or other performance, duly made, though the title to the thing offered is not transferred to the creditor, stops the running of interest on the obligation, and has the same effect upon all its incidents as a performance thereof.

§ 930. Retention of thing offered and refused

If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is a gratuitous depositary thereof.

Article C—Prevention of Performance or Offer

§ 941. Causes excusing performance or offer

The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

(1) when the performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;

(2) when it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of the United States, unless the parties have expressly agreed to the contrary; or

(3) when the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which the performance or offer may be made, and not rescinded before that time.

§ 942. Performance prevented by creditor

If the performance of an obligation is prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

§ 943. Performance prevented by cause excusing it

If the performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

§ 944. Refusal to accept performance before offer

A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

Article D—Accord and Satisfaction

§ 951. Accord defined

An accord is an agreement to accept in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

§ 952. Effect of accord

Though the parties to an accord are bound to execute it, it does not extinguish the obligation until it is fully executed.

§ 953. Satisfaction defined

Acceptance, by the creditor, of the consideration of an accord extinguishes the obligation, and is called satisfaction.

§ 954. Part performance

Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

Article E—Novation

§ 961. Novation defined

Novation is the substitution of a new obligation for an existing one.

§ 962. Methods of novation

Novation is made by the substitution of:

(1) a new obligation between the same parties, with intent to extinguish the old obligation;

(2) a new debtor in place of the old one, with intent to release the latter; or

(3) a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

§ 963. Applicability of contract rules

Novation is made by contract, and is subject to all the rules concerning contracts in general.

§ 964. Rescission of novation

When the obligation of, or an order upon, a third person is accepted in satisfaction, the creditor may rescind the acceptance if:

(1) the debtor prevents the person from complying with the order or from fulfilling the obligation; or

(2) at the time the obligation or order is received, the person is insolvent and this fact is unknown to the creditor; or

(3) before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

Article F—Release

§ 971. Extinction of obligation by release

An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

§ 972. Extent of general release

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

§ 973. Release of joint debtor

A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him.

CHAPTER 31—NATURE OF A CONTRACT

SUBCHAPTER I—DEFINITIONS

SUBCHAPTER II—PARTIES

SUBCHAPTER III—CONSENT

SUBCHAPTER IV—OBJECT

SUBCHAPTER V—CONSIDERATION

Subchapter I—Definitions

§ 1001. Contract defined

A contract is an agreement to do or not to do a certain thing.

§ 1002. Essential elements of contract

It is essential to the existence of a contract that there should be:

(1) parties capable of contracting;
(2) their consent;
(3) a lawful object; and
(4) a sufficient cause or consideration.

Subchapter II—Parties

§ 1021. Persons capable of contracting

All persons are capable of contracting, except minors and persons of unsound mind.

§ 1022. Capacity of minors and persons of unsound mind

Minors, and persons of unsound mind, have only such capacity as is defined by chapter 3 of this title.

§ 1023. Identification of parties necessary

It is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them.

§ 1024. Contract for benefit of third person

A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

Subchapter III—Consent

§ 1041. Essentials of consent

The consent of the parties to a contract must be:

(1) free;
(2) mutual; and
(3) communicated by each to the other.

§ 1042. Voidable consent

A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties, in the manner prescribed by sections 1291 to 1294 of this title.

§ 1043. Causes defeating reality or freedom of consent

An apparent consent is not real or free when obtained through:

(1) duress;
(2) menace;
(3) fraud;
(4) undue influence; or
(5) mistake.

§ 1044. When causes exist

Consent is deemed to have been obtained through one of the causes specified by section 1043 of this title only when it would not have been given had that cause not existed.

§ 1045. Duress

Duress consists in:

(1) unlawful confinement of the person of the party, or of the spouse of the party, or of an ancestor, descendant, or adopted child of the party or spouse;

(2) unlawful detention of the property of such a person; or

(3) confinement of such a person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

§ 1046. Menace

Menace consists in a threat of:

(1) any duress specified by paragraphs (1) and (3) of section 1045 of this title;

(2) unlawful and violent injury to the person or property of any person specified by section 1045 of this title; or

(3) injury to the character of such a person.

§ 1047. Kinds of fraud

Fraud is either actual or constructive.

§ 1048. Actual fraud

Actual fraud, within the meaning of this subchapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(3) the suppression of that which is true, by one having knowledge or belief of the fact;

(4) a promise made without any intention of performing it; or

(5) any other act fitted to deceive.

§ 1049. Constructive fraud

Constructive fraud consists in:

(1) any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or

(2) any act or omission which the law specially declares to be fraudulent, without respect to actual fraud.

§ 1050. Actual fraud as question of fact

Actual fraud is always a question of fact.

§ 1051. Undue influence

Undue influence consists in:

(1) the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of the confidence or authority for the purpose of obtaining an unfair advantage over him;

(2) taking an unfair advantage of another's weakness of mind; or

(3) taking a grossly oppressive and unfair advantage of another's necessities or distress.

§ 1052. Kinds of mistake

Mistake may be either of fact or law.

§ 1053. Mistake of fact

Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

(1) an unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or

(2) belief in the present existence of a thing material to the contract which does not exist, or in the past existence of such a thing, which has not existed.

§ 1054. Mistake of law

Mistake of law is a mistake, within the meaning of this subchapter, only when it arises from a misapprehension of the law:

(1) by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or

(2) by one party, of which the others are aware at the time of contracting, but which they do not rectify.

§ 1055. Mistake of foreign laws

Mistake of foreign laws is a mistake of fact.

§ 1056. Mutuality of consent

Consent is not mutual unless the parties all agree upon the same thing in the same sense; but in certain cases defined by chapter 35 of this title, relating to the interpretation of contracts, they are to be deemed so to agree without regard to the fact.

§ 1057. Communication of consent

Consent may be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to communication.

§ 1058. Communication of acceptance of proposal

If a proposal prescribes conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

§ 1059. Completion of communication

Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to section 1058 of this title.

§ 1060. Acceptance of proposal

Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

§ 1061. Absolute or qualified acceptance

An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal.

§ 1062. Time for revoking proposal

A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

§ 1063. Method of revoking proposal

A proposal is revoked by:

(1) communication of notice of revocation by the proposer to the other party, in the manner prescribed by sections 1057–1059 of this title, before his acceptance has been communicated to the former;

(2) the lapse of the time prescribed in the proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

(3) the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) the death or insanity of the proposer.

§ 1064. Ratification of voidable contract

A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent.

§ 1065. Consent by acceptance of benefits

A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, as far as the facts are known, or ought to be known, to the person accepting.

Subchapter IV—Object

§ 1081. Object defined

The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

§ 1082. Requisites of the object

The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

§ 1083. Impossibility defined

Everything is deemed possible except that which is impossible in the nature of things.

§ 1084. Unlawful, impossible, or unascertainable object

Where a contract has but a single object, and that object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

§ 1085. One of several objects unlawful

Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

Subchapter V—Consideration

§ 1101. Good consideration defined

A benefit conferred, or agreed to be conferred, upon the promisor, by another person, to which the promisor is not lawfully entitled, or a prejudice suffered, or agreed to be suffered, by another person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

§ 1102. Legal or moral obligation

An existing legal obligation resting upon the promisor, or a moral obligation originating in a benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, but only to an extent corresponding with the extent of the obligation.

§ 1103. Lawful consideration

The consideration of a contract must be lawful within the meaning of section 1241 of this title.

§ 1104. Effect of illegal consideration

If a part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

§ 1105. Executed or executory consideration

A consideration may be executed or executory, in whole or in part. Insofar as it is executory it is subject to sections 1081–1085 of this title.

§ 1106. Executory consideration

When a consideration is executory, it is not indispensable that the contract specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

§ 1107. Ascertainment of consideration

When a contract does not determine the amount of the consideration, nor the method by which it is to be determined, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be as much money as the object of the contract is reasonably worth.

§ 1108. Impossibility of ascertaining consideration

(a) Where a contract provides an exclusive method by which its consideration is to be determined, which method is on its face impossible of execution, the entire contract is void.

(b) Where a contract provides an exclusive method by which its consideration is to be determined, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

(c) This section does not apply to cases provided for by sections 1429 and 1430 of this title.

§ 1109. Written instrument

A written instrument is presumptive evidence of a consideration.

§ 1110. Burden of proving want of consideration

The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

CHAPTER 33—CREATION OF CONTRACTS

Sec.

§ 1141. Kinds of contracts

A contract is either express or implied.

§ 1142. Express contract defined

An express contract is one the terms of which are stated in words.

§ 1143. Implied contract defined

An implied contract is one the existence and terms of which are manifested by conduct.

§ 1144. Oral contracts

All contracts may be oral, except such as are specially required by statute to be in writing.

§ 1145. Contract not in writing through fraud

If a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by that fraud led to believe that it is in writing, and acts upon that belief to his prejudice, may enforce it against the fraudulent party.

§ 1146. Statute of frauds

The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:

(1) an agreement that by its terms is not to be performed within a year from the making thereof;

(2) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for by section 3714 of this title;

(3) an agreement made upon consideration of marriage;

(4) an agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

(5) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

(6) an agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath property, or to make provision for a person by will.

§ 1147. Effect of written contract on negotiations or stipulations

The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

§ 1148. Written contract effective upon delivery

A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

§ 1149. Law governing delivery of written contracts

Sections 594–598 of this title, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

§ 1150. Sealed and unsealed instruments

All distinctions between sealed and unsealed instruments are abolished.

CHAPTER 35—INTERPRETATION OF CONTRACTS

Sec.

§ 1181. Uniformity of interpretation

All contracts, whether public or private, shall be interpreted by the same rules, except as otherwise provided by this title.

§ 1182. Intention of parties

A contract shall be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, as far as the same is ascertainable and lawful.

§ 1183. Ascertainment of intention generally

For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter shall apply.

§ 1184. Language of contract

The language of a contract shall govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

§ 1185. Written contracts

When a contract is reduced to writing, the intention of the parties shall be ascertained from the writing alone, if possible; subject, however, to the other provisions of this chapter.

§ 1186. Writing disregarded

When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, that intention shall be regarded, and the erroneous parts of the writing disregarded.

§ 1187. Contract taken as a whole

The whole of a contract shall be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

§ 1188. Several contracts to be taken together

Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, shall be taken together.

§ 1189. Interpretation in favor of contract

A contract shall receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

§ 1190. Words in their ordinary sense

The words of a contract shall be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter shall be followed.

§ 1191. Technical words

Technical words shall be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

§ 1192. Law and usage of place

A contract shall be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

§ 1193. Explanation by reference to circumstances

A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

§ 1194. Restriction to object of contract

However broad may be the term of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

§ 1195. Ambiguity or uncertainty of promise

If the terms of a promise are in any respect ambiguous or uncertain, it shall be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

§ 1196. Particular clauses; general intent

Particular clauses of a contract are subordinate to its general intent.

§ 1197. Partly written and printed contracts

If a contract is partly written and partly printed, or if part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter shall be so far disregarded.

§ 1198. Reconciliation of repugnancies

Repugnancy in a contract shall be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

§ 1199. Inconsistent words

Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, shall be rejected.

§ 1200. Interpretation against party causing uncertainty

In cases of uncertainty not removed by the preceding rules, the language of a contract shall be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be that party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

§ 1201. Implied stipulations

Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract does not manifest a contrary intention.

§ 1202. Necessary incidents implied

All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

§ 1203. Time of performance of contract

If a time is not specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it shall be performed immediately upon the thing to be done being exactly ascertained.

§ 1204. Joint and several promise

(a) Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

(b) A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

§ 1205. Executed and executory contracts

An executed contract is one, the object of which is fully performed. All others are executory.

CHAPTER 37—UNLAWFUL CONTRACTS

§ 1241. Unlawful defined

That is not lawful which is:

(1) contrary to an express provision of law;

(2) contrary to the policy of express law, though not expressly prohibited; or

(3) otherwise contrary to good morals.

§ 1242. Contracts contrary to policy of law

Contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

§ 1243. Liquidated damages

(a) Except as expressly provided in subsection (b) of this section, a contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void.

(b) The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

§ 1244. Contracts in restraint of trade; partnership agreements

(a) Except as provided in subsection (b) of this section, contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind is to that extent void.

(b) Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

§ 1245. Contracts in restraint of marriage

A contract in restraint of the marriage of any person, other than a minor, is void.

CHAPTER 39—EXTINCTION OF CONTRACTS

Subchapter I—General Provisions

§ 1271. Extinguishment

A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this chapter.

Subchapter II—Rescission

§ 1291. Extinguishment by rescission

A contract is extinguished by its rescission.

§ 1292. Grounds for rescission

A party to a contract may rescind it in the following cases only:

(1) if the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with that party;

(2) if, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part;

(3) if the consideration becomes entirely void from any cause;

(4) if the consideration, before it is rendered to him, fails in a material respect, from any cause;

(5) by consent of all the other parties; or

(6) under the circumstances provided for by chapter 45 of this title, relating to sales of goods.

§ 1293. Stipulations against right to rescind

A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where the mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

§ 1294. Procedure for rescission

Rescission, when not effected by consent, may be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to:

(1) rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and

(2) restore to the other party everything of value which he has received from him under the contract; or offer to restore the same, upon condition that the other party shall do likewise, unless the latter is unable or positively refuses to do so.

Subchapter III—Alteration and Cancellation

§ 1311. Alteration of verbal contract

A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

§ 1312. Alteration of written contract

A contract in writing may be altered only by a contract in writing or an executed oral agreement.

§ 1313. Destruction or cancellation by consent of parties

The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

§ 1314. Destruction, cancellation, or alteration by beneficiary

The intentional destruction, cancellation, or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

§ 1315. Alteration or destruction of duplicate

Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the purview of section 1314 of this title.

CHAPTER 41—OBLIGATIONS IMPOSED BY LAW

Sec.

§ 1351. Abstinence from injuring others

Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

§ 1352. Damages for deceit

One who willfully deceives another with intent to induce him to alter his position to his injury, or risk, is liable for any damage which he thereby suffers.

§ 1353. Deceit defined

A deceit, within the meaning of section 1352 of this title, is:

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

(3) the suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or

(4) a promise made without any intention of performing it.

§ 1354. Deceit upon the public or a class

One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

§ 1355. Thing wrongfully acquired; restoration

One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless

(1) he has acquired a title thereto superior to that of the other person; or

(2) the transaction was corrupt and unlawful on both sides.

§ 1356. Same; demand for restoration

The restoration required by section 1355 of this title must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

§ 1357. Willful acts and negligence; contributory negligence

Everyone is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except as far as the latter has willfully brought the injury upon himself. Want of ordinary care on the part of the injured person does not bar a recovery, but the damages shall be diminished by the court or jury in proportion to the want of ordinary care attributable to that person. The extent of liability in the cases covered by this section is defined by chapter 109 of this title, relating to compensatory relief.

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§ 1391. Waiver of provisions; intention of parties

Except where it is otherwise declared, the provisions of chapters 40–105 of this title, with respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by chapter 35 of this title, relating to the interpretation of contracts; and the benefit thereof may be waived by a party entitled thereto, unless the waiver would be against public policy.

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SUBCHAPTER VI—INTERPRETATION

Subchapter I—The Contract

Article A—Formation of the Contract

§ 1421. Contracts to sell and sales

(a) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

(b) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

(c) A contract to sell or a sale may be absolute or conditional.

(d) There may be a contract to sell or a sale between one part owner and another.

§ 1422. Capacity; liability for necessaries

Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessaries are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery.

Article B—Formalities of the Contract

§ 1423. Form of contract or sale

Subject to the provisions of this chapter and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties.

§ 1424. Statute of frauds

(a) A contract to sell or a sale of any goods or choses in action of the value of $500 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(b) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(c) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods,

expresses by words or conduct his assent to becoming the owner of those specific goods.

Article C—Subject Matter of Contract

§ 1425. Existing and future goods

(a) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this chapter called "future goods."

(b) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(c) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods.

§ 1426. Undivided shares

(a) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(b) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight, or measure bought bears to the number, weight, or measure of the mass. If the mass contains less than the number, weight, or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears.

§ 1427. Destruction of goods sold

(a) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(b) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale:

(1) as avoided; or

(2) as transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible.

§ 1428. Destruction of goods contracted to be sold

(a) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

(b) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substan-

tially changed in character, the buyer may at his option treat the contract:

(1) as avoided; or

(2) as binding the seller to transfer the property in all of the existing goods, or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyers option, is bound to transfer if the contract was divisible.

Article D—The Price

§ 1429. Definition and ascertainment of price

(a) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(b) The price may be made payable in any personal property.

(c) Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this chapter shall not apply.

(d) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

§ 1430. Sale at a valuation

(a) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(b) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by subchapters IV and V of this chapter.

Article E—Conditions and Warranties

§ 1431. Effect of conditions

(a) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

(b) Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods.

§ 1432. Definition of express warranty

Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty.

§ 1433. Implied warranties of title

In a contract to sell or a sale, unless contrary intention appears, there is:

(1) an implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass;

(2) an implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

(3) an implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

This section does not, however, render liable a marshal, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest.

§ 1434. Implied warranty in sale by description

Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

§ 1435. Implied warranties of quality

Subject to the provisions of this chapter and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purposes of goods supplied under a contract to sell or a sale, except as follows:

(1) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose;

(2) where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality;

(3) if the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed;

(4) in the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose;

(5) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;

(6) an express warranty or condition does not negative a warranty or condition implied under this chapter unless inconsistent therewith.

Article F—Sale by Sample

§ 1436. Implied warranties in sale by sample

In the case of a contract to sell or a sale by sample:

(1) there is an implied warranty that the bulk shall correspond with the sample in quality;

(2) there is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided by section 1477(c) of this title;

(3) if the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

Subchapter II—Transfer of Property and Title

Article A—Transfer of Property as Between Seller and Buyer

§ 1441. Property not to pass until goods are ascertained

Where there is a contract to sell unascertained goods, property in the goods is not transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided by section 1426 of this title.

§ 1442. Property in specific goods passes when parties so intend

(a) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(b) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case.

§ 1443. Rules for ascertaining intention

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

RULE 1. Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

RULE 2. Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

RULE 3. (1) When goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer:

(A) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(B) if he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

RULE 4. (1) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract,

either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for by the next rule and by section 1444 of this title. This presumption is applicable, although by the terms of the contract the buyer is to pay the price before receiving delivery of the goods and the goods are marked with the words "collect on delivery" or their equivalents.

RULE 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon.

§ 1444. Reservation of right of possession or property when goods are shipped

(a) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

(b) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

(d) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

§ 1445. Sale by auction

In the case of a sale by auction:

(1) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller.

(4) Where notice has not been given that a sale by auction is subject to a right to bid in behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.

§ 1446. Risk of loss

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that:

(1) where delivery of goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery;

(2) where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Article B—Transfer of Title

§ 1447. Sale by a person not the owner

(a) Subject to the provisions of this chapter, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(b) Nothing in this chapter, however, shall affect:

(1) the provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof; or

(2) the validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

§ 1448. Sale by one having a voidable title

Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title.

§ 1449. Sale by seller in possession of goods already sold

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

§ 1450. Creditors' rights against sold goods in seller's possession

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void.

§ 1451. Definition of negotiable documents of title

A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title.

§ 1452. Negotiation of negotiable documents by delivery

A negotiable document of title may be negotiated by delivery:

(1) where, by the terms of the document, the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the bearer; or

(2) where, by the terms of the document, the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to the bearer.

Where, by the terms of a negotiable document of title, the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee.

§ 1453. Negotiation of negotiable documents by indorsement

A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiations may be made in like manner.

§ 1454. Negotiable documents of title marked "not negotiable"

If a document of title which contains an undertaking by a carrier, warehouseman, or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable", "nonnegotiable", or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this chapter. But this chapter does not limit or define the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title, of placing thereon the words "not negotiable", "nonnegotiable", or the like.

§ 1455. Transfer of nonnegotiable documents

A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable document cannot be negotiated, and the indorsement of such a document gives the transferee no additional right.

§ 1456. Who may negotiate a document

A negotiable document of title may be negotiated:

(1) by the owner thereof; or

(2) by any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the

document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery.

§ 1457. Rights of person to whom document has been negotiated

A person to whom a negotiable document of title has been duly negotiated acquires thereby:

(1) such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value; and

(2) the direct obligations of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him.

§ 1458. Rights of person to whom document has been transferred

A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is nonnegotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a nonnegotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

§ 1459. Transfer of negotiable document without indorsement

Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

§ 1460. Warranties on sale of document

A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

(1) that the document is genuine;

(2) that he has a legal right to negotiate or transfer it;

(3) that he has knowledge of no fact which would impair the validity or worth of the document; and

(4) that he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby.

§ 1461. Indorser not a guarantor

The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations.

§ 1462. When negotiation not impaired by fraud, mistake, or duress

The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor in good faith without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress or conversion.

§ 1463. Attachment or levy upon goods for which a negotiable document has been issued

If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee may not be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court.

§ 1464. Creditors' remedies to reach negotiable documents

A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot be readily attached or levied upon by ordinary legal process.

Subchapter III—Performance of the Contract

§ 1471. Seller must deliver and buyer accept goods

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale.

§ 1472. Delivery and payment are concurrent conditions

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

§ 1473. Place, time, and manner of delivery

(a) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(b) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(c) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. This section, however, does not affect the operation of the issue nor transfer of any document of title to goods.

(d) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(e) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

§ 1474. Delivery of wrong quantity

(a) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(b) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(c) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(d) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

§ 1475. Delivery in installments

(a) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

(b) Where there is a contract to sell goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken.

§ 1476. Delivery to a carrier on behalf of the buyer

(a) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 1443, rule 5, of this title, or unless a contrary intent appears.

(b) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(c) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit.

§ 1477. Right to examine the goods

(a) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity to examine them for the purpose of ascertaining whether they are in conformity with the contract.

(b) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(c) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination.

§ 1478. What constitutes acceptance

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

§ 1479. Acceptance does not bar action for damages

In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fails to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know, of such breach, the seller shall not be liable therefor.

§ 1480. Buyer is not bound to return goods wrongly delivered

Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them.

§ 1481. Buyer's liability for failing to accept delivery

When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take

delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the rights against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default.

Subchapter IV—Rights of Unpaid Seller

Article A—Rights of Unpaid Seller Against the Goods

§ 1491. Definition of unpaid seller

(a) The seller of goods is deemed to be an unpaid seller within the meaning of this chapter:

(1) when the whole of the price has not been paid or tendered;

(2) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(b) In this subchapter the term "seller" includes an agent of the agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller.

§ 1492. Remedies of an unpaid seller

(a) Subject to the provisions of this chapter, the unpaid seller of the property in the goods may have passed to the buyer, the unpaid seller to whom the bill of lading has been indorsed, or a consignor or seller of the goods, as such, has:

(1) a lien on the goods or right to retain them for the price while he is in possession of them;

(2) in case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

(3) a right of resale as limited by this chapter;

(4) a right to rescind the sale as limited by this chapter.

(b) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

Article B—Unpaid Seller's Lien

§ 1493. When right of lien may be exercised

(a) Subject to the provisions of this chapter, notwithstanding that goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(1) where the goods have been sold without any stipulation as to credit;

(2) where the goods have been sold on credit, but the term of credit has expired;

(3) where the buyer becomes insolvent.

(b) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

§ 1494. Lien after part delivery

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention.

§ 1495. When lien is lost

(a) The unpaid seller of goods loses his lien thereon:

(1) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(2) when the buyer or his agent lawfully obtains possession of the goods;

(3) by waiver thereof.

(b) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods.

Article C—Stoppage in Transitu

§ 1496. Seller may stop goods on buyer's insolvency

Subject to the provisions of this chapter, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.

§ 1497. When goods are in transit

(a) Goods are in transit within the meaning of section 1496 of this title:

(1) from the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(2) if the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(b) Goods are no longer in transit within the meaning of section 1496 of this title:

(1) if the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(2) if, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(3) if the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

(c) If the goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent of the buyer.

(d) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods.

§ 1498. Ways of exercising the right to stop

(a) The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. The notice may be given either to the person in actual possession

of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(b) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of the delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he is not obliged to deliver or justified in delivering the goods to the seller unless the document is first surrendered for cancellation.

Article D—Resale by the Seller

§ 1499. When and how resale may be made

(a) Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transit may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by the resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(b) Where a resale is made, as authorized by this section, the buyer acquires a good title as against the original buyer.

(c) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give that notice is relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(d) It is not essential to the validity of a resale that notice of the time and place of the resale be given by the seller to the original buyer.

(e) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale.

Article E—Rescission by the Seller

§ 1500. When and how the seller may rescind the sale

(a) An unpaid seller having a right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(b) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer has been in default an unreasonable time before the right of rescission was asserted.

§ 1501. Effect of sale of goods subject to lien or stoppage in transitu

Subject to the provisions of this chapter, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu.

Subchapter V—Action for Breach of Contract

Article A—Remedies of the Seller

§ 1511. Action for the price

(a) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(b) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(c) Although the property in the goods has not passed, if they can not readily be resold for a reasonable price, and if section 1512(d) of this title is not applicable, the seller may offer to deliver the goods to the buyer, and if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price.

§ 1512. Action for damages for nonacceptance of goods

(a) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.

(b) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(c) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(d) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing toward carrying out the contract or the sale after receiving notice of the buyer's repudiation

or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages.

§ 1513. When seller may rescind contract or sale

Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer.

Article B—Remedies of the Buyer

§ 1514. Action for converting or detaining goods

Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld.

§ 1515. Action for failing to deliver goods

(a) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for nondelivery.

(b) The measure of damages is the loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract.

(c) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

§ 1516. Specific performance

Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree, direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as to the court may seem just.

§ 1517. Remedies for breach of warranty

(a) Where there is a breach of warranty by the seller, the buyer may, at his election:

(1) accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution or extinction of the price;

(2) except or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(3) refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty;

(4) rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(b) When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(c) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(d) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(e) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 1492 of this title.

(f) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(g) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

§ 1518. Interest and special damages

Nothing in this chapter shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

Subchapter VI—Interpretation

§ 1531. Variation of implied obligations

Where any right, duty, or liability would arise under a contract to sell or a sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale.

§ 1532. Rights may be enforced by action

Where any right, duty, or liability is declared by this chapter, it may, unless otherwise by this chapter provided, be enforced by action.

§ 1533. Rules for cases not provided for by this chapter

In any case not provided for in this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts to sell and sales of goods.

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§ 1534. Interpretation shall give effect to purpose of uniformity

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those States which enact it.

§ 1535. Provisions not applicable to mortgages

The provisions of this chapter relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security.

§ 1536. Definitions

(a) In this chapter, unless the context or subject matter otherwise requires:

"action" includes counterclaim, setoff, and suit in equity;

"buyer" means a person who buys or agrees to buy goods or any legal successor in interest of such person;

"defendant" includes a plaintiff against whom a right of setoff or counterclaim is asserted;

"delivery" means voluntary transfer of possession from one person to another;

"divisible contract to sell or sale" means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation;

"document of title to goods" includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document;

"fault" means wrongful act or default;

"fungible goods" means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit;

"future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale;

"goods" includes all chattels personal other than things in action and money; the term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

"order" in sections of this chapter relating to documents of title means an order by indorsement on the document;

"person" includes a corporation or partnership or two or more persons having a joint or common interest;

"plaintiff" includes defendant asserting a right of setoff or counterclaim;

"property" means the general property in goods, and not merely a special property;

"purchaser" includes mortgagee and pledgee;

"purchases" includes taking as a mortgagee or as a pledgee;

"quality of goods" includes their state or condition;

"sale" includes a bargain and sale as well as a sale and delivery;

"seller" means a person who sells or agrees to sell goods, or any legal successor in the interest of such person;

"specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made;

"value" is any consideration sufficient to support a simple contract; an antecedent or pre-existing claim, whether for money or not, constitutes value where goods or documents of title are taken either in satisfaction thereof or as security therefor.

(b) A thing is done "in good faith" within the meaning of this chapter when it is in fact done honestly, whether it be done negligently or not.

(c) A person is insolvent within the meaning of this chapter who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

(d) Goods are in a "deliverable state" within the meaning of this chapter when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.

§ 1537. Chapter not to affect warehouse laws

This chapter does not repeal or limit sections 1771–1844 of this title.

§ 1538. Short title

This chapter may be cited as the Uniform Sales Act.

CHAPTER 47—CONDITIONAL SALES

Sec.

§ 1571. Definitions

In this chapter:

"conditional sale" means:

(1) A contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or

(2) A contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of such goods upon full compliance with the terms of the contract;

"buyer" means the person who buys or hires the goods covered by the conditional sale, or any legal successor in interest of such person;

"goods" means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things

attached to or forming a part of land which are agreed to be severed before sale or under the conditional sale;

"performance of the condition" means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether the event is the performance of an act by the buyer or the happening of a contingency;

"person" includes an individual, partnership, corporation, and other association;

"purchase" includes mortgage and pledge;

"purchaser" includes mortgagee and pledgee;

"seller" means the person who sells or leases the goods covered by the conditional sale, or legal successor in interest of such a person.

§ 1572. Primary rights of buyer

The buyer has the right when not in default to retain possession of the goods, and he also has the right to acquire the property in the goods on the performance of the conditions of the contract. The seller is liable to the buyer for the breach of all promises and warranties, express or implied, made in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

§ 1573. Primary rights of seller

The buyer is liable to the seller for the purchase price, or for installments thereof, as the same become due, and for breach of all promises made by him in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

§ 1574. Conditional sales valid except as otherwise provided

A provision in a conditional sale reserving property in the seller after possession of the goods is delivered to the buyer, is valid as to all persons, except as hereinafter otherwise provided.

§ 1575. Conditional sales void as to certain persons

A provision in a conditional sale reserving property in the seller is void as to any purchaser from or creditor of the buyer, who, without notice of the provision, purchases the goods or acquires by attachment or levy a lien upon them, before the contract or a copy thereof is filed as hereinafter provided. This section does not apply to conditional sales of goods for resale.

§ 1576. Place of filing

The conditional sale contract or a copy thereof shall be filed in the office of the registrar of property of the Canal Zone.

§ 1577. Conditional sale of goods for resale

When goods are delivered under a conditional sale contract and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the same is valid whether filed or not except that the reservation of property is void against purchasers from the buyer in good faith for value and without actual knowledge of the condition of the contract.

§ 1578. Filing

The registrar of property shall mark upon the contract or copy filed with him the day and hour of filing and shall file the contract or copy in his office for public inspection. He shall keep a separate book in which he shall enter the names of the seller and buyer, the date of the contract, the day and hour of filing, a brief description of the goods, the price named in the contract, and the date of cancellation thereof. The book shall be indexed under the names of both seller and buyer. For filing and entering such a contract or copy, or any assignment of such a contract, the registrar is entitled to a fee of $1.

§ 1579. Refiling

The filing of conditional sales contracts provided for by sections 1575 and 1576 of this title shall be valid for a period of 3 years only. The validity of the filing may in each case be extended for successive additional periods of 1 year from the date of refiling by filing a copy of the original contract within 30 days next preceding the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount remaining to be paid thereon. The copy, with statement attached, shall be filed and entered in the same manner as a contract or copy filed and entered for the first time, and the registrar of property is entitled to a like fee as upon the original filing.

§ 1580. Cancellation of contract

After the performance of the condition, upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall execute, acknowledge, and deliver to the demandant a statement that the condition in the contract has been performed. If for 10 days after such a demand the seller fails to mail or deliver a statement of satisfaction, he shall forfeit to the demandant $5 and be liable for all damages suffered. Upon presentation of a statement of satisfaction the registrar of property shall file the same and note the cancellation of the contract and the date thereof on the margin of the page where the contract has been entered. For filing and entering the statement of satisfaction the filing officer is entitled to a fee of 25 cents.

§ 1581. Prohibition of removal or sale without notice

Unless the contract otherwise provides, the buyer may, without the consent of the seller, remove the goods from the Canal Zone and sell, mortgage, or otherwise dispose of his interest in them; but prior to the performance of the condition, such a buyer may not remove the goods from the Canal Zone, except for temporary uses for a period of not more than 30 days, unless the buyer not less than 30 days before the removal gives the seller personally or by registered mail written notice of the place to which the goods are to be removed and the approximate time of the intended removal; nor prior to the performance of the conditions shall the buyer sell, mortgage, or otherwise dispose of his interest in the goods, unless he, or the person to whom he is about to sell, mortgage, or otherwise dispose of the same, notifies the seller in writing personally or by registered mail of the name and address of the person to whom his interest in the goods is about to be sold, mortgaged, or otherwise transferred, not less than 10 days before the sale, mortgage, or other disposal. If a buyer does so remove the goods, or does so sell, mortgage, or otherwise dispose of his interest in them without the notice or in violation of the contract, the seller may retake possession of the goods and deal with them as in case of default in payment of part or all of the purchase price.

§ 1582. Fraudulent injury, concealment, removal, or sale

When, prior to the performance of the condition, the buyer maliciously or with intent to defraud, injures, destroys, or conceals the goods, or remove them from the Canal Zone, without having given the notice required by section 1581 of this title, or sells, mortgages, or otherwise disposes of the goods under claim of full ownership, he shall be guilty of a crime and upon conviction thereof shall be imprisoned in jail for not more than one year or be fined not more than $500 or both.

§ 1583. Retaking possession

When the buyer is in default in the payment of a sum due under the contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, or in the performance of any promise, the breach of which is by the contract expressly made a ground for the retaking of the goods, the seller may retake possession thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process; but this section does not authorize a violation of the criminal law.

§ 1584. Notice of intention to retake

Not more than 40 nor less than 20 days prior to the retaking, the seller, if he so desires, may serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the buyer's default. The notice shall state the default and the period at the end of which the goods will be retaken, and shall briefly and clearly state what the buyer's rights under this chapter will be in case they are retaken. If the notice is so served and the buyer does not perform the obligations in which he has made default before the day set for retaking, the seller may retake the goods and hold them subject to sections 1586–1590 of this title regarding resale, but without a right of redemption.

§ 1585. Redemption

If the seller does not give the notice of intention to retake provided for by section 1584 of this title, he shall retain the goods for 10 days after the retaking within the Canal Zone, during which period the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping, and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if a default had not occurred. Upon written demand delivered personally or by registered mail by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expense of retaking, keeping, and storage. For failure to furnish such a statement within a reasonable time after demand, the seller shall forfeit to the buyer $10 and also be liable to him for all damages suffered because of the failure. If the goods are perishable so that retention for 10 days as herein prescribed would result in their destruction or substantial injury, this section does not apply, and the seller may resell the goods immediately upon their retaking.

§ 1586. Compulsory resale by seller

If the buyer does not redeem the goods within 10 days after the seller has retaken possession, and the buyer has paid at least 50 per centum of the purchase price at the time of the retaking the seller shall sell them at public auction in the Canal Zone, the sale to be held not more than 30 days after the retaking. The seller shall give to the buyer not less than 10 days' written notice of the sale, either personally or by registered mail, directed to the buyer at his last known place of business or residence. The seller shall also give notice of the sale by at least 3 notices posted in different public places within the Canal Zone, at least 5 days before the sale. If at the time of the retaking $500 or more has been paid on the purchase price, the seller shall also give

notice of the sale at least 5 days before the sale by publication in a newspaper having a general circulation within the Canal Zone. The seller may bid for the goods at the resale.

§ 1587. Resale at option of parties

If the buyer has not paid at least 50 percent of the purchase price at the time of the retaking, the seller is not under a duty to resell the goods as prescribed by section 1586 of this title, unless the buyer serves upon the seller, within 10 days after the retaking, a written notice demanding a resale, delivered personally or by registered mail. If the notice is served, the resale shall take place within 30 days after the service, in the manner, at the place, and upon the notice prescribed by section 1586 of this title. The seller may voluntarily resell the goods for account of the buyer on compliance with the same requirements.

§ 1588. Proceeds of resale

The proceeds of the resale shall be applied:

(1) to the payment of the expenses thereof;

(2) to the payment of the expenses of retaking, keeping and storing the goods;

(3) to the satisfaction of the balance due under the contract.

Any sums remaining after the satisfaction of those claims shall be paid to the buyer.

§ 1589. Deficiency on resale

If the proceeds of the resale are not sufficient to defray the expenses thereof and the expenses of retaking, keeping, and storing the goods, and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, or from any one who has succeeded to the obligations of the buyer.

§ 1590. Rights of parties where there is no resale

If there is no resale the seller may retain the goods as his own property without obligation to account to the buyer except as provided by section 1592 of this title, and the buyer shall be discharged of all obligation.

§ 1591. Election of remedies

After the retaking of possession as provided by section 1583 of this title the buyer is liable for the price only after a resale and only to the extent provided by section 1589 of this title. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such an action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods as provided in section 1583 of this title. But a right of retaking may not be exercised by the seller after he has collected the entire price or after he has claimed a lien upon the goods, or attached them, or levied upon them as the goods of the buyer.

§ 1592. Recovery of part payments

If the seller fails to comply with sections 1585–1588 and 1590 of this title, after retaking the goods, the buyer may recover from the seller his actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under the contract, with interest.

§ 1593. Waiver of statutory protection

An act or agreement of the buyer before or at the time of the making of the contract, or an agreement or statement by the buyer in the contract, does not constitute a valid waiver of sections 1585–1588 and

1592 of this title; except that the contract may stipulate that on such default of the buyer as is provided for by section 1583 of this title, the seller may rescind the conditional sale, either as to all the goods or as to any part thereof for which a specific price was fixed in the contract. If the contract thus provides for rescission, the seller at his option may retake the goods without complying with or being bound by sections 1584–1592 of this title, as to the goods retaken, upon crediting the buyer with the full purchase price of those goods. As much of this credit as is necessary to cancel any indebtedness of the buyer to the seller shall be so applied and the seller shall repay to the buyer on demand any surplus not so required.

§ 1594. Loss and increase

After the delivery of the goods to the buyer and prior to the retaking of them by the seller, the risk of injury and loss rest upon the buyer. The increase of the goods is subject to the same conditions as the original goods.

§ 1595. Rules for cases not provided for

In any case not provided for by this chapter the rules of law and equity, including the law merchant, and in particular those relating to principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to conditional sales.

§ 1596. Uniformity of interpretation

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

§ 1597. Short title

This chapter may be cited as the Uniform Conditional Sales Act.

CHAPTER 49—DEPOSIT IN GENERAL

SUBCHAPTER I—NATURE AND CREATION OF DEPOSIT

Sec.

SUBCHAPTER II—OBLIGATIONS OF THE DEPOSITARY

Subchapter I—Nature and Creation of Deposit

§ 1631. Kinds of deposit

A deposit may be voluntary or involuntary; and for safe-keeping or for exchange.

§ 1632. Voluntary deposit

A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is the depositor, and the person receiving the depositary.

§ 1633. Involuntary deposit

An involuntary deposit is made:

(1) by the accidental leaving or placing of personal property in the possession of a person, without negligence on the part of its owner; or

(2) in cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of a person.

§ 1634. Duty of involuntary depositary

The person with whom a thing is deposited as provided by section 1633 of this title is bound to take charge of it, if able to do so.

§ 1635. Deposit for keeping

A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

§ 1636. Deposit for exchange

A deposit for exchange is one in which the depositary is bound only to return a thing corresponding in kind to that which is deposited.

Subchapter II—Obligations of the Depositary

§ 1651. Delivery on demand

A depositary shall deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section 1654 of this title.

§ 1652. Necessity of demand

A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

§ 1653. Place of delivery

A depositary shall deliver the thing deposited at his residence or place of business, as may be most convenient for him.

§ 1654. Notice of adverse claim

A depositary shall give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him.

§ 1655. Notice of deposit to true owner

A depositary who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

§ 1656. Delivery of thing owned jointly, etc.

If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

§ 1657. Delivery of joint deposits

If a deposit is made in the name of two or more persons deliverable or payable to either or to their survivor or survivors, the deposit or any part thereof, or increase thereof, may be delivered or paid to either of the persons or to the survivor or survivors in due course of business.

CHAPTER 51—DEPOSIT FOR KEEPING

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—GRATUITOUS DEPOSIT

SUBCHAPTER III—STORAGE

SUBCHAPTER IV—WAREHOUSE RECEIPTS

Article A—The Issue of Warehouse Receipts

Article B—Obligations and Rights of Warehousemen Upon Their Receipts

Subchapter I—General Provisions

§ 1691. Indemnification of depositary

A depositor shall indemnify the depositary for:

(1) damage caused to him by the defects or vices of the thing deposited; and

(2) expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

§ 1692. Obligation of depositary of animals

A depositary of living animals shall provide them with suitable food and shelter, and treat them kindly.

§ 1693. Use of thing deposited

A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

§ 1694. Liability for damage arising from wrongful use

A depositary is liable for damage happening to the thing deposited, during his wrongful use thereof, unless the damage must inevitably have happened though the property had not been thus used.

§ 1695. Sale of thing in danger of perishing

If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

§ 1696. Injury to or loss of thing deposited

If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, as far as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully, or by gross negligence, permitted the loss or injury to occur.

§ 1697. Services by depositary

As far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by chapters 59–63 of this title on employment and service.

§ 1698. Liability of depositary

The liability of a depositary for negligence may not exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

Subchapter II—Gratuitous Deposit

§ 1721. Gratuitous deposit defined

Gratuitous deposit is a deposit for which the depositary does not receive consideration beyond the mere possession of the thing deposited.

§ 1722. Nature of involuntary deposit

An involuntary deposit is gratuitous, the depositary not being entitled to a reward.

§ 1723. Degree of care required

A gratuitous depositary shall use at least slight care for the preservation of the thing deposited.

§ 1724. Termination of duties of depositary

The duties of a gratuitous depositary cease upon his:

(1) restoring the thing deposited to its owner; or

(2) giving reasonable notice to the owner to remove it and the owner failing to do so within a reasonable time.

An involuntary depositary, under paragraph (2) of section 1633 of this title, may not give such a notice until the emergency which gave rise to the deposit is past.

Subchapter III—Storage

§ 1741. Deposit for hire

A deposit not gratuitous is called storage. The depositary in such a case is a depositary for hire.

§ 1742. Degree of care required

A depositary for hire shall use at least ordinary care for the preservation of the thing deposited.

§ 1743. Compensation for fraction of week or month

In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half-month.

§ 1744. Termination of deposit

(a) In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice.

(b) Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

§ 1745. Depositary's lien

(a) A depositary for hire has a lien for:

(1) storage charges;

(2) advances and insurance incurred at the request of the depositor;

(3) money necessarily expended in and about the care, preservation, and keeping of the property stored;

(4) money advanced at the request of the depositor, to discharge a prior lien; and

(5) the expenses of a sale where default has been made in satisfying a valid lien.

(b) The rights of the depositary for hire to the lien are regulated by chapters 97 et seq., of this title, on liens. The lien may be enforced in the manner provided by sections 1806, 1808 and 1809 of this title, relating to warehousemen.

§ 1746. Sale to satisfy lien

If from any cause other than want of ordinary care and diligence on his part, a depositary for hire is unable to deliver perishable property, baggage, or luggage received by him for storage, or to collect his charges for storage due thereon, he may cause the property to be sold to satisfy his lien for storage in accordance with sections 1806–1809 of this title relating to warehousemen.

Subchapter IV—Warehouse Receipts

Article A—The Issue of Warehouse Receipts

§ 1771. Persons who may issue receipts

A warehouse receipt may be issued by any warehouseman.

§ 1772. Form of receipts; essential terms

A warehouse receipt need not be in any particular form, but must embody within its written or printed terms:

(1) the location of the warehouse where the goods are stored;

(2) the date of issue of the receipt;

(3) the consecutive number of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(5) the rate of storage charges;

(6) a description of the goods or of the packages containing them;

(7) the signature of the warehouseman, which may be made by his authorized agent;

(8) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of the ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien; and if the precise amount of the advances made or of the liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman is liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the foregoing terms.

§ 1773. Form of receipts; what terms may be inserted

A warehouseman may insert in a receipt, issued by him, any other terms and conditions, but the terms and conditions may not:

(1) be contrary to this subchapter; or

(2) in anywise impair his obligation to exercise that degree of care in the safe-keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

§ 1774. Definition of nonnegotiable receipt

A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt.

§ 1775. Definition of negotiable receipt

A receipt in which it is stated that the goods received will be delivered to the bearer or to the order of any person named in such receipt is a negotiable receipt.

A nonnegotiable provision may not be inserted in a negotiable receipt. Such a provision, if inserted, is void.

§ 1776. Duplicate receipts must be so marked

When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt except the one first issued. A warehouseman is liable for all damage caused by his failure so to do to any one who purchases the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

§ 1777. Failure to mark "not negotiable"

A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "nonnegotiable" or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchases it for value supposing it to be negotiable may, at his option, treat the receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section does not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

Article B—Obligations and Rights of Warehousemen Upon Their Receipts

§ 1781. Obligation of warehouseman to deliver

A warehouseman, in the absence of a lawful excuse provided by this subchapter, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if the demand is accompanied with:

(1) an offer to satisfy the warehouseman's lien;

(2) an offer to surrender the receipt if negotiable, with such indorsement as would be necessary for the negotiation of the receipt; and

(3) a readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if requested by the warehouseman.

If the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden is upon him to establish the existence of a lawful excuse for his refusal.

§ 1782. Justification of warehouseman in delivering

A warehouseman is justified in delivering the goods, subject to sections 1783–1785 of this title, to one who is:

(1) the person lawfully entitled to the possession of the goods, or his agent;

(2) a person who is either himself entitled to delivery by the terms of a nonnegotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or

(3) a person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

§ 1783. Warehouseman's liability for misdelivery

If a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman is liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by paragraphs (2) and (3) of section 1782 of this title, and though he delivered the goods as authorized by those paragraphs he is so liable, if prior to the delivery he had either:

(1) been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make delivery; or

(2) had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

§ 1784. Negotiable receipts must be cancelled when goods delivered

Except as provided by section 1809 of this title, if a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he is liable to anyone who purchases the receipt for value in good faith, for failure to deliver the goods to him, whether the purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

§ 1785. Negotiable receipts must be cancelled or marked when part of goods delivered

Except as provided by section 1809 of this title, if a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel the receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he is liable, to anyone who purchases the receipt for value in good faith, for failure to deliver all the goods specified in the receipt, whether the purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

§ 1786. Altered receipts

The alteration of a receipt does not excuse the warehouseman who issued it from any liability if the alteration was:

(1) immaterial;
(2) authorized; or
(3) made without fraudulent intent.

If the alteration was authorized, the warehouseman is liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman is liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt does not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but excuses him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. A purchaser of the receipt for value without notice of the alteration acquires the same rights against the warehouseman which the purchaser would have acquired if the receipt had not been altered at the time of the purchase.

§ 1787. Lost or destroyed receipts

If a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by the delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided by this section does not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

§ 1788. Effect of duplicate receipts

A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty, by the warehouseman that the receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but imposes upon him no other liability.

§ 1789. Warehouseman cannot set up title in himself

Title or right to the possession of the goods on the part of the warehouseman, unless it is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, does not excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

§ 1790. Interpleader of adverse claimants

If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

§ 1791. Warehouseman has reasonable time to determine validity of claim

If someone other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of the claim, the warehouseman is excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

§ 1792. Adverse title is no defense except as above provided

Except as provided by sections 1790 and 1791 of this title and by sections 1782 and 1809 of this title, a right or title of a third person is not a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

§ 1793. Liability for nonexistence or misdescription of goods

A warehouseman is liable to the holder of a receipt, issued by him or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of warehouse receipts, for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, the statements, if true, do not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

§ 1794. Liability for care of goods

A warehouseman is liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

§ 1795. Goods must be kept separate

Except as provided by section 1796 of this title, a warehouseman shall keep the goods as far separate from goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

§ 1796. Fungible goods may be commingled, if warehouseman authorized

If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such a case the various depositors of the mingled goods own the entire mass in common, and each depositor is entitled to such portion thereof as the amount deposited by him bears to the whole.

§ 1797. Liability of warehouseman to depositors of commingled goods

The warehouseman is severally liable to each depositor for the care and redelivery of his share of the mass to the same extent and under the same circumstances as if the goods had been kept separate.

§ 1798. Attachment or levy upon goods for which a negotiable receipt has been issued

If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they may not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman may not be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

§ 1799. Creditors' remedies to reach negotiable receipts

A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise, in attaching the receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

§ 1800. What claims are included in the warehouseman's lien

Subject to section 1803 of this title, a warehouseman has a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to the goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

§ 1801. Against what property the lien may be enforced

Subject to section 1803 of this title, a warehouseman's lien may be enforced:

(1) against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(2) against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if the person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

§ 1802. How the lien may be lost

A warehouseman loses his lien upon goods:

(1) by surrendering possession thereof; or

(2) by refusing to deliver the goods when a demand is made with which he is bound to comply under this subchapter.

§ 1803. Negotiable receipt must state charges for which lien is claimed

If a negotiable receipt is issued for goods, the warehouseman does not have a lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly

enumerates other charges for which a lien is claimed. In such a case there shall be a lien for the charges enumerated as far as they are within the provisions of section 1800 of this title, although the amount of the charges so enumerated is not stated in the receipt.

§ 1804. Warehouseman need not deliver until lien is satisfied

A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

§ 1805. Warehouseman's lien does not preclude other remedies

Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

§ 1806. Satisfaction of lien by sale

A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. The notice shall be given by delivery in person or by registered or certified mail addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

(1) an itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(2) a brief description of the goods against which the lien exists;

(3) a demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than 10 days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; and

(4) a statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place or by advertising for sealed bids.

In accordance with the terms of a notice so given, a sale of the goods by auction or by acceptance of a bid may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. If the sale is by auction, it shall be had in the place where the lien was acquired, or, if such a place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper having general circulation in the Canal Zone. The sale shall be held not less than 15 days from the time of the first publication.

From the proceeds of the sale the warehouseman shall satisfy his lien, including the reasonable charges of notice and sale. The balance, if any, of the proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods. If any balance is not claimed by the rightful owner within one month from the day of the sale, it shall be paid to the Canal Zone Government; and if it is not claimed by the owner thereof or his legal representatives within

one year thereafter, it shall be covered into the Treasury of the United States as miscellaneous receipts.

At any time before the goods are so sold, any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving and posting notices and preparing for the sale up to the time of the payment. The warehouseman shall deliver the goods to the person making the payment if he is a person entitled, under this subchapter, to the possession of the goods on payment of the charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

§ 1807. Perishable and hazardous goods

If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon the goods and to remove them from the warehouse, and in the event of the failure of the person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without posting notices. If the warehouseman after a reasonable effort is unable to sell the goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of a sale made under this section shall be disposed of in the same way as the proceeds of sales made pursuant to section 1806 of this title.

§ 1808. Other methods of enforcing liens

The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as is not paid by the proceeds of the sale of the property.

§ 1809. Effect of sale

After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman is not liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if the receipt is negotiable.

Article C—Negotiation and Transfer of Receipts

§ 1811. Negotiation of negotiable receipts by delivery

A negotiable receipt may be negotiated by delivery:

(1) where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or

(2) where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and that person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in that case the receipt may thereafter be negotiated only by the indorsement of such indorsee.

§ 1812. Negotiation of negotiable receipts by indorsement

A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. The indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of that person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner.

§ 1813. Transfer of receipts

A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A nonnegotiable receipt may not be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

§ 1814. Who may negotiate a receipt

A negotiable receipt may be negotiated by any person in possession of it, however possession may have been acquired, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of that person or if at the time of negotiation the receipt is in such form that it may be negotiated by delivery.

§ 1815. Rights of person to whom a receipt has been negotiated

A person to whom a negotiable receipt has been duly negotiated acquires thereby:

(1) such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value; and

(2) the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

§ 1816. Rights of person to whom a receipt has been transferred

A person to whom a receipt has been transferred but not negotiated acquires thereby, as against the transferor, the title to the goods, subject to the term of any agreement with the transferor.

If the receipt is nonnegotiable, the person also acquires the right to notify the warehouseman of the transfer to him of the receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a nonnegotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

§ 1817. Transfer of negotiable receipt without indorsement

If a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation takes effect as of the time when the indorsement is actually made.

§ 1818. Warranties on sale of receipt

A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants:

(1) that the receipt is genuine;

(2) that he has a legal right to negotiate or transfer it;

(3) that he has knowledge of no fact which would impair the validity or worth of the receipt; and

(4) that he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

§ 1819. Indorser not a guarantor

The indorsement of a receipt does not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

§ 1820. Warranty not implied from accepting payment of a debt

A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which the receipt is security, whether from a party to a draft drawn for such debt or from any other person, is not by so doing deemed to represent or to warrant the genuineness of the receipt or the quantity or quality of the goods therein described.

§ 1821. When negotiation not impaired by fraud, mistake, or duress

The validity of the negotiation of a receipt is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, in good faith, without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress, or conversion.

§ 1822. Subsequent negotiation

If a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing the goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under a sale, or other disposition thereof to a person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, has the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

§ 1823. Negotiation defeats vendor's lien

If a negotiable receipt has been issued for goods, a seller's lien or right of stoppage in transitu does not defeat the rights of a purchaser for value in good faith to whom the receipt has been negotiated, whether the negotiation is prior or subsequent to the notification to the warehouseman who issued the receipt of the seller's claim to a lien or right of stoppage in transitu. Nor is the warehouseman obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

§ 1831. Issue of receipt for goods not received

Whoever, being a warehouseman, or an officer, agent, or servant of a warehouseman, issues or aids in issuing a receipt knowing that the goods for which it is issued have not been actually received by the warehouseman, or are not under his actual control at the time of issuing the receipt, shall, for each such offense, be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1832. Issue of receipt containing false statement

Whoever, being a warehouseman, or an officer, agent, or servant of a warehouseman, fraudulently issues or aids in fraudulently issuing a receipt for goods, knowing that it contains any false statement, shall, for each such offense, be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1833. Issue of duplicate receipts not so marked

Whoever, being a warehouseman, or an officer, agent, or servant of a warehouseman, issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for by section 1787 of this title, shall, for each such offense, be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1834. Issue for warehouseman's goods of receipts which do not state that fact

Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, the warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for the goods which does not state the ownership, shall, for each such offense, be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1835. Delivery of goods without obtaining negotiable receipt

Except in the cases provided for by sections 1787 and 1809 of this title, whoever, being a warehouseman, or an officer, agent, or servant of a warehouseman, deliver goods out of the possession of the warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of the goods is outstanding and uncanceled, without obtaining the possession of the receipt at or before the time of the delivery, shall, for each such offense, be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1836. Negotiation of receipt for mortgaged goods

Whoever deposits goods to which he has not title, or upon which there is a lien or mortgage, and takes for the goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall, for each such offense, be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1841. Cases not provided for in subchapter

In any case not provided for by this subchapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress, or coercion, mistake, or other invalidating cause, govern.

§ 1842. Interpretation shall give effect to purpose of uniformity

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 1843. Definitions

(a) In this subchapter, unless the context or subject matter otherwise requires:

"action" includes counterclaim and setoff;

"delivery" means voluntary transfer of possession from one person to another;

"fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit;

"goods" means chattels or merchandise in storage, or which has been or is about to be stored;

"holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein;

"order" means an order by indorsement on the receipt;

"owner" does not include mortgagee or pledgee;

"person" includes a corporation or partnership or two or more persons having a joint or common interest;

"purchase" includes to take as mortgagee or as pledgee;

"purchaser" includes mortgagee and pledgee;

"receipt" means a warehouse receipt;

"value" means any consideration sufficient to support a simple contract; an antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor;

"warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(b) A thing is done "in good faith" within the meaning of this subchapter, when it is in fact done honestly, whether it be done negligently or not.

§ 1844. Short title

This subchapter may be cited as the Uniform Warehouse Receipts Act.

Subchapter V—Innkeepers

§ 1871. Innkeeper's lien on property of guests

Hotel, inn, boardinghouse, and lodginghouse keepers have a lien upon the baggage and other property belonging to or legally under the control of their guests, boarders, or lodgers which may be in the hotel, inn, or boarding or lodginghouse for the proper charges due from the guests, boarders, or lodgers, for their accommodation, board and lodging, and room rent, and such extras as are furnished at their request, and for all money paid for or advanced to the guests, boarders or lodgers, and for the costs of enforcing the lien, with the right to the possession of the baggage and other property until the charges and moneys are paid.

Unless the charges and moneys are paid when they become due, the hotel, inn, boardinghouse, or lodginghouse keeper may sell the

baggage and property under the conditions prescribed by sections 1806–1809 of this title relating to warehousemen.

§ 1872. Unclaimed baggage; sale at auction

When a trunk, carpetbag, valise, box, bundle, or other baggage comes into the possession of the keeper of a hotel, inn, or boarding or lodginghouse, and remains unclaimed for a period of three months, he may sell it under the conditions prescribed by sections 1806–1809 of this title relating to warehousemen.

Subchapter VI—Finding

§ 1891. Obligation of finder

One who finds a thing lost is not bound to take charge of it, but if he does so he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire.

§ 1892. Notice of finding of things or saving of animals; restitution

If the finder of a thing, other than a domestic animal, takes possession thereof, or if a person saves such an animal from drowning or starvation, he shall, within a reasonable time, inform the owner thereof, if known, and make restitution to him upon demand, without compensation, except a reasonable charge for saving and caring therefor.

If the finder or saver does not know the owner, he shall, within five days, file an affidavit with the magistrate of the subdivision in which the finding or saving took place, particularly describing the property and the time, place, and circumstances under which it was found or saved.

§ 1893. Proof of ownership

The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from a person claiming it.

§ 1894. Reward and compensation to finder

The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

§ 1895. Storage of thing found

The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character, at a reasonable expense.

§ 1896. Sale by finder

The finder of a thing which is commonly the subject of sale, may sell it when the owner cannot, with reasonable diligence, be found, or being found, refuses upon demand to pay the lawful charges of the finder, and when:

(1) the thing is in danger of perishing or of losing the greater part of its value; or

(2) the lawful charges of the finder amount to two thirds of its value.

§ 1897. Manner of sale

A sale pursuant to section 1896 of this title shall be made in the same manner as the sale of a thing pledged.

§ 1898. Vesting of property in finder

If an owner does not appear within six months after the finding or saving and offer reasonable proof of his ownership, and compensates,

or in good faith offer to compensate, the finder or saver for the expense necessarily incurred by him, then the property vests in the finder or saver.

§ 1899. Abandoned things

This subchapter does not apply to things which have been intentionally abandoned by their owners.

CHAPTER 53—DEPOSIT FOR EXCHANGE

Sec.
1931. Relations of the parties.

§ 1931. Relations of the parties

A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

CHAPTER 55—LOAN

SUBCHAPTER I—LOAN FOR USE

Sec.
1961. Definition of loan for use.
1962. Title to property lent.
1963. Care required of borrower.
1964. Treatment of animals by borrower.
1965. Degree of skill.
1966. Borrower to repair injuries.
1967. Use of thing lent.
1968. Relending forbidden.
1969. Expenses of thing lent.
1970. Liability of lender for defects.
1971. Return of thing lent; time; indemnification for loss.
1972. When returnable without demand.
1973. Place of return.

SUBCHAPTER II—LOAN FOR EXCHANGE

1991. Definition of loan for exchange.
1992. Optional loan.
1993. Title to property lent.
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SUBCHAPTER III—LOAN OF MONEY

2011. Definition of loan of money.
2012. Repayment of loan in current money.
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2015. Annual rate.
2016. Legal interest.
2017. Usurious contracts; principal, only, recoverable.
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2019. Evidence of usury.

Subchapter I—Loan for Use

§ 1961. Definition of loan for use

A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

§ 1962. Title to property lent

A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

§ 1963. Care required of borrower

A borrower for use shall use great care for the preservation in safety and in good condition of the thing lent.

§ 1964. Treatment of animals by borrower

One who borrows a living animal for use shall treat it with great kindness and provide everything necessary and suitable for it.

§ 1965. Degree of skill

A borrower for use shall have and exercise such skill in the care of the thing lent as he causes the lender to believe him to possess.

§ 1966. Borrower to repair injuries

A borrower for use shall repair all deteriorations or injuries to the thing lent which are occasioned by his negligence, however slight.

§ 1967. Use of thing lent

The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

§ 1968. Relending forbidden

The borrower of a thing for use may not part with it to a third person, without the consent of the lender.

§ 1969. Expenses of thing lent

The borrower of a thing for use shall bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For those expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

§ 1970. Liability of lender for defects

The lender of a thing for use shall indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

§ 1971. Return of thing lent; time, indemnification for loss

The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender shall indemnify him for the loss, if he compels the return, the borrower not having in any manner violated his duty.

§ 1972. When returnable without demand

If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

§ 1973. Place of return

The borrower of a thing for use shall return it to the lender, at the place contemplated by the parties at the time of lending; or if a particular place was not so contemplated by them, then at the place where it was at the time.

Subchapter II—Loan for Exchange

§ 1991. Definition of loan for exchange

A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

§ 1992. Optional loan

A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this subchapter.

§ 1993. Title to property lent

By a loan for exchange the title to the thing lent is transferred to the borrower, and he shall bear all its expenses, and is entitled to all its increase.

§ 1994. Modification of contract

A lender for exchange may not require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon.

§ 1995. Applicability of sections 1970, 1972, and 1973

Sections 1970, 1972, and 1973 of this title apply to a loan for exchange.

Subchapter III—Loan of Money

§ 2011. Definition of loan of money

A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by subchapter I of this chapter relating to loan for use.

§ 2012. Repayment of loan in current money

Unless there is an express contract to the contrary, a borrower of money shall pay the amount due in such money as is current at the time when the loan becomes due, whether the money is worth more or less than the actual money lent.

§ 2013. Loan presumed to be on interest

Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.

§ 2014. Definition of interest

Interest is the compensation allowed by law or fixed by the parties for the use, or forebearance, or detention of money.

§ 2015. Annual rate

When a rate of interest is prescribed by a law or contract, without specifying the period of time by which the rate is to be calculated, it is to be deemed an annual rate.

§ 2016. Legal interest

A rate of interest may not be allowed in excess of 6 per centum per annum upon any contract for the use or detention of money, unless it is in writing and the interest agreed upon may not exceed 12 per centum per annum.

§ 2017. Usurious contracts; principal, only, recoverable

All contracts whatsoever which may in any way, directly or indirectly, violate section 2016 of this title by stipulating for a greater rate of interest than 12 per centum per annum, are void and of no effect for the amount or value of the interest only; but the principal sum of money or value of the contract may be received and recovered.

§ 2018. Recovery of usurious interest paid

When the interest received or collected for the use or detention of money exceeds the rate of 12 per centum per annum, it shall be deemed to be usurious, and the persons paying the same, or their legal repre-

sentatives, may recover from the person, firm, or corporation receiving such interest, the amount of the interest so received or collected, in any court of competent jurisdiction, within two years from the date of the payment.

§ 2019. Evidence of usury

Evidence of usury may not be received on the trial of any case unless it is pleaded and verified by the affidavit of the party wishing to avail himself of that defense.

CHAPTER 57—HIRING

Sec.

§ 2051. Hiring defined

Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

§ 2052. Products of thing hired

The products of a thing hired, during the hiring, belong to the hirer.

§ 2053. Quiet possession

An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming it.

§ 2054. Degree of care by hirer

The hirer of a thing shall use ordinary care for its preservation in safety and in good condition.

§ 2055. Repairs by hirer

The hirer of a thing shall repair all deteriorations or injuries thereto occasioned by his want of ordinary care.

§ 2056. Thing let for a particular purpose

When a thing is let for a particular purpose the hirer may not use it for any other purpose; and if he does, he is liable to the letter for all damages resulting from such use, or the letter may treat the contract as thereby rescinded.

§ 2057. Termination of hiring by letter

The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon when the hirer:

(1) uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or

(2) does not, within a reasonable time after request, make such repairs as he is bound to make.

§ 2058. Termination of hiring by hirer

The hirer of a thing may terminate the hiring before the end of the term agreed upon:

(1) when the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or

(2) when the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other causes than the want of ordinary care of the hirer.

§ 2059. Termination of hiring generally

The hiring of a thing terminates:

(1) at the end of the term agreed upon;

(2) by the mutual consent of the parties;

(3) by the hirer acquiring a title to the thing hired superior to that of the letter; or

(4) by the destruction of the thing hired.

§ 2060. Death or incapacity of party

If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

§ 2061. Apportionment of hire

When the hiring of a thing is terminated before the time originally agreed upon, the hirer shall pay the due proportion of the hire for such use as he has actually made of the thing, unless the use is merely nominal and of no benefit to him.

§ 2062. Obligations of letter of personal property

One who lets personal property shall deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use.

§ 2063. Ordinary expenses

A hirer of personal property shall bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

§ 2064. Extraordinary expenses

If a letter fails to fulfill his obligations as prescribed by section 2062 of this title, the hirer, after giving him notice to do so, if notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover that amount from him.

§ 2065. Return of thing hired

At the expiration of the term for which personal property is hired, the hirer shall return it to the letter at the place contemplated by the parties at the time of hiring; or, if no particular place was so contemplated by them, at the place at which it was at that time.

CHAPTER 59—SERVICE WITH EMPLOYMENT

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—OBLIGATIONS OF EMPLOYER

SUBCHAPTER III—OBLIGATIONS OF EMPLOYEE

SUBCHAPTER IV—TERMINATION OF EMPLOYMENT

Subchapter I—General Provisions

§ 2101. Employment defined

The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or of a third person.

§ 2102. Government employees

This chapter and chapters 61 and 63 of this title do not apply to the United States Government or any of its agencies, or to their employees as concerns such employment.

§ 2103. Scope of chapter

The scope of this chapter is not confined to servants, but includes factors, brokers, carriers, agents, and all similar classes of persons.

Subchapter II—Obligations of Employer

§ 2121. Indemnification of employee

Except as provided by section 2122 of this title, an employer must indemnify his employee for all that the employee necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful.

§ 2122. Assumption of risk; fellow servant rule; contributory negligence

(a) An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed nor in consequence of the negligence of another person employed by the same employer in the same general business, unless the negligence causing the injury was committed in the performance of a duty the employer owes by law to the employee, or unless the employer has neglected to use ordinary care in the selection of the culpable employee. However, the employer is liable for injury when the same results from the wrongful act, neglect, or default of any agent or officer of the employer, superior to the employee injured, or of a person employed by the employer having the right to control or direct the services of the employee injured, and also when the injury results from the wrongful act, neglect, or default of a coemployee engaged in another department of labor from that of the employee injured, or employed upon a machine or other appliance other than that upon which the employee injured is employed.

(b) Knowledge by an employee injured of the defective or unsafe character or condition of any machinery, ways, appliances or structures of the employer is not a bar to recovery for any injury or death caused thereby, unless it also appears that the employee fully understood, comprehended and appreciated the dangers incident to the use of the defective machinery, ways, appliances or structures, and thereafter consented to use it, or continued in the use thereof.

(c) Any contract or agreement, express or implied, made by an employee to waive the benefits of this section, or any part thereof, is null and void, and this section does not deprive any employee or his personal representative of any right or remedy to which he is now entitled under the laws of the Canal Zone.

(d) The rules and principles of law as to contributory negligence which apply to other cases apply to cases arising under this section, except insofar as the same are herein modified or changed.

§ 2123. Negligence of employer

An employer shall in all cases indemnify his employee for losses caused by the former's want of ordinary care.

Subchapter III—Obligations of Employee

§ 2151. Duties of gratuitous employee generally

One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he shall use at least slight care and diligence therein.

§ 2152. Gratuitous employee; service by own request; relinquishment

One who, by his own special request, induces another to intrust him with the performance of a service, shall perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

§ 2153. Same; written power of attorney

A gratuitous employee, who accepts a written power of attorney, shall act under it as long as it remains in force, or until he gives notice to his employer that he will not do so.

§ 2154. Duties of employee for reward

One who, for a good consideration, agrees to serve another, shall perform the service, and must use ordinary care and diligence therein, as long as he is thus employed.

§ 2155. Duties of employee for his own benefit

One who is employed at his own request to do that which is more for his own advantage than for that of his employer, shall use great care and diligence therein to protect the interest of the employer.

§ 2156. Obedience to employer

An employee shall substantially comply with all the directions of his employer concerning the service on which he is engaged, except where obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee.

§ 2157. Conformity to usage

An employee shall perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable or manifestly injurious to his employer to do so.

§ 2158. Degree of skill required

An employee shall exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

§ 2159. Use of skill possessed

An employee shall use such skill as he possesses, as far as the same is required, for the service specified.

§ 2160. Things which belong to employer

Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the employer, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

§ 2161. Duty to account

An employee shall, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and shall, without demand, give prompt notice to his employer of everything which he receives for his account.

§ 2162. Delivery without demand

An employee who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to the employer until demanded, and may not send it to the employer from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

§ 2163. Preference to employer

An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, shall always give the latter the preference.

§ 2164. Responsibility for negligence

An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the employer. The employer is liable to the employee, if the service is not gratuitous, for the value of such services only as are properly rendered.

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§ 2165. Surviving employee

Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor shall act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

Subchapter IV—Termination of Employment

§ 2191. Termination of employment generally

Employment is terminated by:

(1) the expiration of its appointed term;
(2) the extinction of its subject;
(3) the death of the employee; or
(4) the employee's legal incapacity to act as such.

§ 2192. Death or incapacity of employer

Employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

(1) death of the employer; or
(2) legal incapacity of the employer to contract.

§ 2193. Continuance of service in certain cases

An employee, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, shall continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to the successor. The successor shall compensate the employee for the service according to the terms of the contract of employment.

§ 2194. Terms of employment

An employment having no specified term may be terminated at the will of either party, on notice to the other. Employment for a specified term means an employment for a period greater than one month.

§ 2195. Termination by employer

An employment for a specified term may be terminated at any time by the employer in case of willful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

§ 2196. Termination by employee

An employment for a specified term may be terminated by the employee at any time in case of willful or permanent breach of the obligations of his employer to him as an employee.

§ 2197. Compensation due on dismissal

An employee who is not employed for a specified term, and who is dismissed by his employer is entitled to compensation for services rendered up to the time of the dismissal.

§ 2198. Compensation due on quitting

An employee who is not employed for a specified term and who quits the service of his employer is entitled to compensation for services rendered up to the time of the quitting.

CHAPTER 61—PARTICULAR EMPLOYMENTS

SUBCHAPTER I—MASTER AND SERVANT

SUBCHAPTER II—AGENTS

SUBCHAPTER III—FACTORS

Subchapter I—Master and Servant

§ 2231. Servant defined

A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

§ 2232. Term of hiring; presumptions

A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piecework, for no specified term.

§ 2233. Presumption of monthly term and wages

In the absence of an agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

§ 2234. Renewal of hiring

Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

§ 2235. Delivery of things received for master's account

A servant shall deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for the master's account, without demand; but the servant is not bound, without orders from his master, to send anything to the master through another person.

§ 2236. Grounds for discharge

A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

(1) if the servant is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with his service; or

(2) if, being employed about the person of the master, or in a confidential position, the master discovers that the servant has been guilty of misconduct, before or after the commencement of

his service, of such a nature that, if the master had known or contemplated it, he would not have so employed the servant.

Subchapter II—Agents

§ 2251. Conformity to limits of authority

An agent may not exceed the limits of his actual authority, as defined by chapter 75 of this title on agency.

§ 2252. Duty to keep principal informed

An agent shall use ordinary diligence to keep his principal informed of his acts in the course of the agency.

§ 2253. Collecting agent

An agent employed to collect a negotiable instrument shall collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor; and, if it is a bill of exchange, shall present it for acceptance with reasonable diligence.

§ 2254. Responsibility of subagent

A mere agent of an agent is not responsible as such to the principal of the latter.

Subchapter III—Factors

§ 2271. Factor defined

A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

§ 2272. Obedience required from factor

A factor shall obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

§ 2273. Sales on credit

A factor may sell property consigned to him on such credit as is usual; but, having once agreed with the purchaser upon the term of credit, may not extend it.

§ 2274. Liability of factor under guaranty commission

A factor who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

§ 2275. Relief from liability

A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, may not relieve himself from responsibility therefor without the consent of his principal.

CHAPTER 63—SERVICE WITHOUT EMPLOYMENT

Sec.
2311. Voluntary interference with property.

§ 2311. Voluntary interference with property

One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession for the purpose of rendering a service about it, shall complete the service, and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about the service from any profits which his service has caused the thing to acquire for its owner, and shall account to the owner for the residue.

CHAPTER 65—CARRIAGE IN GENERAL

Sec.
2341. Contract of carriage defined.
2342. Kinds of carriage.
2343. Marine carriers; application of provisions.
2344. Obligations of gratuitous carriers.
2345. Obligations of gratuitous carrier after commencing carriage.

§ 2341. Contract of carriage defined

The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another.

§ 2342. Kinds of carriage

Carriage is either:

(1) inland; or
(2) marine.

§ 2343. Marine carriers; application of provisions

This chapter and chapters 67–73 of this title, with the exception of section 2471 of this title, do not apply to marine carriers.

Marine carriers, within the meaning of this section, include carriers upon the ocean, upon arms of the sea, and those transiting the Canal from ocean to ocean.

§ 2344. Obligations of gratuitous carriers

Carriers without reward are subject to the same rules as employees without reward, except as far as is otherwise provided by this chapter and chapters 67–73 of this title.

§ 2345. Obligations of gratuitous carrier after commencing carriage

A carrier without reward, who has begun to perform his undertaking, shall complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

CHAPTER 67—CARRIAGE OF PERSONS

SUBCHAPTER I—GRATUITOUS CARRIAGE OF PERSONS

Sec.
2371. Degree of care required.

SUBCHAPTER II—CARRIAGE FOR REWARD

2391. General duties of carrier.
2392. Safety of vehicles.
2393. Overcrowding or overloading.
2394. Treatment of passengers.
2395. Rate of speed and delays.

Subchapter I—Gratuitous Carriage of Persons

§ 2371. Degree of care required

A carrier of persons without reward shall use ordinary care and diligence for their safe carriage.

Subchapter II—Carriage for Reward

§ 2391. General duties of carrier

A carrier of persons for reward shall use the utmost care and diligence for their safe carriage, shall provide everything necessary for that purpose, and shall exercise to that end a reasonable degree of skill.

§ 2392. Safety of vehicles

A carrier of persons for reward shall provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

§ 2393. Overcrowding or overloading

A carrier of persons for reward may not overcrowd or overload his vehicle.

§ 2394. Treatment of passengers

A carrier of persons for reward shall give to passengers all such accommodations as are usual and reasonable, and shall treat them with civility, and give them a reasonable degree of attention.

§ 2395. Rate of speed and delays

A carrier of persons for reward shall travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

CHAPTER 69—CARRIAGE OF PROPERTY

SUBCHAPTER I—GENERAL DEFINITIONS

SUBCHAPTER II—OBLIGATIONS OF CARRIER

SUBCHAPTER III—BILLS OF LADING

SUBCHAPTER IV—FREIGHTAGE

Subchapter I—General Definitions

§ 2421. Freight, freightage, consignor, and consignee defined

Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

Subchapter II—Obligations of Carrier

§ 2441. Care and diligence required of carriers

A carrier of property for reward shall use at least ordinary care and diligence in the performance of all his duties. A carrier without reward shall use at least slight care and diligence.

§ 2442. Obedience to directions

A carrier shall comply with the directions of the consignor or consignee to the same extent that an employee is bound to comply with those of his employer.

§ 2443. Conflict of orders

When the directions of a consignor and consignee are conflicting, the carrier shall comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he shall comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

§ 2444. Delivery of freight

A carrier of property shall deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

§ 2445. Notice of arrival to consignee

If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he shall notify the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee is unknown to the carrier, he may give the notice by letter mailed in the nearest post office.

§ 2446. Failure of consignee to accept and remove freight

If a consignee does not accept and remove freight within 72 hours after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the rights and duties of the carrier shall thereafter be the same as those of a warehouseman as provided in subchapter IV of chapter 51 of this title.

Subchapter III—Bills of Lading

§ 2471. Application of Federal Bill of Lading Act to shipments wholly within Canal Zone

The Federal Bill of Lading Act (49 U.S.C., secs. 81–124) applies to shipments wholly within the Canal Zone.

Subchapter IV—Freightage

§ 2491. Time for payment of freightage

A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he may not until he is ready to deliver the freight to the consignee.

§ 2492. Consignor's liability

The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he may not afterwards recover the freightage from the consignor.

§ 2493. Consignee's liability

The consignee of freight is liable for the freightage if he accepts the freight with notice of the intention of the consignor that he pay it.

§ 2494. Natural increase of freight

Freightage may not be charged upon the natural increase of freight.

§ 2495. Apportionment by contract

If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for as much as he delivers.

§ 2496. Apportionment upon partial delivery

If a part of the freight is accepted by a consignee, without specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

§ 2497. Apportionment according to distance

If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

§ 2498. Freight carried farther or faster than agreed

If freight is carried farther, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and may not refuse to deliver it, on the demand of the consignee, at the place and time of its arrival.

§ 2499. Carrier's lien

A carrier has a lien for freightage and for services rendered at the request of the shipper or consignee in and about the transportation, care, and preservation of the property, and he also has a lien for money advanced at the request of the shipper or consignee to discharge a prior lien. His rights to the lien are regulated by chapters 97–103 of this title on liens. The lien may be enforced in the manner provided by sections 1806–1809 of this title relating to warehousemen.

CHAPTER 71—CARRIAGE OF MESSAGES

Sec.

§ 2531. Degree of care and diligence required

A carrier of messages for reward shall use great care and diligence in the transmission and delivery of messages.

CHAPTER 73—COMMON CARRIERS

SUBCHAPTER I—COMMON CARRIERS IN GENERAL

SUBCHAPTER II—COMMON CARRIERS OF PERSONS

SUBCHAPTER III—COMMON CARRIERS OF PROPERTY

Subchapter I—Common Carriers in General

§ 2561. Common carrier defined

Everyone who offers to the public to carry persons, property, or messages is a common carrier of whatever he thus offers to carry.

§ 2562. Obligation to accept freight

A common carrier shall, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

§ 2563. Compensation

A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

§ 2564. Limitation of obligations

The obligations of a common carrier may not be limited by general notice on his part, but may be limited by special contract.

§ 2565. Exoneration agreements

A common carrier may not be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants.

§ 2566. Acceptance of ticket, bill of lading or written contract

Where a passenger or consignor receives a ticket, bill of lading, or written contract for carriage and makes no objection to its terms or conditions at the time he receives it, neither the passenger or consignor, nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the ticket, bill of lading, or written contract for carriage, may deny that he is bound by the terms and conditions, as far as they are not contrary to law or public policy.

§ 2567. Loss of valuable letters

A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he be informed at the time of its receipt of the value of its contents.

Subchapter II—Common Carriers of Persons

§ 2591. Liability for luggage

The liability of a carrier for luggage received by him with a passenger is the same as that of a common carrier of property.

§ 2592. Regulations for conduct of business

A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

§ 2593. Payment of fare

A common carrier may demand the fare of passengers, either at starting or at any subsequent time.

§ 2594. Ejection of passengers

(a) A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier may be ejected from the vehicle by the carrier with as little violence as possible, at any usual stopping place or near a dwelling house.

(b) After having ejected a passenger, a carrier may not require the payment of any part of his fare.

Subchapter III—Common Carriers of Property

§ 2621. Liability of inland carriers for loss

Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections 2444–2446 of this title, for the loss or injury thereof from any cause whatever, except:

(1) an inherent defect, vice, or weakness, or a spontaneous action, of the property itself;

(2) the act of a public enemy of the United States;

(3) the act of the law; or

(4) an irresistible superhuman cause.

§ 2622. Application of exceptions

A common carrier is liable, even in the cases excepted by section 2621 of this title, if his want of ordinary care exposes the property to the cause of the loss.

§ 2623. Liability for delay

A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

§ 2624. Valuables; limitation of liability

A common carrier of gold, silver, platinum, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk or laces; or of plated ware of any kind, is not liable for more than $50 upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package, or otherwise, of the nature of the freight; nor is he liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

§ 2625. Delivery of freight beyond usual route

If a common carrier accepts freight for a place beyond his usual route, he shall, unless he stipulates otherwise, deliver it at the end of his route in that direction to another competent carrier carrying

to the place of address or connected with those who thus carry, and his liability ceases upon making such a delivery.

§ 2626. Proof in case of loss

If freight addressed to a place beyond the usual route of the common carrier who first received it is lost or injured, he shall, within a reasonable time after demand, give satisfactory proof to the consignor, that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

§ 2627. Services other than carriage and delivery

In respect of any service rendered about freight by a common carrier, other than its carriage and delivery, his rights and obligations are defined by chapters 49–53 of this title, relating to deposit, and chapters 59–63 of this title, relating to service.

CHAPTER 75—AGENCY IN GENERAL

SUBCHAPTER I—DEFINITIONS

SUBCHAPTER II—AUTHORITY OF AGENTS

SUBCHAPTER III—MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS

SUBCHAPTER IV—OBLIGATIONS OF AGENTS TO THIRD PERSONS

SUBCHAPTER V—DELEGATION OF AGENCY

SUBCHAPTER VI—TERMINATION OF AGENCY

Subchapter I—Definitions

§ 2661. Agent and agency defined

An agent is one who represents another, called the principal, in dealings with third persons. Such a representation is called agency.

§ 2662. Capacity to appoint or be agent

Any person having capacity to contract may appoint an agent, and any person may be an agent.

§ 2663. General or special agents

An agent for a particular act or transaction is called a special agent. All others are general agents.

§ 2664. Actual or ostensible agency

An agency is either actual or ostensible.

§ 2665. Actual agency defined

An agency is actual when the agent is really employed by the principal.

§ 2666. Ostensible agency defined

An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another who is not really employed by him to be his agent.

Subchapter II—Authority of Agents

§ 2691. Scope of authority

An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

§ 2692. Performance of acts required of principal by this title

Every act which, according to this title, may be done by or to any person, may be done by or to the agent of that person for that purpose, unless a contrary intention clearly appears.

§ 2693. Defrauding principal

An agent may never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals to be, a fraud upon the principal.

§ 2694. Creation of agency

An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

§ 2695. Consideration unnecessary

A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

§ 2696. Oral or written authorizations

An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing may be given only by an instrument in writing.

§ 2697. Ratification of part of transaction

Ratification of part of an indivisible transaction is a ratification of the whole.

§ 2698. Ratification of agent's act

A ratification may be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act with notice thereof.

§ 2699. When ratification void

A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

§ 2700. Third persons; effect of ratification

An unauthorized act may not be made valid, retroactively, to the prejudice of third persons, without their consent.

§ 2701. Rescission of ratification

A ratification may be rescinded only if made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified.

§ 2702. Measure of agent's authority

An agent has such authority as the principal, actually or ostensibly, confers upon him.

§ 2703. Actual authority defined

Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

§ 2704. Ostensible authority defined

Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

§ 2705. Agent's authority as to persons having notice of restrictions

An agent has actually such authority as is defined by this chapter and chapter 77 of this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

§ 2706. Necessary authority

An agent may:

(1) do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and

(2) make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

§ 2707. Power to disobey instructions

An agent may disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interests of his principal that he should do so, and there is not time to communicate with the principal.

§ 2708. Authority given in general and specific terms

When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

§ 2709. Exceptions to general authority

An authority expressed in general terms, however broad, does not authorize an agent to:

(1) act in his own name, unless it is the usual course of business to do so;

(2) define the scope of his agency; or

(3) do any act which a trustee is forbidden to do by sections 3531–3541 of Title 7.

§ 2710. Authority to sell personal property

An authority to sell personal property includes authority to warrant the title of the principal and the quality and quantity of the property.

§ 2711. Authority of general agent to receive price

A general agent to sell, who is intrusted by the principal with the possession of the thing sold, may receive the price.

§ 2712. Authority of special agent to receive price

A special agent to sell may receive the price on delivery of the thing sold, but not afterwards.

Subchapter III—Mutual Obligations of Principals and Third Persons

§ 2731. Principal's rights and liabilities from agent's acts

An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within that limit, if they had been entered into on his own account, accrue to the principal.

§ 2732. Incomplete execution of authority

A principal is bound by an incomplete execution of an authority only when it is consistent with the whole purpose and scope thereof.

§ 2733. Notice to principal or agent

As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

§ 2734. Obligation of principal when agent exceeds authority

When an agent exceeds his authority, his principal is bound by his authorized acts only as far as they can be plainly separated from those which are unauthorized.

§ 2735. Acts under ostensible authority

A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof.

§ 2736. Exclusive credit to agent

If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

§ 2737. Person dealing with agent without knowledge of agency

One who deals with an agent, without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

§ 2738. Instrument intended to bind principal

An instrument within the scope of his authority by which an agent intends to bind his principal, does bind him if that intent is plainly inferable from the instrument itself.

§ 2739. Principal's responsibility for agent's negligence, wrongful act, or omission

Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by the agent in and as a part of the transaction of the business, and for his willful omission to fulfill the obligations of the principal.

§ 2740. Responsibility for agent's other wrongs

A principal is not responsible for wrongs committed by his agent other than those specified by section 2739 of this title, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

Subchapter IV—Obligations of Agents to Third Persons

§ 2761. Warranty of authority

One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

§ 2762. Agent's responsibility to third persons

One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency only when:

(1) with his consent, credit is given to him personally in a transaction;

(2) he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or

(3) his acts are wrongful in their nature.

§ 2763. Surrender of property to third person

If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he shall, on demand, surrender, or so much of it as he has under his control at the time of demand, to that person, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

§ 2764. Application of chapter on persons

The provisions of this subchapter are subject to the provisions of chapter 3 of this title.

Subchapter V—Delegation of Agency

§ 2781. Agent's delegation of powers

An agent, unless specially forbidden by his principal to do so, may delegate his powers to another person only when:

(1) the act to be done is purely mechanical;

(2) it is such as the agent cannot himself, and the subagent can lawfully perform;

(3) it is the usage of the place to delegate such powers; or

(4) the delegation is specially authorized by the principal.

§ 2782. Unauthorized subagent

If an agent employs a subagent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

§ 2783. Authorized subagent

A subagent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the subagent.

Subchapter VI—Termination of Agency

§ 2801. Termination generally

An agency is terminated, as to every person having notice thereof, by:

(1) the expiration of its term;

(2) the extinction of its subject;

(3) the death of the agent;

(4) the agent's renunciation of the agency; or

(5) the incapacity of the agent to act as such.

§ 2802. Revocation, death, or incapacity of principal

Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by:

(1) its revocation by the principal;

(2) the principal's death; or

(3) the principal's incapacity to contract.

CHAPTER 77—FACTORS

Sec.
2841. Factor defined.
2842. Actual authority of factor.
2843. Ostensible authority.

§ 2841. Factor defined

A factor is an agent, as defined by section 2271 of this title.

§ 2842. Actual authority of factor

In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted:

(1) to insure property consigned to him uninsured;

(2) to sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and

(3) to delegate his authority to his partner or servant, but not to a person in an independent employment.

§ 2843. Ostensible authority

A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

CHAPTER 79—PARTNERSHIP IN GENERAL

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—PARTNERSHIP PROPERTY

SUBCHAPTER III—MUTUAL OBLIGATION OF PARTNERS

SUBCHAPTER IV—RENUNCIATION OF PARTNERSHIP

Subchapter I—General Provisions

§ 2871. Definition of partnership

Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

§ 2872. Shipowners

Part owners of a ship do not, by simply using it in a joint enterprise, become partners as to the ship.

§ 2873. Formation of partnership

A partnership can be formed only by the consent of all the parties thereto, and therefore a new partner may not be admitted into a partnership without the consent of every existing member thereof.

Subchapter II—Partnership Property

§ 2891. Definition of partnership property

The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired thereby.

§ 2892. Partner's interest in partnership property

The interest of each member of a partnership extends to every portion of its property.

§ 2893. Partner's share in profits and losses

In the absence of an agreement on the subject the shares of partners in the profit or loss of the business are equal, and the share of each in the partnership property is the value of his original contributions, increased or diminished by his share of profit or loss.

§ 2894. When division of losses implied

An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

§ 2895. Partner may require application of partnership property to payment of debts

Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance, if any, due to him.

§ 2896. What property is partnership property by presumption

Property acquired with partnership funds is presumed to be partnership property.

Subchapter III—Mutual Obligation of Partners

§ 2921. Partners as trustees for each other

The relations of partners are confidential. They are trustees for each other within the meaning of chapter 161 of Title 7, and their obligations as such trustees are defined by that chapter.

§ 2922. Good faith to be observed between partners

In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, a partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

§ 2923. Mutual liability of partners to account

A partner shall account to the partnership for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

§ 2924. No compensation for services to partnership

A partner is not entitled to compensation for services rendered by him to the partnership, except by special agreement.

Subchapter IV—Renunciation of Partnership

§ 2941. Renunciation of future profits exonerates from liability

A partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to the third person, and to his own copartners, that he has made a renunciation, and that, as far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future.

§ 2942. Effect of renunciation

After a partner has given notice of his renunciation of the partnership, he may not claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership.

CHAPTER 81—GENERAL PARTNERSHIP

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SUBCHAPTER II—POWERS AND AUTHORITY OF PARTNERS

SUBCHAPTER III—MUTUAL OBLIGATIONS OF PARTNERS

SUBCHAPTER IV—LIABILITY OF PARTNERS

SUBCHAPTER V—TERMINATION OF PARTNERSHIP

SUBCHAPTER VI—LIQUIDATION

Subchapter I—General Provisions

§ 2971. Definition of general partnership

A partnership that is not formed in accordance with the law concerning special partnerships, and a special partnership, as far only as the general partners are concerned, is a general partnership.

Subchapter II—Powers and Authority of Partners

§ 2991. Power of majority of partners

Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

§ 2992. Authority of individual partner

A general partner is agent for the partnership in the transaction of its business, and may do whatever is necessary to carry on the business in the ordinary manner, and for this purpose may bind his copartners by an agreement in writing.

§ 2993. Acts prohibited to individual partners

A partner, as such, may not:

(1) make an assignment of the partnership property or any portion thereof to a creditor, or to a third person in trust for the benefit of a creditor, or of all creditors;

(2) dispose of the good will of the business;

(3) dispose of the whole of the partnership property at once, unless it consists entirely of merchandise;

(4) do any act which would make it impossible to carry on the ordinary business of the partnership;

(5) confess a judgment;

(6) submit a partnership claim to arbitration; or

(7) do any other act not within the scope of section 2992 of this title—

unless his copartners have wholly abandoned the business to him or are incapable of acting.

§ 2994. Effect of partner's acts in bad faith

A partner is not bound by any act of a copartner, in bad faith toward him, though within the scope of the partner's powers, except in favor of persons who have in good faith parted with value in reliance upon that act.

Subchapter III—Mutual Obligations of Partners

§ 3011. Profits of individual partner

All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

§ 3012. Engagement in other business

(a) Except as provided in subsection (b) of this section, and section 3011 of this title, a partner may engage in any separate business.

(b) A general partner who agrees to give his personal attention to the business of the partnership may not engage in any business which gives him an interest adverse to that of the partnership or which prevents him from giving to the business of the partnership all the attention which would be advantageous to it.

§ 3013. Accounting for profits from unauthorized business

A general partner transacting business contrary to the provisions of this subchapter may be required by any copartner to account to the partnership for the profits of such business.

Subchapter IV—Liability of Partners

§ 3031. Liability of partners to third persons

A general partner is liable to third persons for all the obligations of the partnership, jointly with his copartners.

§ 3032. Liability for each other's acts as agents

The liability of general partners for each other's acts is defined by chapter 75 of this title on agency.

§ 3033. Liability of one held out as partner

Anyone permitting himself to be represented as a partner, general or special, is liable, as such, to third persons to whom the representation is communicated, and who, on the faith thereof, give credit to the partnership.

§ 3034. Persons not liable as partners

Except as provided by section 3033 of this title, a person is not liable as a partner who is not a partner in fact.

Subchapter V—Termination of Partnership

§ 3051. Duration of partnership

If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

§ 3052. Total dissolution of partnership

A general partnership is dissolved as to all the partners by:

(1) lapse of the time prescribed by agreement for its duration;

(2) the expressed will of any partner, if there is no such agreement;

(3) the death of a partner;

(4) the transfer to a person, not a partner, of the interest of any partner in the partnership property;

(5) war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or

(6) a judgment of dissolution.

§ 3053. Partial dissolution

A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his copartners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

§ 3054. Partner entitled to dissolution

A general partner is entitled to a judgment of dissolution when:

(1) he, or another partner, becomes legally incapable of contracting;

(2) another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or

(3) the business of the partnership can be carried on only at a permanent loss.

§ 3055. Notice of termination

The liability of a general partner for the acts of his copartners continues, even after a dissolution of the copartnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons until the dissolution has been advertised in a newspaper printed in English and of general circulation in the Canal Zone, to the extent in either case to which the persons part with value in good faith, and in the belief that the partner is still a member of the firm.

§ 3056. Notice by change of name

A change of the partnership name, which plainly indicates the withdrawal of a partner, is sufficient notice of the fact of the withdrawal to all persons to whom it is communicated; but a change in the name, which does not contain such an indication, is not notice of the withdrawal of any partner.

Subchapter VI—Liquidation

§ 3081. Powers of partners after dissolution

After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this subchapter.

§ 3082. Partners who may and may not act in liquidation

(a) Except as provided in subsection (b) of this section, any member of a general partnership may act in liquidation of its affairs.

(b) If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon credit thereof.

§ 3083. Powers of partners in liquidation; restriction regarding obligations

(a) A partner authorized to act in liquidation may:

(1) collect, compromise, or release any debts due to the partnership;

(2) pay or compromise any claims against the partnership;

(3) dispose of the property of the partnership; and

(4) indorse, in the name of the partnership, promissory notes or other obligations held by the partnership for the purpose of collecting them.

(b) A partner authorized to act in liquidation may not create any new obligations in the name of the partnership or revive a debt against the firm, by an acknowledgment, when an action thereon is barred by Title 5.

CHAPTER 83—SPECIAL PARTNERSHIP

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—POWERS, RIGHTS, AND DUTIES OF PARTNERS

SUBCHAPTER III—LIABILITY OF PARTNERS

SUBCHAPTER IV—ALTERATION AND DISSOLUTION

Subchapter I—General Provisions

§ 3121. Formation of special partnership

A special partnership may be formed by two or more persons, in the manner and with the effect prescribed in this chapter, for the transaction of any business except banking or insurance by an insurer.

§ 3122. Composition of special partnership

A special partnership may consist of one or more persons called general partners, and one or more persons called special partners.

§ 3123. Certified statement

Persons desirous of forming a special partnership shall severally sign a certificate, stating the:

(1) name under which the partnership is to be conducted;

(2) general nature of the business intended to be transacted;

(3) names of all the partners, and their residences, specifying which are general and which are special partners;

(4) amount of capital which each special partner has contributed to the common stock; and

(5) periods at which the partnership will begin and end.

§ 3124. Acknowledgment and recordation of certificates; false statements

Certificates pursuant to section 3123 of this title shall be acknowledged by all the partners, before the clerk of the district court and filed in his office, and shall be open to public inspection. If a false statement is made in a certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

§ 3125. Affidavit as to sums contributed

An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, in lawful money of the United States, shall be filed in the office of the clerk of the district court with the original certificate specified by sections 3123 and 3124 of this title.

§ 3126. Compliance with sections 3121–3125

A special partnership is not formed until sections 3121–3125 of this title are complied with.

§ 3127. Renewal of special partnership

Every renewal or continuance of a special partnership shall be certified, filed, and verified in the same manner as upon its original formation.

Subchapter II—Powers, Rights, and Duties of Partners

§ 3151. Transaction of business by general partners

The general partners only have authority to transact the business of a special partnership.

§ 3152. Powers of special partners; claims

(a) A special partner may:

(1) at all times investigate the affairs of the partnership, and advise his partners, or their agents, as to their management; and

(2) lend money to the partnership, or advance money for it, and take from it security therefor.

(b) As to loans or advances referred to in subsection (a) of this section, a special partner has the same rights as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it shall be postponed until all other creditors are satisfied.

§ 3153. Actions by and against general partners

In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

§ 3154. Withdrawal of capital

A special partner, under any pretense, may not withdraw any part of the capital invested by him in the partnership, during its continuance.

§ 3155. Interest and profits

A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by another special partner, and is not bound to refund the same to meet subsequent losses.

§ 3156. Result of withdrawing capital

If a special partner withdraws capital from the firm, contrary to this subchapter, he thereby becomes a general partner.

§ 3157. Preference transfers void

A transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of the partnership or partner with intent to give a preference to any creditor of the partnership or partner over any other creditor of the partnership, is void against the creditors thereof. A judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void.

Subchapter III—Liability of Partners

§ 3181. Liability of general partners

The general partners in a special partnership are liable to the same extent as partners in a general partnership.

§ 3182. Liability of special partners

The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

(1) if he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable, as a general partner, to all creditors of the partnership;

(2) if he has willfully interfered with the business of the partnership, except as permitted by sections 3151–3157 of this title, he is liable in like manner; or

(3) if he has willfully joined in or assented to an act contrary to a provision of 3151–3157 of this title, he is liable in like manner.

§ 3183. Liability for unintentional act

When a special partner has unintentionally done any of the acts specified by section 3182 of this title, he is liable, as a general partner, to any creditor of the firm who has been actually misled thereby to his prejudice.

§ 3184. Who may question existence of special partnership

One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, may not afterwards charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by sections 3121–3127 of this title.

Subchapter IV—Alteration and Dissolution

§ 3201. When special partnership becomes general

A special partnership becomes general if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of that fact, duly verified and signed by one or more of the partners, is not filed with the clerk of the district court.

§ 3202. Admission of new special partners

New special partners may be admitted into a special partnership upon a certificate, stating the names, residences, and contributions to common stock of each of them, signed by each of them, and by the general partners, verified, acknowledged, and filed with the clerk of the district court.

§ 3203. Dissolution of special partnership; notice

A special partnership is subject to dissolution in the same manner as a general partnership, except that a dissolution, by the act of the partners, is not complete until a notice thereof has been filed and recorded in the office of the clerk of the district court, and published once in each week, for four successive weeks, in a newspaper of general circulation in the Canal Zone.

§ 3204. Use of name of special partner

The name of a special partner may not be used in the firm name of partnership, unless it be accompanied with the word "limited."

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Subchapter I—General Provisions

§ 3241. Scope of chapter

All kinds of insurance, other than marine insurance, are subject to this chapter.

§ 3242. Definition of insurance

Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability, arising from an unknown or contingent event.

§ 3243. Insurer and insured

The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the person indemnified is called the insured.

§ 3244. Time for exercising right of rescission

Whenever a right to rescind a contract of insurance is given to the insurer by this chapter, the right may be exercised at any time previous to the commencement of an action on the contract.

Subchapter II—Events Subject to Insurance

§ 3261. Events generally

Except as provided in this subchapter, any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter.

§ 3262. Lottery

A lottery or its outcome shall not be insured against.

§ 3263. Gaming or wager

A policy executed by way of gaming or wagering is void.

Subchapter III—Parties to Contract

§ 3281. Capacity to insure

Any person capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporation, nonresidents, and others.

§ 3282. Capacity to be insured

Any person except a public enemy may be insured.

§ 3283. Effect of loss payable clause or assignment to mortgagee

Unless the policy otherwise provides, where a mortgagor of property effects insurance in his own name providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to a mortgagee, the insurance is deemed to be upon the interest of the mortgagor and the mortgagor does not cease to be a party to the original contract.

§ 3284. Same; acts of parties

In the case of a loss payable clause or assignment referred to by section 3283 of this title, any act of the mortgagor, prior to the loss and which would otherwise avoid the insurance, will have the same effect, although the property is in the hands of the mortgagee; but any act which, under the contract of insurance, is to be performed by the mortgagor, may be performed by the mortgagee therein named, with the same effect as if it had been performed by the mortgagor.

§ 3285. Insurer's consent to transfer; effect of mortgagor's acts

If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, the acts of the mortgagor cannot affect the rights of the assignee.

Subchapter IV—Insurable Interest

§ 3301. Definition of insurable interest

Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured is an insurable interest.

§ 3302. Property interests

An insurable interest in property may consist in an:

(1) existing interest;

(2) inchoate interest founded on an existing interest; or

(3) expectancy, coupled with an existing interest in that out of which the expectancy arises.

§ 3303. Contingent or expectant interests

A mere contingent or expectant interest in a thing, not founded on an actual right to the thing, nor upon a valid contract for it, is not insurable.

§ 3304. Measure of interest

Except in the case of a property held by the insured as a carrier or depositary, the measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

§ 3305. Interest of carrier or depositary

A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value.

§ 3306. Lack of insurable interest

If the insured has no insurable interest, the contract is void.

§ 3307. When insurable interest must exist

An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime; and interest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs.

§ 3308. Waiver of requirement void

Every stipulation in a policy of insurance for the payment of loss whether the person insured has or has not an interest in the property insured, or that the policy shall be received as proof of such interest, is void.

§ 3309. Effect of transfer

Except in the cases specified by sections 3310–3312 of this title, and in the cases of life and disability insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

§ 3310. Change of interest after loss

A change of interest in a subject insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

§ 3311. Change of interest in separate subject

A change of interest in one or more of several distinct subjects, separately insured by one policy, does not avoid the insurance as to the others.

§ 3312. Transfer of interest between partners

In the case of partners, joint owners, or owners in common, who are jointly insured, a transfer of interest by one to another thereof does not avoid insurance, even though it has been agreed that the insurance shall cease upon an alienation of the subject insured.

§ 3313. Transfer of subject matter

The mere transfer of subject matter insured does not transfer the policy, but suspends it until the same person becomes the owner of both the policy and the subject matter insured.

Subchapter V—Concealment and Representations

Article A—Concealment

§ 3331. Definition of concealment

Neglect to communicate that which a party knows, and ought to communicate, is concealment.

§ 3332. Effect of concealment

Concealment, whether intentional or unintentional, entitles the injured party to rescind insurance.

§ 3333. Required disclosure

Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract and as to which he makes no warranty, and which the other party has not the means of ascertaining.

§ 3334. Required inquiry

Except in answer to the inquiries of the other, neither party to a contract of insurance is bound to communicate information of matters:

(1) which the other knows;

(2) which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant;

(3) of which the other waives communication;

(4) which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and

(5) which relate to a risk excepted from the policy, and which are not otherwise material.

§ 3335. Test of materiality

Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract or in making his inquiries.

§ 3336. Presumed knowledge

Each party to a contract of insurance is bound to know all the:

(1) general causes which are open to his inquiry equally with that of the other, and which may affect either the political or material perils contemplated; and

(2) general usages of trade.

§ 3337. Waiver of communication

The right to information of material facts may be waived, either by:

(1) the terms of the insurance; or

(2) neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

§ 3338. Interest of insured

Information of the nature or amount of the interest of one insured need not be communicated unless in answer to an inquiry, except as prescribed by section 3392 of this title.

§ 3339. Fraudulent concealment

An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

§ 3340. Matters of opinion

Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

Article B—Representations

§ 3351. Oral or written

A representation may be oral or written.

§ 3352. Time of making

A representation may be made at the time of, or before, issuance of the policy.

§ 3353. Rules of interpretation

The language of a representation is to be interpreted by the same rules as those applied to contracts in general.

§ 3354. Representation as to future

A representation as to the future is a promise, unless it is merely a statement of a belief or an expectation.

§ 3355. Effect upon policy

A representation can not qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

§ 3356. Alteration or withdrawal

A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

§ 3357. Time intended by representation

The completion of the contract of insurance is the time to which a representation must be presumed to refer.

§ 3358. Representation upon hearsay

When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others; or he may submit the information, in its whole extent, to the insurer. In either case, he is not responsible for its truth, unless it proceeds from an agent of the insured, whose duty it is to give the information.

§ 3359. Falsity

A representation is false when the facts fail to correspond with its assertions or stipulations.

§ 3360. Effect of material false representation

If a representation is false in a material point, whether affirmative or promissory, the injured party may rescind the contract from the time when the representation becomes false.

§ 3361. Materiality

The materiality of a representation is determined by the same rule as the materiality of a concealment.

Article C—Miscellaneous Provisions

§ 3371. Application of subchapter

This subchapter applies as well to a modification of a contract of insurance as to its original formation.

Subchapter VI—The Policy

Article A—General Provisions

§ 3391. Definition of policy of insurance

The written instrument, in which a contract of insurance is set forth, is called a policy of insurance.

§ 3392. Required contents of policy

A policy of insurance must specify:

(1) the parties between whom the contract is made;

(2) the property or life insured;

(3) the interest of the insured in property insured, if he is not the absolute owner thereof;

(4) the risks insured against;

(5) the period during which the insurance is to continue; and

(6) either:

(A) the rate of premium; or

(B) if the insurance is of a character where the exact premium is only determinable upon the termination of the contract, the basis and rates upon which the final premium is to be determined and paid.

§ 3393. Coverage of specified insured's interest

When the name of the person intended to be insured is specified in a policy, it can be applied only to his own interest.

§ 3394. Insurance by agent or trustee

When an insurance contract is executed with an agent or trustee as the insured, the fact that his principal or beneficiary is the real party in interest may be indicated by describing the insured as agent or trustee, or by other general words in the policy.

§ 3395. Insurance by partner or part-owner

To render an insurance, effected by one partner or part-owner, applicable to the interest of his copartners, or of other part-owners, it is necessary that the terms of the policy be such as are applicable to the joint or common interest.

§ 3396. General description of insured

When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, only he who can show that it was intended to include him may claim the benefit of the policy.

§ 3397. Insurance of future owners

A policy may be so framed that it will inure to the benefit of whosoever, during the continuance of the risk, becomes the owner of the interest insured.

Article B—Types of Policies

§ 3411. Open and valued policies

A policy is either open or valued.

§ 3412. Definition of open policy

An open policy is one in which the value of the subject-matter is not agreed upon, but is left to be ascertained in case of loss.

§ 3413. Definition of valued policy

A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

§ 3414. Definition of running policy

A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

Article C—Warranties

§ 3421. Express or implied

A warranty is either express or implied.

§ 3422. Express warranty

A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

§ 3423. Form of words

A particular form of words is not necessary to create a warranty.

§ 3424. Express warranties to be in policy

Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy, as making a part of it.

§ 3425. Past, present, and future warranties

A warranty may relate to the past, the present, the future, or to any or all of these.

§ 3426. Statement of intent

A statement in a policy, which imports that there is an intention to do or not to do a thing which materially affects the risk, is a warranty that the act or omission will take place.

§ 3427. Excusable omission to fulfill future warranty

When, before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy.

§ 3428. Violation of material warranty

The violation of a material warranty or other material provision of a policy, on the part of either party thereto, entitles the other to rescind.

§ 3429. Violation of immaterial warranty

Unless the policy declares that a violation of specified provisions thereof shall avoid it, the breach of an immaterial provision does not avoid the policy.

§ 3430. Breach without fraud

A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where the warranty is broken in its inception, prevents the policy from attaching to the risk.

Subchapter VII—The Premium

§ 3451. Conditions of return of premium

If a policy is cancelled or rescinded, the person insured, unless the insurance contract otherwise provides, is entitled:

(1) to a return of the whole premium, if no part of his interest in the thing insured is exposed to any of the perils insured against; or

(2) if the insurance is made for a definite period of time, and the insured surrenders his policy, to a return of such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

Section 3452 of this title applies only to the expired time.

§ 3452. Earned premium

Except as provided by section 3451 of this title, or by the insurance contract, if a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums as far as that particular risk is concerned.

§ 3453. Right to return

A person insured is entitled to a return of the premium when:

(1) the contract is voidable on account of:

(A) the fraud or misrepresentation of the insurer; or

(B) facts, of the existence of which the insured was ignorant without his fault; or

(2) by any default of the insured other than actual fraud, the insurer did not incur any liability under the policy.

§ 3454. Policy as receipt

An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, as far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

§ 3455. Overinsurance by several insurers

In case of an overinsurance by several insurers, the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the subject at risk.

§ 3456. Overinsurance by simultaneous policies

When an overinsurance is effected by simultaneous policies, the insurers shall contribute to the premium to be returned in proportion to the amount insured by their respective policies.

§ 3457. Overinsurance by successive policies

When an overinsurance is effected by successive policies, those only shall contribute to a return of the premium who are exonerated by prior insurance from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

Subchapter VIII—Loss

Article A—Transfer of Interest After Loss

§ 3481. Agreement not to transfer

An agreement not to transfer the claim of the insured against the insurer after a loss has happened, is void if made before the loss.

Article B—Causes of Loss

§ 3491. Proximate and remote causes

An insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

§ 3492. Rescue from peril insured against

An insurer is liable where:

(1) the thing is rescued from a peril insured against, and which would otherwise have caused a loss, if, in the course of the rescue, the thing is exposed to a peril not insured against, and which permanently deprives the insured of its possession, in whole or in part; or

(2) a loss is caused by efforts to rescue the thing insured from a peril insured against.

§ 3493. Specially excepted perils

If a peril is specially excepted in a contract of insurance and there is a loss which would not have occurred but for the peril, the loss is thereby excepted even though the immediate cause of the loss was a peril which was not excepted.

§ 3494. Willful act of insured; negligence

An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of the insured's agents or others.

Article C—Notice and Proofs of Loss

§ 3501. Notice of fire loss

In case of loss upon an insurance against fire, an insurer is exonerated if notice thereof is not given to him without unnecessary delay by a person insured or a person entitled to the benefit of the insurance.

§ 3502. Notice of casualty loss; 20-day period

Except in the case of life, marine, or fire insurance, notice of an accident, injury, or death may be given at any time within 20 days after the event, to the insurer under a policy against loss therefrom. In such a policy, a requirement of notice within a lesser period is not valid. Notice deposited in the mails properly addressed within the time stated is sufficient, though it does not reach the insurer within that time.

§ 3503. Preliminary proofs

When preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice. It is sufficient for him to give the best evidence which he has in his power at the time.

§ 3504. Waiver of defects

All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

§ 3505. Waiver of delay

Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

§ 3506. Proof by third party

If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured or beneficiary, there is sufficient compliance with the requirement if the insured or beneficiary:

(1) uses reasonable diligence to procure the certificate or testimony; and

(2) in case of refusal to give the certificate or testimony to him, furnishes reasonable evidence to the insurer that the refusal was not induced by just grounds of disbelief in the facts necessary to be certified or testified.

Subchapter IX—Double Insurance

§ 3521. Definition of double insurance

A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

§ 3522. Contribution in case of double insurance

In case of double fire insurance, each insurer shall contribute ratably toward the loss, without regard to the dates of several policies.

Subchapter X—Reinsurance

§ 3531. Definition of reinsurance contract

A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of the insurance.

§ 3532. Presumed nature of contract

A reinsurance is presumed to be a contract of indemnity against liability and not merely against damage.

§ 3533. Disclosures required

Where an insurer obtains reinsurance, he shall communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk.

§ 3534. Interest of original insured

The original insured has no interest in a contract of reinsurance.

Subchapter XI—Casualty Insurance

§ 3551. Liability on casualty risks; required provisions in policies

(a) In respect of every contract of insurance made between an insurance company and a person, by which the person is insured against loss or damage through legal liability for the bodily injury, death, or damage to property of a third person, for which loss or damage the insured is responsible, whenever a loss occurs on account of a casualty covered by the contract of insurance, the liability of the insurance company is absolute, and the payment of the loss does not depend upon the satisfaction by the insured of a final judgment against him for loss or damage, or death, occasioned by the casualty. A contract of insurance may not be cancelled or annulled by an agreement between the insurance company and the insured after the insured has become responsible for loss or damage as mentioned in this section, and any such cancellation or annulment is void.

(b) Contracts or policies of insurance of the type mentioned in subsection (a) of this section, delivered in and/or having force and effect in, the Canal Zone, shall be deemed, notwithstanding any provision therein to the contrary, to contain or to be subject to the following provisions:

(1) A provision that the insolvency or bankruptcy of the person insured, or the insolvency of his estate, shall not release the insurer from the payment of damages for injury sustained or loss occasioned during the life of and within the coverage of the policy or contract.

(2) A provision that notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant, to a licensed agent of the insurer in the Canal Zone, with particulars sufficient to identify the insured, is notice to the insurer.

(3) A provision that failure to give any notice required to be given by the contract or policy within the time prescribed therein shall not invalidate a claim made by the insured or any other claimant thereunder if it shall be shown not to have been reasonably possible to give the notice within the prescribed time and that notice was given as soon as was reasonably possible.

§ 3552. Remedy of injured party after recovering judgment; defenses

(a) Upon the recovery of a final judgment against a person by a person or by the executor or administrator of a deceased person, for loss or damage on account of bodily injury or death, or for loss or damage to property, if the defendant in the action was insured against the loss or damage at the time when the right of action arose, the judgment creditor may have the insurance money provided for in the contract or policy of insurance between the insurance company and the defendant applied to the satisfaction of the judgment. If the judg-

ment is not satisfied within 30 days after the date when it is rendered, the judgment creditor may proceed by a civil action against the defendant and the insurance company to reach and apply the insurance money to the satisfaction of the judgment.

(b) Except as provided by this subchapter, an action brought under subsection (a) of this section is subject to the conditions of the contract or policy of insurance and to the defenses that may be pleaded by the insurer to the direct action instituted by the insured.

CHAPTER 87—FIRE INSURANCE

Sec.

§ 3571. Alteration of use or condition of insured property

An insurer is entitled to rescind a contract of fire insurance if the use or condition of the subject-matter insured is altered from that to which it is limited by the policy, and the alteration is made without the consent of the insured by means within the control of the insured and increases the risk.

§ 3572. Alteration without increase of risk

When a contract of fire insurance does not restrict the use or condition of the insured subject-matter, the contract is not affected by an alteration in the use or condition thereof if the alteration does not increase the risk.

§ 3573. Acts of insured

After the execution of a contract of insurance, an act of the insured does not affect the contract unless the act violates the provisions of the policy, even though the act increases the risk and causes a loss.

§ 3574. Measure of indemnity; effect of valuation

The effect of a valuation in a fire policy is the same as in a marine policy.

§ 3575. Same; open policy

Under an open policy, the measure of indemnity in fire insurance is the expense to the insured of replacing the thing lost or injured in its condition at the time of the injury, the expense being computed as of the time of the commencement of the fire.

§ 3576. Request for examination of property; valuation

Whenever the insured desires to have a valuation named in his policy insuring any building or structure against fire, he may require the building or structure to be examined by the insurer, and the value of the insured's interest therein shall be fixed at that time by the parties. The cost of the examination shall be paid by the insured. A clause shall be inserted in the policy stating substantially that the value of the insured's interest in the building or structure has been thus fixed.

§ 3577. Payment of loss under valued policy

In the absence of any change increasing the risk without the consent of the insurer or of fraud on the part of the insured, and except as

provided by section 3579 of this title, the insurer, under a policy valued pursuant to section 3576 of this title, shall pay:

(1) in case of a total loss, the whole amount insured upon the insured's interest in the building or structure, as stated in the policy and upon which the insurers have received a premium; and

(2) in case of a partial loss, the full amount of the partial loss.

If there are two or more policies covering the insured's interest, each policy shall contribute pro rata to the payment of the whole or partial loss.

§ 3578. Limit of liability

Except as provided by section 3579 of this title, the insurer is not required to pay more than the amount stated in a policy valued pursuant to section 3756 of this title.

§ 3579. Stipulations in valued policy

Stipulations in a policy valued pursuant to section 3576 of this title concerning the repairing, rebuilding or replacing of buildings or structures wholly or partially damaged or destroyed shall prevail over sections 3577 and 3578 of this title.

CHAPTER 89—LIFE AND DISABILITY INSURANCE

Sec.

§ 3611. Insurable interest

Every person has an insurable interest in the life and health of:

(1) himself;

(2) any person on whom he depends wholly or in part for education or support;

(3) any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and

(4) any person upon whose life any estate or interest vested in him depends.

§ 3612. Measure of indemnity

In life or disability insurance, the only measure of liability and damage is the sum or sums payable in the manner and at the times as provided in the policy to the person entitled thereto.

§ 3613. Transfer of policy; manner; insurable interest

A life or disability insurance policy may pass by transfer, will, or succession to any person, whether or not the transferee has an insurable interest. The transferee may recover upon it whatever the insured might have recovered.

§ 3614. Notice of transfer

Notice to an insurer of a transfer or bequest of a life or disability insurance policy is not necessary to preserve the validity of the policy unless expressly required by the policy.

§ 3615. Disposition or incumbrance of interest in installment

The beneficiary under a life insurance policy which provides for the payment of its proceeds in periodical installments, may be restrained by provisions in the policy from disposing of or incumbering his interest in any such installment prior to the date when it becomes due and payable by the insurer.

§ 3616. Manner of payment of life insurance

(a) An insurance upon life may be made payable:

(1) on the death of the insured;

(2) on the insured's surviving a specified period;

(3) periodically as long as the insured lives;

(4) otherwise contingently on the continuance or determination of life; or

(5) upon such terms and conditions and subject to such restrictions as to revocation by the policyholder and control by beneficiaries as shall have been agreed to in writing by the insurer and the policyholder, or, if no terms and conditions have been agreed to by the insurer and the policyholder during the insured's lifetime, then upon such terms and conditions and subject to such restrictions as may be agreed to in writing by the insurer and the beneficiaries.

(b) An agreement between the insurer and the policyholder, referred to in paragraph (5) of subsection (a) of this section, may be rescinded or amended by the parties thereto without the consent of any beneficiary therein designated unless the rights of the beneficiary have been expressly declared to be irrevocable.

(c) An agreement referred to in paragraph (5) of subsection (a) of this section, made after the effective date of this Code, shall not vest in the insurer discretion as to the conditions, time, amount, manner or method of payment. The relationship between the insurer and the policyholder or beneficiaries under such an agreement shall be that of debtor and creditor and the insurer shall not be required to segregate funds so held but shall hold them as a part of its general corporate assets.

§ 3617. Discharge of insurer by payment

Notwithstanding the provisions of section 293 of Title 8, when the proceeds of, or payments under, a life insurance policy become payable and the insurer makes payment thereof in accordance with the terms of the policy, or in accordance with the terms of a written assignment thereof if the policy has been assigned, the payment shall fully discharge the insurer from all claims under the policy unless, before the payment is made, the insurer has received, at its home office, written notice by or on behalf of another person that he claims to be entitled to the payment or to an interest in the policy.

CHAPTER 91—INDEMNITY

Sec.

§ 3651. Definition of indemnity

Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of another person.

§ 3652. Invalidity with respect to future wrongful act

An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by that person at the time of doing it to be unlawful.

§ 3653. Validity with respect to past wrongful act

An agreement to indemnify a person against an act already done, is valid, even though the act was known to be wrongful, unless it was a felony.

§ 3654. Extension of indemnity to acts of agents

An agreement to indemnify against the acts of a certain person, applies not only to his acts and their consequences, but also to those of his agents.

§ 3655. Indemnity to several persons

An agreement to indemnify several persons applies to each, unless a contrary intention appears.

§ 3656. Joint or several liability

One who indemnifies another against an act to be done by the latter is liable jointly with the person indemnified, and separately, to every person injured by the act.

§ 3657. Rules for interpreting agreement of indemnity

In the interpretation of a contract of indemnity the following rules are to be applied, unless a contrary intention appears:

(1) upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable;

(2) upon an indemnity against claims, or demands, or damages, or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof;

(3) an indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defense against the claims, demands, or liability incurred in good faith and in the exercise of a reasonable discretion;

(4) the person indemnifying shall, on request of the person indemnified, defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to engage in the conduct of the defenses, if he chooses to do so;

(5) if, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith is conclusive in his favor against the former;

(6) if the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceeding against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former; or

(7) a stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if the person indemnified had a good defense upon the merits, which by want of ordinary care he failed to establish in the action.

§ 3658. Reimbursement of person indemnifying other

Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay.

§ 3659. Definition of bail

Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

§ 3660. Regulation of bail

The obligations of bail are governed by the law specially applicable thereto.

CHAPTER 93—GUARANTY IN GENERAL

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—CREATION OF GUARANTY

SUBCHAPTER III—INTERPRETATION OF GUARANTY

SUBCHAPTER IV—LIABILITY OF GUARANTORS

SUBCHAPTER V—CONTINUING GUARANTY

SUBCHAPTER VI—EXONERATION OF GUARANTORS

Subchapter I—General Provisions

§ 3691. Definition of guaranty

A guaranty is a promise to answer for the debt, default, or miscarriage of another person.

Subchapter II—Creation of Guaranty

§ 3711. Guarantor without knowledge of principal

A person may become guarantor even without the knowledge or consent of the principal.

§ 3712. Consideration

Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

§ 3713. Writing; signature

Except as prescribed by section 3714 of this title, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

§ 3714. Obligations which need not be in writing

A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

(1) where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to the promise, or by one who has received a discharge from an obligation in whole or in part in consideration of the promise;

(2) where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

(3) where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation;

(4) where the promise is upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person;

(5) where a factor undertakes, for a commission, to sell merchandise and guarantee the sale; or

(6) where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

§ 3715. Acceptance of guaranty; notice

A mere offer to guarantee is not binding until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

Subchapter III—Interpretation of Guaranty

§ 3731. Guaranty of incomplete contract

In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

§ 3732. Guaranty that an obligation is good or collectible

A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

§ 3733. Same; recovery

A guaranty, such as is provided by section 3732 of this title, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.

§ 3734. Same; guarantor's liability

In the cases provided by section 3733 of this title, the removal of the principal from the Canal Zone, leaving no property therein from which the obligation might be satisfied, is equivalent to the insol-

vency of the principal in its effect upon the rights and obligations of the guarantor.

Subchapter IV—Liability of Guarantors

§ 3751. Conditional and unconditional guaranties

A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

§ 3752. Liability of guarantor of payment or performance

A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.

§ 3753. Liability of guarantor of conditional obligation

Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of the default, and the creditor has actual notice thereof.

§ 3754. Guarantor's obligation commensurate with that of principal

The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.

§ 3755. Illegal contract or personal disability of principal

A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

Subchapter V—Continuing Guaranty

§ 3771. Definition of continuing guaranty

A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

§ 3772. Revocation

A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to the transactions which he does not renounce.

Subchapter VI—Exoneration of Guarantors

§ 3791. Alteration of original obligation; suspension of remedies or rights

A guarantor is exonerated, except so far as he may be indemnified by the principal, if, by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, are in any way impaired or suspended.

§ 3792. Void promises

A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of section 3791 of this title.

§ 3793. Rescission of agreement altering obligation or impairing remedy

The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by the agreement.

§ 3794. Partial satisfaction of obligation

The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

§ 3795. Delay in proceeding by creditor

Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

§ 3796. Liability of indemnified guarantor notwithstanding modification or release

A guarantor who has been indemnified by the principal is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

§ 3797. Effect of discharge of principal

A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

CHAPTER 95—SURETYSHIP

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—LIABILITY OF SURETIES

SUBCHAPTER III—RIGHTS OF SURETIES

SUBCHAPTER IV—RIGHTS OF CREDITORS

SUBCHAPTER V—LETTER OF CREDIT

Subchapter I—General Provisions

§ 3831. Definition of surety

A surety is one who at the request of another, and for the purpose of securing a benefit to him, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

§ 3832. Apparent principal may show that he is surety

One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

Subchapter II—Liability of Sureties

§ 3851. Limit of surety's obligation

A surety cannot be held beyond the express terms of his contract, and if the contract prescribes a penalty for its breach, he is not in any case liable for more than the penalty.

§ 3852. Rules of interpretation

In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

§ 3853. Effect of judgment against surety

Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

§ 3854. Exoneration by performance or offer of performance

Performance of the principal obligation, or an offer of performance, duly made as provided in this title, exonerates a surety.

§ 3855. Discharge by certain acts of creditor

A surety is exonerated:

(1) in like manner with a guarantor;

(2) to the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or

(3) to the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

Subchapter III—Rights of Sureties

§ 3871. Surety has rights of guarantor

A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

§ 3872. Pursuit of certain remedies by creditor; exoneration of surety for neglect

A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

§ 3873. Compelling principal to perform

A surety may compel his principal to perform the obligation when due.

§ 3874. Reimbursement of surety by principal

If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal shall reimburse what the surety has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by section 3875 of this title.

§ 3875. Subrogation to creditor's rights; contribution from cosureties

A surety, upon satisfying the obligation of the principal, may enforce every remedy which the creditor then has against the principal to the extent of reimbursing what he has expended, and may require all his cosureties to contribute thereto, without regard to the order of time in which they become cosureties.

§ 3876. Entitlement to benefits of securities held by creditor

A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor, or by a cosurety at the time of entering into the contract of suretyship, or acquired by him afterward, whether the surety was aware of the security or not.

§ 3877. Property of principal to be applied first

Whenever property of a surety is hypothecated with property of the principal, the surety may have the property of the principal first applied to the discharge of the obligation.

Subchapter IV—Rights of Creditors

§ 3901. Entitlement to benefits of securities held by surety

A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon maturity of the obligation, compel the application of the security to its satisfaction.

Subchapter V—Letter of Credit

§ 3921. Definition of letter of credit

A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

§ 3922. How addressed

A letter of credit may be addressed to several persons in succession.

§ 3923. Liability of the writer

The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

§ 3924. General or special letters of credit

A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

§ 3925. Nature and effect of general letter of credit

A general letter of credit gives any person to whom it may be shown authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name.

§ 3926. Extent of general letter of credit

Several persons may successively give credit upon a general letter.

§ 3927. Letter as continuing guaranty in certain cases

If the parties to a letter of credit appear, by its terms, to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty.

§ 3928. Notice to writer of letter

The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

§ 3929. Agreement of credit with terms of letter

If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter.

CHAPTER 97—LIENS IN GENERAL

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—CREATION OF LIENS

SUBCHAPTER III—EFFECT OF LIENS

SUBCHAPTER IV—PRIORITY OF LIENS

SUBCHAPTER V—REDEMPTION FROM LIENS

SUBCHAPTER VI—EXTINCTION OF LIENS

Subchapter I—General Provisions

§ 3961. Definition of lien

A lien is a charge imposed in a mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.

§ 3962. General or special liens

Liens are either general or special.

§ 3963. Definition of general lien

A general lien is one which the holder thereof may enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

§ 3964. Definition of special lien

A special lien is one which the holder thereof may enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

§ 3965. Satisfaction of prior lien by holder of special lien

Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

§ 3966. Contracts governed by this chapter

Contracts of mortgage and pledge are subject to all the provisions of this chapter.

Subchapter II—Creation of Liens

§ 3991. Manner of creation

A lien is created:

(1) by contract of the parties; or
(2) by operation of law.

§ 3992. No lien for claim not due

A lien does not arise by mere operation of law until the time at which the act to be secured thereby ought to be performed.

§ 3993. Lien on future interest

An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such a case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of the interest.

§ 3994. Obligations not in existence when lien created

A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

Subchapter III—Effect of Liens

§ 4011. Title not transferred by lien

Notwithstanding an agreement to the contrary, a lien or a contract for a lien, does not transfer any title to the property subject to the lien.

§ 4012. Certain contracts void

All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

§ 4013. Creation as not implying personal obligation

The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

§ 4014. Lien as security for other obligations

The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for

the performance of any other obligation than that which the lien originally secured.

§ 4015. Compensation of holder of lien

One who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 1969 and 1970 of this title.

Subchapter IV—Priority of Liens

§ 4031. Time of creation as controlling; exception

Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

§ 4032. Marshaling liens

Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself or of injustice to other persons, shall resort to the property in the following order, on the demand of any party interested:

(1) to the things upon which he has an exclusive lien;

(2) to the things which are subject to the fewest subordinate liens;

(3) in like manner inversely to the number of subordinate liens upon the same things; and

(4) when several things are within one of the foregoing classes, and subject to the same number of liens:

(A) to the things which have not been transferred since the prior lien was created;

(B) to the things which have been so tranferred without a valuable consideration; and

(C) to the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

Subchapter V—Redemption from Liens

§ 4051. Right to redeem; subrogation

A person having an interest in property subject to a lien may redeem it from the lien at any time after the claim is due and before his right of redemption is foreclosed. By the redemption, he becomes subrogated to all the benefits of the lien, as against all owners of other interests in the property, except insofar as he was bound to make the redemption for their benefit.

§ 4052. Rights of inferior lienor

One who has a lien inferior to another, upon the same property, may:

(1) redeem the property in the same manner as its owner might, from the superior lien; and

(2) be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

§ 4053. Procedure for redemption from lien

Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

Subchapter VI—Extinction of Liens

§ 4071. Lien as accessory to act whose performance it secures

A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for the performance or not, and is extinguishable in like manner with any other accessory obligation.

§ 4072. Extinction by sale or conversion

The sale of any property on which there is a lien, in satisfaction of the claim secured thereby or in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

§ 4073. Extinction under statute of limitations

A lien is extinguished by the lapse of the time within which, under Title 5, an action may be brought upon the principal obligation.

§ 4074. Partial performance

The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

§ 4075. Restoration of property as extinguishing lien dependent upon possession

The voluntary restoration of property to its owner by the holder of a lien thereon dependent upon possession extinguishes the lien as to the property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for value.

CHAPTER 99—MORTGAGE

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—MORTGAGES OF PERSONAL PROPERTY

Sec.
4155. Duties of registrar with respect to filing; fee.
4156. Filing assignment of mortgage; notice.
4157. Removal of mortgaged property from Canal Zone.
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4161. Continuance of lien of mortgage on crops.
4162. Validity of certain mortgages.
4163. Discharge of mortgage of personal property.

Subchapter I—General Provisions

§ 4111. Definition of mortgage

Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

§ 4112. Formalities of creation

A mortgage may be created, renewed, or extended, only by writing, subscribed by the party to be charged or by his agent thereunto authorized in writing.

§ 4113. Lien of mortgage as special

The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

§ 4114. Transfer as creating mortgage or pledge

A transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when it is accompanied by actual change of possession, in which case it is to be deemed a pledge.

§ 4115. Proof of transfer made subject to defeasance on a condition

Except as against a subsequent purchaser or encumbrancer for value and without notice, the fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing the transfer to be a mortgage, be proved, though the fact does not appear by the terms of the instrument.

§ 4116. Extent of mortgage lien

A mortgage is a lien upon everything that would pass by a grant of the property.

§ 4117. Possession of mortgaged property

Unless authorized by the express terms of the mortgage, a mortgage does not entitle the mortgagee to the possession of the property; but after the execution of the mortgage the mortgagor may agree to a change of possession without a new consideration.

§ 4118. Mortgage not a personal obligation

A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

§ 4119. Waste

A person whose interest is subject to the lien of a mortgage may not do any act which will substantially impair the mortgagee's security.

§ 4120. Subsequent acquisition of title by mortgagor

Title acquired by the mortgagor subsequent to the execution of the mortgage, inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

§ 4121. Power of sale

A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

§ 4122. Power of attorney to execute

A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, and certified in the manner prescribed by chapter 27 of this title, and recorded in the office of the registrar of property.

§ 4123. Validity of mortgage with respect to third persons

A mortgage of property is void as against creditors of the mortgagor and subsequent purchasers and encumbrances of the property in good faith for value, unless it is acknowledged or proved and certified in the manner prescribed by chapter 27 of this title, and recorded in the office of the registrar of property of the Canal Zone.

§ 4124. Recording assignment of mortgage; notice

An assignment of a mortgage may be recorded in like manner as a mortgage, and the record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

§ 4125. Recording assignment of mortgage not notice to mortgagor; validity of payments

When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding the note, bond, or other instrument.

§ 4126. Mortgage passes by assignment of debt

The assignment of a debt secured by mortgage carries with it the security.

§ 4127. Discharge; marginal entry; form

A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the registrar of property, who shall certify the acknowledgment in form substantially as follows: "Signed and acknowledged before me, this ——— day of ———, in the year ———. A. B., Registrar of Property."

§ 4128. Same; recording certificate of payment, satisfaction, or discharge

A recorded mortgage, if not discharged as provided in section 4127 of this title, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as prescribed by chapter 27 of this title, stating that the mortgage has been paid, satisfied, or discharged.

§ 4129. Duty of mortgagee on satisfaction of mortgage

When a mortgage has been satisfied, the mortgagee or his assignee shall immediately, on the demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof, so as to entitle it to be recorded, or he shall enter satisfaction, or cause satisfaction of the mortgage to be entered of record. A mortgagee, or assignee of the mortgagee, who refuses to execute, acknowledge, and deliver to the mortgagor the certificate of discharge, or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as pro-

vided in this chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of the refusal, and shall also forfeit to him or them the sum of $100. The mortgagee, his assignee, or personal representative, shall deliver to the mortgagor, his heirs, successors, or assigns, the mortgage and the note so paid or satisfied. For filing and entering the certificate of discharge, or satisfaction, the registrar shall be entitled to a fee of 50 cents.

This section does not apply to the payment, satisfaction and discharge of mortgages of personal property under section 4163 of this title.

§ 4130. Bottomry and respondentia excluded from chapter

Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by this chapter.

Subchapter II—Mortgages of Personal Property

§ 4151. Mortgageable personal property

Mortgages may be made upon all growing crops, including fruit, and upon any and all kinds of personal property, except articles of wearing apparel and personal adornment.

§ 4152. Stock in trade of merchant

Where a mortgage is made upon the stock in trade of a merchant, it shall be deemed, in the absence of a contrary intention, to cover goods subsequently acquired; and purchasers from the mortgagor in good faith and in the usual course of business are not liable to the mortgagee.

§ 4153. Form of personal property mortgage

A mortgage of personal property may be made in substantially the following form:

This mortgage, made the —— day of ——, in the year ——, by A B, of ——, by occupation a ——, mortgagor, to C D, of ——, by occupation a ——, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of —— dollars, on (or before) the —— day of ——, in the year ——, with interest thereon (or, as security for the payment of a note or obligation, describing it, and so forth) A B.

§ 4154. Essentials for validity as to third persons

A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith and for value, unless:

(1) it is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors;

(2) it is acknowledged or proved and certified in the manner prescribed by chapter 27 of this title; and

(3) it, or a true copy, is filed in the office of the registrar of property of the Canal Zone.

§ 4155. Duties of registrar with respect to filing; fee

(a) The registrar of property shall:

(1) mark upon the mortgage of personal property, or copy, filed with him, the day and hour of filing;

(2) file the mortgage, or copy, in his office for public inspection;

(3) keep a separate book and enter therein the names of the mortgagor and mortgagee, the date of the mortgage, the day and hour of filing, a brief description of the property mortgaged and the amount of the mortgage; and

(4) index the book referred to in paragraph (3) of this subsection under the names of both mortgagor and mortgagee.

(b) For filing and entering a mortgage of personal property or copy thereof, or an assignment of such a mortgage, the registrar shall be entitled to a fee of $1.

§ 4156. Filing assignment of mortgage; notice

An assignment of a mortgage of personal property may be filed in like manner as a mortgage of personal property, and each filing operates as notice to all persons subsequently deriving title to the mortgage from the assignor. When a mortgage of personal property is executed as security for money due, or to become due, on a promissory note, bond, or other instrument designated in the mortgage, the filing of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding the note, bond, or other instrument.

§ 4157. Removal of mortgaged property from Canal Zone

A mortgagor may not remove or permit the removal of mortgaged property from the Canal Zone without the written consent of the mortgagee.

§ 4158. Foreclosure of mortgage; manner

A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by chapter 101 of this title, or by proceedings pursuant to sections 1731–1734 of Title 5.

§ 4159. Attachment or execution upon mortgaged property

Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of the mortgagor in the manner provided by section 569 of Title 5.

§ 4160. Inapplicability of sections 4154–4157 to certain ships and aircraft

Sections 4154–4157 of this title do not apply to any mortgage of a ship or part of a ship under the flag of the United States, nor to any mortgage of an aircraft, or part thereof, licensed or registered under the laws of the United States.

§ 4161. Continuance of lien of mortgage on crops

The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, as long as the same remains on the land.

§ 4162. Validity of certain mortgages

Mortgages of personal property, other than that upon which mortgages are authorized to be made by section 4151 of this title, and mortgages not made in conformity with this subchapter, are nevertheless valid between the parties, their heirs, legatees, and personal representatives, and persons who, before parting with value, have actual notice thereof.

§ 4163. Discharge of mortgage of personal property

Upon the payment or satisfaction of a mortgage of personal property, the mortgagee, his assignee, or legal representative, upon the request of the mortgagor or of any person interested in the mortgaged property, must execute, acknowledge, and deliver to the person requesting it a certificate setting forth the payment or satisfaction. If the mortgagee, his assignee, or legal representative refuses to execute, acknowledge, and deliver to the mortgagor or other person interested

in the mortgaged property the certificate provided for in this section he shall forfeit to the person requesting the certificate the sum of $5 and be liable for all damages suffered by reason of the refusal. Upon presentation of the certificate of payment or satisfaction to the registrar of property, he shall file it and note the discharge of the mortgage and the date thereon on the margin of the page where the mortgage has been entered. For filing and entering the certificate of payment or satisfaction, the registrar shall be entitled to a fee of 50 cents.

CHAPTER 101—PLEDGE

Sec.

§ 4201. Definition

Pledge is a deposit of personal property by way of security for the performance of another act.

§ 4202. Certain contracts as pledges

Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge.

§ 4203. Delivery of property as essential

The lien of a pledge is dependent on possession, and a pledge is not valid until the property pledged is delivered to the pledgee, or to a pledge holder, as hereinafter prescribed.

§ 4204. Increase

The increase of property pledged is pledged with the property.

§ 4205. Extent of lienor's pledge

One who has a lien upon property may pledge it to the extent of his lien.

§ 4206. Pledgee's rights as against real owner

One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, may not set up his own title, to defeat a pledge of the property, made by the other, to a pledgee who received the property in good faith, in the ordinary course of business, and for value.

§ 4207. Rights of owner pledging to secure obligation of another person

Property may be pledged as security for the obligation of a person other than the owner, and in so doing the owner has all the rights of a pledgor for himself, except as hereafter stated in this chapter.

§ 4208. Deposit of pledged property with third person as pledge holder

A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge holder.

§ 4209. Withdrawal of pledged property by pledge lender

One who pledges property as security for the obligation of another may not withdraw the property pledged otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge he cannot withdraw it without his consent.

§ 4210. Obligations of pledge holder

A pledge holder for reward may not exonerate himself from his undertaking; and a gratuitous pledge holder may do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder, and in case of their failure to agree, by depositing the property pledged with an impartial person, who will then be entitled to a reasonable compensation for his care of it.

§ 4211. Enforcement of pledgee's rights by pledge holder

A pledge holder shall enforce all the rights of the pledgee, unless authorized by him to waive them.

§ 4212. Obligation of pledgee and pledge holder for reward

A pledgee, or a pledge holder for reward, assumes the duties and liabilities of a depositary for reward.

§ 4213. Gratuitous pledge holder

A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary.

§ 4214. Debtor's misrepresentation of value of pledge

Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

§ 4215. When pledgee may sell

When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

§ 4216. Demand for performance as condition precedent to sale

Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee shall demand performance thereof from the debtor, if the debtor can be found.

§ 4217. Notice of sale to pledgor

A pledgee shall give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend.

§ 4218. Waiver of notice of sale

Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

§ 4219. Waiver of demand for performance

A debtor or pledgor waives a demand for performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due; but may not waive it in any other manner except by contract.

§ 4220. Manner of sale

The sale by pledgee, of property pledged, must be made by public auction, in the manner and upon the notice of sale of personal property under execution.

§ 4221. Pledgee's sale of securities; collection

A pledgee may not sell evidences of debt pledged to him, except the obligations of governments, States, or corporations; but he may collect them when due.

§ 4222. Sale on demand of pledgor

Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to the satisfaction, when due.

§ 4223. Payment of surplus to pledgor after sale

After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and shall pay the surplus to the pledgor, on demand.

§ 4224. Retention, by pledgee, of all that can become due

When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

§ 4225. Purchase of property by pledgee or pledge holder

Whenever property pledged is sold at public auction, in the manner provided by section 4220 of this title, the pledgee or pledge holder may purchase the property at the sale.

§ 4226. Foreclosure, by judicial sale, of right of redemption

Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

CHAPTER 103—OTHER LIENS

Sec.

§ 4261. Liens on personal property for services thereon

(a) Generally.

Whoever, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safekeeping, or carriage thereof, has a special lien thereon, dependent on possession, for the

compensation, if any, which is due to him from the owner for the service; and whoever makes, alters, or repairs any article of personal property, at the request of the owner or legal possessor of the property, has a lien thereon for his reasonable charges for the balance due for the work done and materials furnished, and may retain possession of the property until the charges are paid.

(b) Livery and feed-stable, etc., proprietors.

Livery or boarding or feed-stable or feed-yard proprietors, and persons pasturing horses or stock, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, or pasturing the horses or stock.

(c) Foundry proprietors.

Foundry proprietors and persons conducting a foundry business have a lien, dependent on possession, upon all patterns in their hands belonging to a customer, for the balance due them from the customers for foundry work.

(d) Laundry and dry cleaning proprietors.

Laundry proprietors and dry cleaning establishment proprietors, and persons conducting a laundry business or dry cleaning establishment, have a general lien, dependent on possession, upon all personal property in their hands belonging to a customer, for the balance due them from the customers for laundry or dry cleaning work. This subsection does not confer a lien in favor of a wholesale dry cleaner on materials received from a dry cleaning establishment proprietor or a person conducting a dry cleaning establishment.

(e) Veterinary proprietors and surgeons.

Veterinary proprietors and veterinary surgeons have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, and the medical treatment of animals.

(f) Garage keepers.

Keepers of garages for automobiles have a lien, dependent on possession, for their compensation in caring for and safekeeping the automobiles, and for making repairs and performing any labor upon, or furnishing supplies or materials for, the automobiles. Where the possession of, or lien upon, an automobile held under a claim of lien hereunder is lost by reason of fraud, trick, or device, the repossession of the automobile by the garage keeper shall revive the lien so lost. A lien thus revived is subordinate to any sale, lien, encumbrance, right, title, or interest in the automobile acquired or exercised in good faith and for value by a person between the time of loss of possession and the time of repossession.

§ 4262. Limitation on amount of lien unless notice given

That portion of any lien, as provided for in section 4261 of this title, in excess of $200, for any work, services, care, or safekeeping rendered or performed at the request of any person other than the holder of the legal title, is invalid, unless prior to commencing any such work, service, care, or safekeeping, the person claiming the lien gives actual notice in writing either by personal service or by registered letter addressed to the holder of the legal title to the property, if known. In the case of automobiles, the person named as legal owner in the registration certificate, shall be deemed, for the purpose of this section, the holder of the legal title.

§ 4263. Sale of property by lien holder; notice; proceeds

If the person entitled to the lien provided for in section 4261 of this title is not paid the amount due and for which the lien is given,

within 20 days after the amount has become due, the lien holder may proceed to sell the property, or so much thereof as may be necessary to satisfy the lien and costs of sale, at public auction, and by giving at least 10 days' previous notice of the sale by advertising in a newspaper of general circulation in the Canal Zone. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property. The remainder, if any, must be paid over to the person who owned the property at the time of sale.

§ 4264. Factor's lien

A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

§ 4265. Banker's lien

A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from the customer in the course of the business.

§ 4266. Officer's lien

An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon the property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

CHAPTER 105—NEGOTIABLE INSTRUMENTS

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Subchapter I—Negotiable Instruments in General

Article A—Form and Interpretation

§ 4301. Form of negotiable instrument

An instrument to be negotiable must conform to the following requirements:

(1) it must be in writing and signed by the maker or drawer;

(2) must contain an unconditional promise or order to pay a sum certain in money;

(3) must be payable on demand, or at a fixed or determinable future time;

(4) must be payable to order or to bearer; and

(5) where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

§ 4302. Certainty of sum payable; definition

The sum payable is a sum certain within the meaning of this chapter, although it is to be paid:

(1) with interest; or

(2) by stated installments; or

(3) by stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or

(4) with exchange, whether at a fixed rate or at the current rate; or

(5) with costs of collection or an attorney's fee, in case payment shall not be made at maturity.

§ 4303. Unconditional order or promise to pay

An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with:

(1) an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

(2) a statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

§ 4304. Determinable future time defined

An instrument is payable at a determinable, future time, within the meaning of this chapter, which is expressed to be payable:

(1) at a fixed period after date or sight; or

(2) on or before a fixed or determinable future time specified therein; or

(3) on or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

§ 4305. Nonnegotiable instrument; provisions not affecting negotiability

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

(1) authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

(2) authorizes a confession of judgment, if the instrument be not paid at maturity; or

(3) waives the benefit of any law intended for the advantage or protection of the obligor; or

(4) gives the holder an election to require something to be done in lieu of payment of money.

But this section does not validate any provision or stipulation otherwise illegal.

§ 4306. Omissions; seal; particular money; statement of nature of consideration

The validity and negotiable character of an instrument are not affected by the fact that:

(1) it is not dated; or

(2) does not specify the value given, or that any value has been given therefor; or

(3) does not specify the place where it is drawn or the place where it is payable; or

(4) bears a seal; or

(5) designates a particular kind of current money in which payment is to be made.

But this section does not alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

§ 4307. Payable on demand

An instrument is payable on demand:

(1) where it is expressed to be payable on demand, or at sight, or on presentation; or

(2) in which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

§ 4308. Payable to order

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

(1) a payee who is not maker, drawer, or drawee; or

(2) the drawer or maker; or

(3) the drawee; or

(4) two or more payees jointly; or

(5) one or some of several payees; or

(6) the holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

§ 4309. Payable to bearer

The instrument is payable to bearer:

(1) when it is expressed to be so payable; or

(2) when it is payable to a person named therein or bearer; or

(3) when it is payable to the order of a fictitious or non-existing or living person not intended to have any interest in it and such fact was known to the person making it so payable or known to his employee or other agent who supplies the name of such payee; or

(4) when the name of the payee does not purport to be the name of any person; or

(5) when the only or last indorsement is an indorsement in blank.

§ 4310. Sufficiency of terms of instrument

The instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof.

§ 4311. Date; presumption

Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

§ 4312. Antedating or postdating

The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

§ 4313. Insertion of date; when authorized; wrong date

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

§ 4314. Filling up blanks

Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

§ 4315. Incomplete instrument not delivered

Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

§ 4316. Delivery; necessity; when effectual; presumptions

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

§ 4317. Construction in case of ambiguity or omissions

Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

(1) where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2) where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3) where the instrument is not dated, it will be considered to be dated as of the time it was issued;

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(4) where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

§ 4318. Liability of signatories; signature in trade or assumed name

A person is not liable on the instrument if his signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

§ 4319. Signature by agent; authority; proof

The signature of a party may be made by an authorized agent. A particular form of appointment is not necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

§ 4320. Liability of person signing as agent, etc.

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

§ 4321. Signature by procuration

A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

§ 4322. Indorsement or assignment by corporation or infant

The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

§ 4323. Forged signature

When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

Article B—Consideration

§ 4331. Presumption of consideration

A negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

§ 4332. Value defined

Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time.

§ 4333. Holder for value

Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time.

§ 4334. Lien holder as holder for value

Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

§ 4335. Want of consideration; effect

Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

§ 4336. Liability of accommodation party

An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

Article C—Negotiation

§ 4341. Negotiation defined

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

§ 4342. Indorsement; method

The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

§ 4343. Indorsement must be of entire instrument

The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

§ 4344. Kinds of indorsement

An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

§ 4345. Special indorsement; indorsement in blank

A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee; and an instrument so indorsed is payable to bearer and may be negotiated by delivery.

§ 4346. Indorsement in blank; change to special indorsement

The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

§ 4347. Restrictive indorsement

An indorsement is restrictive, which either:

(1) prohibits the further negotiation of the instrument; or

(2) constitutes the indorsee the agent of the indorser; or

(3) vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

§ 4348. Restrictive indorsement; effect; rights of indorsee

A restrictive indorsement confers upon the indorsee the right:

(1) to receive payment of the instrument;

(2) to bring any action thereon that the indorser could bring;

(3) to transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

§ 4349. Qualified indorsement

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

§ 4350. Conditional indorsement

Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

§ 4351. Indorsement of instrument payable to bearer

Where an instrument, payable to bearer, is indorsed specially it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

§ 4352. Indorsement of instrument payable to two or more persons

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

§ 4353. Instrument drawn or indorsed to "cashier"

Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer.

§ 4354. Indorsement where name wrongly designated or misspelled

Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

§ 4355. Indorsement in representative capacity

Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

§ 4356. Time of indorsement; presumption

Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

§ 4357. Place of indorsement; presumption

Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

§ 4358. Continuation of negotiable character

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

§ 4359. Striking out indorsement

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

§ 4360. Transfer without indorsement

Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

§ 4361. Renegotiation by prior party

Where an instrument is negotiated back to a prior party that party may, subject to the provisions of this chapter, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

Article D—Rights of Holder

§ 4371. Right of holder to sue; payment

The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

§ 4372. Holder in due course defined

A holder in due course is a holder who has taken the instrument under the following conditions:

(1) that it is complete and regular upon its face;

(2) that he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(3) that he took it in good faith and for value;

(4) that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

§ 4373. Holder not in due course

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

§ 4374. Notice before full amount paid

Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

§ 4375. Defective title

The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

§ 4376. Notice of infirmity or defect

To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

§ 4377. Rights of holder in due course

A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

§ 4378. Original defenses; availability

In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

§ 4379. Holder in due course; presumption; burden of proof

Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of a person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of the defective title.

Article E—Liabilities of Parties

§ 4381. Liability of maker

The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

§ 4382. Liability of drawer

The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

§ 4383. Liability of acceptor

The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

(1) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) the existence of the payee and his then capacity to indorse.

§ 4384. When person deemed indorser

A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

§ 4385. Liability of irregular indorser

Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser, in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

§ 4386. Warranty on negotiation by delivery or by qualified indorsement

A person negotiating an instrument by delivery or by a qualified indorsement, warrants:

(1) that the instrument is genuine and in all respects what it purports to be;

(2) that he has a good title to it;

(3) that all prior parties had capacity to contract;

(4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty does not extend in favor of a holder other than the immediate transferee.

Paragraph (3) of this section does not apply to persons negotiating public or corporation securities, other than bills and notes.

§ 4387. Liability of general indorser

An indorser who indorses without qualification, warrants to all subsequent holders in due course:

(1) the matters and things specified by paragraphs (1), (2), and (3) of section 4386 of this title; and

(2) that the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

§ 4388. Liability of indorser when paper negotiable by delivery

Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

§ 4389. Order of indorsers' liability

As respects one another indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

§ 4390. Liability of agent or broker

Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section 4386 of

this title, unless he discloses the name of his principal and the fact that he is acting only as agent.

Article F—Presentment for Payment

§ 4401. Failure to present for payment; effect

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

§ 4402. Instruments payable on demand and not payable on demand

Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

§ 4403. Sufficiency of presentment

Presentment for payment, to be sufficient, must be made:

(1) by the holder, or by some person authorized to receive payment on his behalf;

(2) at a reasonable hour on a business day;

(3) at a proper place as herein defined;

(4) to the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

§ 4404. Place of presentment

Presentment for payment is made at the proper place:

(1) where a place of payment is specified in the instrument and it is there presented;

(2) where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

(3) where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) in any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

§ 4405. Exhibition of instrument

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

§ 4406. Instrument payable at bank

Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

§ 4407. Principal debtor dead

Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made

to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found.

§ 4408. Persons liable as partners

Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

§ 4409. Joint debtors

Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

§ 4410. When not required to charge drawer

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

§ 4411. When not required to charge indorser

Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

§ 4412. Excuse for delay

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

§ 4413. When dispensed with

Presentment for payment is dispensed with:

(1) where after the exercise of reasonable diligence presentment as required by this chapter can not be made;

(2) where the drawee is a fictitious person;

(3) by waiver of presentment, express or implied.

§ 4414. Instrument dishonored by nonpayment

The instrument is dishonored by nonpayment when:

(1) it is duly presented for payment and payment is refused or cannot be obtained; or

(2) presentment is excused and the instrument is overdue and unpaid.

§ 4415. Liability of person secondarily liable

Subject to this chapter, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

§ 4416. Time of maturity

A negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

§ 4417. Computation of time

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

§ 4418. Instrument payable at bank

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

§ 4419. Payment in due course defined

Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

Article G—Notice of Dishonor

§ 4421. Parties to whom notice of dishonor given

Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

§ 4422. Parties who may give

The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

§ 4423. Notice by agent

Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

§ 4424. Effect of notice on behalf of holder

Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

§ 4425. Effect of notice on behalf of party entitled to give notice

Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

§ 4426. Notice by agent; authority; procedure

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

§ 4427. Sufficiency of notice

A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

§ 4428. Form of notice

The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

§ 4429. Notice to party or agent

Notice of dishonor may be given either to the party himself or to his agent in that behalf.

§ 4430. Notice to deceased party

When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

§ 4431. Notice to partners

Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

§ 4432. Notice to persons jointly liable

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

§ 4433. Notice to bankrupt

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

§ 4434. Time within which notice must be given

Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter.

§ 4435. Time where parties reside in same place

Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) if given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

(2) if given at his residence, it must be given before the usual hours of rest on the day following;

(3) if sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

§ 4436. Time where parties reside in different places

Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

(1) if sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter;

(2) if given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

§ 4437. Due notice; miscarriage in mails

Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

§ 4438. Deposit in post office defined

Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the Postal Service.

§ 4439. Notice to antecedent party; time

Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

§ 4440. Place where notice must be sent

Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

(1) either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or

(2) if he lives in one place, and has his place of business in another, notice may be sent to either place; or

(3) if he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this chapter, it will be sufficient, though not sent in accordance with the requirements of this section.

§ 4441. Waiver of notice

Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

§ 4442. Waiver of notice; persons affected by waiver

Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

§ 4443. Waiver of protest

A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of formal protest, but also of presentment and notice of dishonor.

§ 4444. Dispensing with notice

Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.

§ 4445. Delay; excuse

Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

§ 4446. Notice to drawer; when dispensed with

Notice of dishonor is not required to be given to the drawer in either of the following cases:

(1) where the drawer and drawee are the same person;

(2) when the drawee is a fictitious person or a person not having capacity to contract;

(3) when the drawer is the person to whom the instrument is presented for payment;

(4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

(5) where the drawer has countermanded payment.

§ 4447. Notice to indorser; when dispensed with

Notice of dishonor is not required to be given to an indorser in either of the following cases:

(1) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

(2) where the indorser is the person to whom the instrument is presented for payment;

(3) where the instrument was made or accepted for his accommodation.

§ 4448. Notice of nonpayment where acceptance refused

Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

§ 4449. Omission to give notice of nonacceptance; effect

An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

§ 4450. Protest; when necessary; when unnecessary

Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

Article H—Discharge of Negotiable Instruments

§ 4461. Methods of discharge

A negotiable instrument is discharged:

(1) by payment in due course by or on behalf of the principal debtor;

(2) by payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

(3) by the intentional cancellation thereof by the holder;

(4) by any other act which will discharge a simple contract for the payment of money;

(5) when the principal debtor becomes the holder of the instrument at or after maturity in his own right.

§ 4462. Persons secondarily liable; discharge

A person secondarily liable on the instrument is discharged:

(1) by any act which discharges the instrument;

(2) by the intentional cancellation of his signature by the holder;

(3) by the discharge of a prior party;

(4) by a valid tender of payment made by a prior party;

(5) by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

(6) by any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

§ 4463. Rights of parties secondarily liable who pay instruments

Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

(1) where it is payable to the order of a third person, and has been paid by the drawer; and

(2) where it was made or accepted for accommodation, and has been paid by the party accommodated.

§ 4464. Renunciation by holder

The holder may expressly renounce his rights against any party to the instrument, before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

§ 4465. Unintentional cancellation; burden of proof

A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

§ 4466. Material alteration; effect

Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

§ 4467. Material alteration defined

Any alteration which changes:

(1) the date;
(2) the sum payable, either for principal or interest;
(3) the time or place of payment;
(4) the number or the relations of the parties;
(5) the medium or currency in which payment is to be made—

or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

Subchapter II—Bills of Exchange

Article A—Form and Interpretation

§ 4471. Bill of exchange defined

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

§ 4472. Bill not an assignment of funds in hands of drawee

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

§ 4473. Bill addressed to two or more drawees

A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

§ 4474. Inland and foreign bills defined

An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within the Canal Zone. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

§ 4475. Treatment of bill as promissory note

Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

§ 4476. Referee in case of need

The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say in case the bill is dishonored by nonacceptance or nonpayment. That person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

Article B—Acceptance

§ 4481. Acceptance; definition; method of making

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It may not express that the drawee will perform his promise by any other means than the payment of money.

§ 4482. Holder entitled to acceptance on face of bill

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if his demand is refused, may treat the bill as dishonored.

§ 4483. Acceptance by separate instrument

Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

§ 4484. Promise to accept; equivalent to acceptance

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person, who upon the faith thereof, receives the bill for value.

§ 4485. Time allowed drawee to accept

The drawee is allowed 24 hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

§ 4486. Liability of drawee retaining or destroying bill

Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within 24 hours after the delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

§ 4487. Acceptance of incomplete bill

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the presentment.

§ 4488. Kinds of acceptance

An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

§ 4489. General acceptance

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

§ 4490. Qualified acceptance

An acceptance is qualified which is:

(1) conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(2) partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(3) local; that is to say, an acceptance to pay only at a particular place;

(4) qualified as to time;

(5) the acceptance of some one or more of the drawees, but not of all.

§ 4491. Qualified acceptance; rights of parties

The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

Article C—Presentment for Acceptance

§ 4501. Necessity of making presentment for acceptance

Presentment for acceptance must be made:

(1) where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) where the bill expressly stipulates that it shall be presented for acceptance; or

(3) where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

Presentment for acceptance is not necessary in any other case in order to render any party to the bill liable.

§ 4502. Failure to present as releasing drawer and indorsers

Except as herein otherwise provided, the holder of a bill which is required by section 4501 of this title to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

§ 4503. Time for making; persons to whom made

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

(1) where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) where the drawee is dead, presentment may be made to his personal representative;

(3) where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

§ 4504. Days on which presentment may be made

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under sections 4403 and 4416 of this title. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon, on that day.

§ 4505. Insufficient time

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

§ 4506. Excuse

Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases:

(1) where the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill;

(2) where, after the exercise of reasonable diligence, presentment cannot be made;

(3) where, although presentment has been irregular, acceptance has been refused on some other ground.

§ 4507. Dishonor by nonacceptance

A bill is dishonored by nonacceptance:

(1) when it is duly presented for acceptance and such an acceptance as is prescribed by this chapter is refused or cannot be obtained; or

(2) when presentment for acceptance is excused and the bill is not accepted.

§ 4508. Duty of holder on nonacceptance

If a bill is duly presented for acceptance and is not accepted within the prescribed time the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

§ 4509. Rights of holder on nonacceptance

If a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

Article D—Protest

§ 4511. Necessity for protest

If a foreign bill appearing on its face for nonacceptance, and by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

§ 4512. Method of making

The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

(1) the time and place of presentment;

(2) the fact that presentment was made and the manner thereof;

(3) the cause or reason for protesting the bill;

(4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

§ 4513. Persons who may make protest

Protest may be made by:

(1) a notary public; or

(2) any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

§ 4514. Time for making

When a bill is protested, the protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

§ 4515. Place where made

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

§ 4516. Protest both for nonacceptance and nonpayment

A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

§ 4517. Protest before maturity; better security

Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

§ 4518. Dispensing with protest

Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

§ 4519. Lost, destroyed, or wrongly detained bill

When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

Article E—Acceptance for Honor

§ 4521. Circumstances authorizing acceptance for honor

Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

§ 4522. Method of acceptance for honor

An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

§ 4523. Honor of drawer; presumption

Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

§ 4524. Liability of acceptor

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

§ 4525. Agreement of acceptor

The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance; provided, it shall not have been paid by the drawee; and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given him.

§ 4526. Maturity of sight bill accepted for honor

Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

§ 4527. Protest after acceptance

Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

§ 4528. Presentment for payment to acceptor

Presentment for payment to the acceptor for honor must be made as follows:

(1) if it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity;

(2) if it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified by section 4436 of this title.

§ 4529. Excuse for delay in making presentment

Section 4412 of this title applies where there is delay in making presentment to the acceptor for honor or referee in case of need.

§ 4530. Dishonor by acceptor for honor

When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

Article F—Payment for Honor

§ 4541. Persons who may make payment for honor

Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

§ 4542. Formalities

The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

§ 4543. Declaration before payment for honor

The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

§ 4544. Preference of parties offering to pay for honor

Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

§ 4545. Discharge of subsequent parties; subrogation of payer

Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

§ 4546. Refusal of payment; loss of right of recourse

Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by the payment.

§ 4547. Rights of payer for honor

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

Article G—Bills in a Set

§ 4551. Bills in sets constitute one bill

Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

§ 4552. Negotiation of different parts; rights of holders

Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, the true owner of the bill. But this section does not affect the rights of a person who in due course accepts or pays the part first presented to him.

§ 4553. Liability of holder indorsing two or more parts to different persons

Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

§ 4554. Acceptance

The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

§ 4555. Payment by acceptor

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

§ 4556. Discharging one part; effect

Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

Subchapter III—Promissory Notes and Checks

§ 4561. Promissory note defined

A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer, but the negotiability of a promissory note otherwise negotiable in form, secured by a mortgage or deed of trust upon real or personal property, shall not be affected or abridged by reason of a statement therein that it is so secured, nor by reason of the fact that said instrument is so secured, nor by any conditions contained in the mortgage or deed of trust securing the same. Where a note is drawn to the maker's own order it is not complete until indorsed by him.

§ 4562. Check defined

A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this chapter applicable to a bill of exchange payable on demand apply to a check.

§ 4563. Time for presenting check

A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

§ 4564. Certification of check; effect

Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

§ 4565. Holder procuring check to be certified; effect

Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

§ 4566. Check not an assignment; liability of bank

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

Subchapter IV—General Provisions

§ 4571. Short title

This chapter may be cited as the Uniform Negotiable Instruments Act.

§ 4572. Definitions

In this chapter, unless the context otherwise requires:

"acceptance" means an acceptance completed by delivery or notification;

"action" includes counterclaim and setoff;

"bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not;

"bearer" means the person in possession of a bill or note which is payable to bearer;

"bill" means bill of exchange, and "note" means negotiable promissory note;

"delivery" means transfer of possession, actual or constructive, from one person to another;

"holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof;

"indorsement" means an indorsement completed by delivery;

"instrument" means negotiable instrument;

"issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder;

"person" includes a body of persons, whether incorporated or not;
"value" means valuable consideration;
"written" includes printed; and "writing" includes print.

§ 4573. Primary and secondary liability

The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

§ 4574. Reasonable time; computation

In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

§ 4575. Time; computation; last day on holiday

Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

§ 4576. Cases not provided for

In a case not provided for in this chapter the rules of the law merchant shall govern.

CHAPTER 107—RELIEF IN GENERAL

Sec.
4611. Species of relief.
4612. Relief in case of forfeiture.

§ 4611. Species of relief

As a general rule compensation is a relief or remedy provided by the law of the Canal Zone for the violation of private rights, and the means of securing their observance; and specific and preventive relief may not be given in cases other than those specified by this chapter and chapters 109 and 111 of this title.

§ 4612. Relief in case of forfeiture

Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty.

CHAPTER 109—COMPENSATORY RELIEF

SUBCHAPTER I—DAMAGES IN GENERAL

Article A—General Principles

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4641. Damages for detriment from unlawful act or omission.
4642. Detriment defined.
4643. Detriment after commencement of action.

Article B—Interest as Damages

4651. Recovery of interest on damages.
4652. Breach of obligation other than contract.
4653. Interest stipulated by contract.
4654. Waiver by accepting principal.

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Sec.

4661. Allowance of exemplary damages.

SUBCHAPTER II—MEASURE OF DAMAGES

Article A—Damages for Breach of Contract

4681. Measure of damages for breach of contract.
4682. Certainty of damages.
4683. Breach of contract to pay liquidated sum.
4684. Breach of carrier's obligation to receive goods, etc.
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4686. Carrier's delay.
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Article B—Damages for Wrongs

4701. Breach of obligation other than contract.
4702. Conversion of personal property; presumption.
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4704. Same; damages of lienor.
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4706. Injuries to animals.
4707. Liability of owner of dog for damages suffered by dog bite.
4708. Damages for fraud in the purchase, sale or exchange of property.

Article C—General Provisions

4721. Property of peculiar value.
4722. Value of instrument in writing.
4723. Damages prescribed as exclusive of exemplary damages and interest.
4724. Limitation of damages.
4725. Damages to be reasonable.
4726. Nominal damages.

Subchapter I—Damages in General

Article A—General Principles

§ 4641. Damages for detriment from unlawful act or omission

A person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.

§ 4642. Detriment defined

Detriment is a loss or harm suffered in person or property.

§ 4643. Detriment after commencement of action

Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof or certain to result in the future.

Article B—Interest as Damages

§ 4651. Recovery of interest on damages

A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

§ 4652. Breach of obligation other than contract

In an action for the breach of an obligation not arising from contract, and in a case of oppression, fraud, or malice, interest may be given, in the discretion of the court or jury.

§ 4653. Interest stipulated by contract

Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a judgment or other new obligation.

§ 4654. Waiver by accepting principal

Accepting payment of the whole principal, as such, waives all claims to interest.

Article C—Exemplary Damages

§ 4661. Allowance of exemplary damages

In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Subchapter II—Measure of Damages

Article A—Damages for Breach of Contract

§ 4681. Measure of damages for breach of contract

For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this title, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

§ 4682. Certainty of damages

Damages may not be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

§ 4683. Breach of contract to pay liquidated sum

The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation, with interest thereon.

§ 4684. Breach of carrier's obligation to receive goods, etc.

The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

§ 4685. Breach of carrier's obligation to deliver

The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

§ 4686. Carrier's delay

The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered, and the day of its actual delivery.

§ 4687. Breach of warranty of agent's authority

The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

§ 4688. Nonpayment of check

A bank is not liable to a depositor because of the nonpayment through mistake or error, and without malice, of a check which should have been paid unless the depositor alleges and proves actual damage by reason of the nonpayment and in such event the liability shall not exceed the amount of damage so proved.

Article B—Damages for Wrongs

§ 4701. Breach of obligation other than contract

For the breach of an obligation not arising from contract the measure of damages, except where otherwise expressly provided by this title, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

§ 4702. Conversion of personal property; presumption

The detriment caused by the wrongful conversion of personal property is presumed to be:

(1) the value of the property at the time of the conversion, with the interest from that time, or an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted; and

(2) a fair compensation for the time and money properly expended in pursuit of the property.

§ 4703. Same; application to benefit of owner

The presumption declared by section 4702 of this title can not be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

§ 4704. Same; damages of lienor

One having a mere lien on personal property can not recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 4702 of this title for loss of time and expenses.

§ 4705. Seduction

The damages for seduction rest in the sound discretion of the court or jury.

§ 4706. Injuries to animals

For wrongful injuries to animals which are subjects of property, committed willfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

§ 4707. Liability of owner of dog for damages suffered by dog bite

The owner of a dog is liable for the damages suffered by a person who is bitten by the dog while in a public place or lawfully in a private place, including the property of the owner of the dog, regardless of the former viciousness of the dog or the owner's knowledge of its viciousness. A person is lawfully upon the private property of the owner within the meaning of this section when he is on the property in the performance of a duty imposed upon him by the laws or postal regulations of the Canal Zone or the United States, or when he is on the property upon the invitation, express or implied, of the owner.

§ 4708. Damages for fraud in the purchase, sale or exchange of property

A person defrauded in the purchase, sale or exchange of property is entitled to recover the difference between the actual value of that with which the defrauded person parted and the actual value of that which he received, together with any additional damage arising from the particular transaction.

This section does not deny to a person having a cause of action for fraud or deceit any legal or equitable remedies to which he may be entitled.

Article C—General Provisions

§ 4721. Property of peculiar value

Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer.

§ 4722. Value of instrument in writing

For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner.

§ 4723. Damages prescribed as exclusive of exemplary damages and interest

The damages prescribed by this subchapter are exclusive of exemplary damages and interest, except where those are expressly mentioned.

§ 4724. Limitation of damages

Notwithstanding the provisions of this subchapter, a person may not recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in section 4661 of this title on exemplary damages and in sections 4705 and 4706 of this title.

§ 4725. Damages to be reasonable

Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

§ 4726. Nominal damages

When a breach of duty has not caused appreciable detriment to the partly affected, he may yet recover nominal damages.

CHAPTER 111—SPECIFIC AND PREVENTIVE RELIEF

SUBCHAPTER I—GENERAL PRINCIPLES

SUBCHAPTER II—SPECIFIC RELIEF

Article A—Possession of Personal Property

Article B—Specific Performance of Obligations

Article C—Revision of Contracts

Article D—Rescission of Contracts

Article E—Cancellation of Instruments

SUBCHAPTER III—PREVENTIVE RELIEF

Subchapter I—General Principles

§ 4761. Allowance of specific or preventive relief

Specific or preventive relief may be given as provided by the laws applicable in the Canal Zone.

§ 4762. Method of giving specific relief

Specific relief is given by:

(1) taking possession of a thing and delivering it to a claimant;

(2) compelling a party himself to do that which ought to be done; or

(3) declaring and determining the rights of parties, otherwise than by an award of damages.

§ 4763. Method of giving preventive relief

Preventive relief is given by prohibiting a party from doing that which ought not to be done.

§ 4764. Enforcement of penal law, penalty or forfeiture

Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance and except as specifically authorized by law, nor to enforce a penalty or forfeiture in any case.

Subchapter II—Specific Relief

Article A—Possession of Personal Property

§ 4781. Specific delivery

A person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

Article B—Specific Performance of Obligations

§ 4791. Specific performance

Except as otherwise provided in sections 4792–4797 of this title, the specific performance of an obligation may be compelled.

§ 4792. Mutuality of remedy

Neither party to an obligation may be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

§ 4793. Contract signed by only one party

A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

§ 4794. Contract imposing penalty or liquidated damages

A contract otherwise proper to be specifically enforced, may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

§ 4795. Obligations not specifically enforceable

The following obligations can not be specifically enforced:

(1) an obligation to render personal service;

(2) an obligation to employ another in personal service;

(3) an agreement to submit a controversy to arbitration;

(4) an agreement to perform an act which the party has not power lawfully to perform when required to do so;

(5) an agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or

(6) an agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

§ 4796. Parties who can not be compelled to perform

Specific performance can not be enforced against a party to a contract:

(1) if he has not received an adequate consideration for the contract;

(2) if it is not, as to him, just and reasonable;

(3) if his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any

promise of that party which has not been substantially fulfilled; or

(4) if his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of the provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

§ 4797. Parties not entitled to specific performance

Specific performance can not be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial, or capable of being fully compensated, in which case specific performance may be compelled, upon full compensation being made for the default.

Article C—Revision of Contracts

§ 4811. When contract may be revised

When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, as far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

§ 4812. Presumption as to intent of parties

For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

§ 4813. Principles of revision

In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

§ 4814. Enforcement of revised contract

A contract may be first revised and then specifically enforced.

Article D—Rescission of Contracts

§ 4821. Grounds for rescission

The rescission of a written contract may be adjudged, on the application of a party aggrieved:

(1) in any of the cases mentioned in section 1292 of this title;

(2) where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or

(3) when the public interest will be prejudiced by permitting it to stand.

§ 4822. Rescission for mistake

Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

§ 4823. Court may require party rescinding to do equity

On adjudging the rescission of a contract, the court may require the party to whom the relief is granted to make any compensation to the other which justice may require.

Article E—Cancellation of Instruments

§ 4831. Grounds for cancellation

A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or cancelled.

§ 4832. Instrument obviously void

An instrument, the invalidity of which is apparent upon its face or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury, within the provisions of section 4831 of this title.

§ 4833. Cancellation in part

Where an instrument is evidence of different rights or obligations, it may be cancelled in part, and allowed to stand for the residue.

§ 4834. Lost or destroyed private documents; establishment; issuance of duplicate; security

An action may be maintained by a person interested in a private document or instrument in writing, which has been lost or destroyed, to prove or establish the document or instrument or to compel the issuance, execution, and acknowledgment of a duplicate thereof.

If the document or instrument is a negotiable instrument, the court shall compel the owner thereof to give adequate security or an indemnity bond to the person reissuing, reexecuting, or reacknowledging it, with sureties approved by the court, against loss, damage, expense, or other liability which may be suffered by him by reason of the issuance of the duplicate instrument or by the original instrument still remaining outstanding.

Subchapter III—Preventive Relief

§ 4851. Method of granting preventive relief

Preventive relief is granted by injunction, preliminary or final.

CHAPTER 113—TORTS ARISING FROM SINGLE PUBLICATION

Sec.

§ 4891. One cause of action for single publication; damages

A person may not have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one edition of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

§ 4892. Judgment as bar to other actions

A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in section 4891 of this title shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance.

§ 4893. Uniformity of interpretation

This chapter shall be so interpreted as to effectuate its purpose to make uniform the law of those states or jurisdictions which enact it.

§ 4894. Short title

This chapter may be cited as the Uniform Single Publication Act.

§ 4895. Existing causes of action

This chapter is not retroactive as to causes of action existing on January 2, 1963.

CHAPTER 115—SPECIAL RELATIONS OF DEBTOR AND CREDITOR

SUBCHAPTER I—GENERAL PRINCIPLES

SUBCHAPTER II—FRAUDULENT INSTRUMENTS AND TRANSFERS

SUBCHAPTER III—ASSIGNMENTS FOR BENEFIT OF CREDITORS

Subchapter I—General Principles

§ 4931. Debtor defined

A debtor, within the meaning of this chapter, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether the liability is certain or contingent.

§ 4932. Creditor defined

A creditor, with the meaning of this chapter, is one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

§ 4933. Validity of debtor's contracts

In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by the contract.

§ 4934. Payments in preference

A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

§ 4935. Relative rights of different creditors; marshaling assets

Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

Subchapter II—Fraudulent Instruments and Transfers

§ 4951. Transfers, etc., with intent to defraud creditors

Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

§ 4952. Transfers and liens without delivery presumed fraudulent

(a) Except as provided in subsection (b) of this section, every transfer of personal property and every lien on personal property, made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery followed by an actual and continued change of possession of the things transferred, is conclusively presumed fraudulent and void as against:

(1) persons who are creditors of the transferor while he remains in possession, and the successors in interest of such creditors;

(2) persons on whom the transferor's estate devolves in trust for the benefit of others than the transferor; and

(3) purchasers or encumbrancers in good faith subsequent to the transfer.

(b) This section does not apply to:

(1) things in action;

(2) ships or cargoes at sea or in a foreign port;

(3) mortgages allowed by law, or contracts of bottomry or respondentia;

(4) a sale, transfer, assignment, or mortgage made under the direction or order of a court of competent jurisdiction, or by an executor, administrator, guardian, receiver, or other officer or person acting in the regular and proper discharge of official duty or in the discharge of any trust imposed upon him by law;

(5) a transfer or assignment, statutory or otherwise, made for the benefit of creditors generally; or

(6) a sale, transfer, assignment, or mortgage of any property exempt from execution.

§ 4953. Avoidance only where enforcement of creditor's right obstructed

A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation.

Subchapter III—Assignments for Benefit of Creditors

§ 4971. When debtor may execute assignment

An insolvent debtor may in good faith execute an assignment of property in trust for the satisfaction of his creditors, in conformity with this subchapter; subject, however, to the provisions of this Code relative to trusts and fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, or by other specific classes or persons.

§ 4972. Form of assignment

The assignment shall contain a list of the names of the creditors of the assignor, and their places of residence and amounts of their respective demands, and the amounts and nature of any security therefor; and shall, subject to the other provisions of this subchapter, be made to the marshal for the Canal Zone.

§ 4973. Custody of property; creditors' meeting; election of assignee

The marshal shall forthwith take possession of all the property assigned to him, and keep it till delivered by him, as provided in this subchapter.

When the assignment has been made, the marshal shall immediately, by mail, notify the creditors named in the assignment, at their places of residence as given therein, to meet at his office on a day and hour to be appointed by him, not less than 8 or more than 10 days from the date of the delivery of the assignment to him, for the purpose of electing one or more assignees, as they may determine, in the place and stead of the marshal in the premises. He shall also publish a notice of the meeting, and the purpose thereof, at least once before the meeting, in a newspaper of general circulation in the Canal Zone.

The notice to be mailed shall also contain a statement of the amount of the demand of the creditor, and the amount and nature of any security therefor, as set forth in the assignment. If a creditor does not find the amount of his claim to be correctly so stated, he may file with the marshal, at or before the meeting, a statement, under oath, of his demand, and his statement shall, for the purpose of voting, be accepted by the marshal as correct. When such a statement is not filed, the statement of amount as set forth in the assignment shall be accepted by the marshal as correct.

A creditor having a mortgage or pledge of property of the debtor, or lien thereon, for securing the payment of a debt owing to him from the debtor, may not be allowed to vote any part of his claim at the meeting of creditors, unless he has first conveyed, released, or delivered up his security to the marshal for the benefit of all creditors of the assignor.

At the meeting the marshal shall preside, and a majority in amount of demands present or represented by proxy shall control all questions and decisions. The creditors may adjourn the meeting from time to time, and may vote on all questions either in person or by proxy signed and acknowledged before any officer authorized to take acknowledgments, and filed with the marshal.

At the meeting, or any adjournment thereof, the creditors may elect one or more assignees from their own number, in the place and

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stead of the marshal, and the person or persons so elected shall afterwards be the assignee or assignees under the provisions of this subchapter. The marshal, by transfer in writing, acknowledged as required by section 4980 of this title, shall at once assign to the elected assignee or assignees upon the trusts in this subchapter provided, all the property so assigned to him, and deliver possession thereof.

All recitals in the assignment by the marshal of notices of the meeting, and the holding thereof, and of the due election of the assignee or assignees, shall be prima facie proof of the facts recited.

§ 4974. Marshal's fees

Before the delivery of the assignment, the marshal shall be paid the expenses incurred by him, and fees in such amount as would by law be collectible if the property assigned had been levied upon and safely kept under attachment.

§ 4975. Powers and duties of elected assignee

After the record of the assignment, as provided by this subchapter, the elected assignee or assignees shall take, and hold, and dispose of all such property and its proceeds, upon the trusts and conditions and for the purposes in this subchapter provided.

§ 4976. Insolvency defined

A debtor is insolvent, within the meaning of this subchapter, when he is unable to pay his debts from his own means as they become due.

§ 4977. Transfers not affected

The provisions of this subchapter do not prevent a person residing in a State or country from making there, in good faith, and without intent to evade the laws of the Canal Zone, a transfer of property situated within it; but such a person can not make a general assignment of property situated in the Canal Zone for the satisfaction of all his creditors, except as in this subchapter provided; nor do the provisions of this subchapter affect the power of a person, although insolvent, and whether residing within or without the Canal Zone, to transfer property in the Canal Zone, in good faith to a particular creditor, or creditors, or to another person in trust for such particular creditor or creditors for the purpose of paying or securing the whole or part of a debt owing to the creditor or creditors, whether in his or their own right or otherwise.

§ 4978. Debts which may be provided for

An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

§ 4979. Void assignments

An assignment for the benefit of creditors is void against a creditor of the assignor not assenting thereto, if it:

(1) gives a preference to one debt or class of debts over another;

(2) tends to coerce any creditor to release or compromise his demand;

(3) provides for the payment of a claim known to the assignor to be false or fraudulent; or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) reserves an interest in the assigned property, or in a part thereof, to the assignor, or for his benefit, before all his existing debts are paid;

(5) confers upon the assignee a power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust; or

(6) exempts him from liability for neglect of duty or misconduct.

§ 4980. Assignment to be in writing; acknowledgment; recording

An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized in writing, and the transfer by the marshal must also be in writing, subscribed by the marshal in his official capacity. Both the assignment and the transfer must be acknowledged, or proved and certified, in the mode prescribed by chapter 27 of this title, and be recorded as required by section 4985 of this title.

§ 4981. Compliance with formalities necessary to validity

Unless the provisions of section 4980 of this title are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

§ 4982. Title of assignee; rights of third parties

An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

§ 4983. Inventory

Within 20 days after an assignment is made for the benefit of creditors, the assignor shall make and file, in the manner prescribed by section 4985 of this title, a full and true inventory, showing:

(1) all the creditors of the assignor;

(2) the place of residence of each creditor, if known to the assignor, or if not known, that fact must be stated;

(3) the sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise;

(4) the true consideration of the liability in each case, and the place where it arose;

(5) every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;

(6) all property of the assignor at the date of the assignment, which is exempt by law from execution; and

(7) all property of the assignor at the date of the assignment, of every kind, not so exempt, and the encumbrances existing thereon, and all vouchers and securities relating thereto, and the value of the property according to the best knowledge of the assignor.

§ 4984. Assignor's affidavit; assignee's inventory; examination of assignor; production of papers

An affidavit must be made by every assignor executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory provided for by section 4983 of this title, to the effect that it is in all respects just and true according to the best of the assignor's knowledge and belief.

If the assignor neglects or refuses to make and file the inventory and affidavit within 20 days, the assignment is not, for that reason, affected in any way, but in that event the assignee or assignees elected by the creditors shall within 20 days thereafter make and file in the office of the registrar of property, a verified inventory of all assets received by them; and the assignee or assignees may at any time, or from time to time, after the transfer to them by the mar-

shal, by petition to the district court, cause the assignor by order or citation to appear before the court, or a commissioner or referee to be appointed by it, at a time and place designated in the order or citation, to be examined touching the matters mentioned in section 4983, and any other matters relative to the assignment, and to have with him all books of account, vouchers, and papers relating to the assigned property; and the court may by its order require the surrender to the assignee or assignees of the books, vouchers, and papers to be by them retained until their trust is fully completed and performed.

§ 4985. Recording assignment and filing inventory

An assignment for the benefit of creditors must be recorded, and the inventory required by section 4983 of this title filed with the registrar of property.

§ 4986. Invalidity for failure to record assignment and file inventory

An assignment for the benefit of creditors is void against creditors of the assignor and against purchasers and encumbrancers in good faith and for value unless it is recorded as provided in this subchapter, and unless either the inventory required by section 4983 of this title, or the inventory required of the assignee or assignees by section 4984 of this title is filed in the manner provided in this subchapter and within the time designated.

§ 4987. Marshal's bond; assignee's bond; removal of assignee

A bond need not be given by the marshal, but he is liable on his official bond for the care and custody of the property while in his possession. Within 40 days after date of the transfer by the marshal, the assignee shall enter into a bond in such amount as may be fixed by the district judge, with sufficient sureties to be approved by the judge, and conditioned for the faithful discharge of the trust and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the inventory; and any assignee failing to comply with the provisions of this section may be removed by the district court on petition of the assignor or any creditor, and his successor appointed by the court.

§ 4988. Assignee's authority; notice to creditors; dividends; delayed claims; secured creditors

(a) Until a verified inventory has been made and filed, either by the assignor or assignee, as required by the provisions of this subchapter, and the assignee has given the bond required by section 4987 of this title, the assignee has no authority to dispose of the property of the estate, or any part of it (except in the case of perishable property, which in his discretion he may dispose of at any time and receive the proceeds of sale thereof); nor has he power to convert the property, or the proceeds of any sale of perishable property, to the purposes of the trust.

(b) Within 10 days after the filing of his bond, the assignee must commence the publication (and the publication shall continue at least once a week for 4 weeks), in a newspaper of general circulation in the Canal Zone, of a notice to creditors of the assignor, stating the fact and date of the assignment, and requiring all persons having claims against the assignor to exhibit them, with the necessary vouchers, and verified by the oath of the creditor, to the assignee, at his place of residence or business, to be specified in the notice; and he shall also, within 10 days after the first publication of the notice, mail a copy of the notice to each creditor whose name is given in the instrument of assignment, at the address therein given. After

the notice is given, a copy thereof, with affidavit of due publication and mailing, must be filed with the registrar of property with whom the inventory has been filed, which affidavit shall be prima facie evidence of the facts stated therein.

(c) At any time, or from time to time, after the expiration of 30 days from the first publication of the notice, if it has also been mailed as in this section provided, the assignee may declare and pay dividends to the creditors whose claims have been presented and allowed. A dividend already declared is not disturbed by reason of claims being subsequently presented and allowed; but the creditor presenting the claim is entitled to a dividend equal to the percent already declared and paid, before any further dividend is made, if there are assets sufficient for that purpose, and if the failure to present the claim did not result from his own neglect, and he attaches to the claim a statement, under oath, showing fully why it was not before presented.

(d) When a creditor has a mortgage or pledge of property of the debtor, or a lien thereon, for securing the payment of a debt owing to him from the debtor, and has not conveyed, released, or delivered up the security to the marshal, as provided for by section 4973 of this title, he shall be admitted as a creditor only for the balance of the debt after deducting the value of the mortgage, pledge, or lien, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the district court directs; or the creditor may release or convey his claim to the assignee upon the property, and be admitted to prove his whole debt.

If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the debtor's right of redemption thereon on receiving the excess; or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all writings necessary or proper to consummate the transaction. If the property is not sold or released, and delivered up, the creditor may not be allowed to prove any part of his debt.

§ 4989. Accounting of assignee

After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the district court.

§ 4990. Exempt property

Property exempt from execution, and insurance upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors unless the instrument specially mentions them and declares an intention that they should pass thereby.

§ 4991. Commissions of assignees

The elected assignee for the benefit of creditors is entitled to a reasonable commission on assignments, to be fixed by the court. The assignee is also entitled to all necessary expenses in the management of his trust.

§ 4992. Assignees protected for acts done in good faith

An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith in the execution of the trust, merely for the reason that the assignment is afterward adjudged void.

§ 4993. Modification of assignment

An assignment for the benefit of creditors which has been executed and recorded so as to transfer the property to the marshal, or a transfer by the marshal to the elected assignee or assignees which has been executed and recorded, cannot afterwards be modified or canceled by the parties without the consent of the assignor and of every creditor affected thereby.

CHAPTER 117—NUISANCE

SUBCHAPTER I—GENERAL PRINCIPLES

SUBCHAPTER II—PUBLIC NUISANCES

SUBCHAPTER III—PRIVATE NUISANCES

Subchapter I—General Principles

§ 5031. Nuisance defined

Anything is a nuisance which:

(1) is injurious to health; or

(2) is indecent or offensive to the senses; or

(3) is an obstruction to the free use of property—

so as to interfere with the comfortable enjoyment of life or property—

or

(4) unlawfully obstructs the free passage or use, in the customary manner, of a navigable lake or river, bay, stream, canal, or basin, or a public park, square, street, or highway.

§ 5032. Public nuisance defined

A public nuisance is one which affects at the same time an entire community or neighborhood, or a considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

§ 5033. Private nuisance defined

Every nuisance not included in the definition in section 5032 of this title is private.

§ 5034. Acts under authority of law

Nothing which is done or maintained under the express authority of law can be deemed a nuisance.

§ 5035. Abatement does not preclude action

The abatement of a nuisance does not prejudice the right of a person to recover damages for its past existence.

Subchapter II—Public Nuisances

§ 5061. Lapse of time does not legalize

The lapse of time can not legalize a public nuisance, amounting to an actual obstruction of public right.

§ 5062. Remedies against public nuisance

The remedies against a public nuisance are:

(1) information;
(2) civil action; and
(3) abatement.

§ 5063. Information

The remedy by information is regulated by Title 6.

§ 5064. Action by private person

A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

§ 5065. Abatement by public body or officer

A public nuisance may be abated by any public body or officer authorized thereto by law.

Subchapter III—Private Nuisances

§ 5091. Remedies for private nuisance

The remedy against a private nuisance is a civil action.

TITLE 5—CIVIL PROCEDURE AND EVIDENCE

PART 1—CIVIL PROCEDURE GENERALLY

CHAPTER 1—GENERAL PROVISIONS

§ 1. Application of Federal Rules of Civil Procedure

(a) Except as otherwise provided in this Code, the forms of process writs, pleadings, and motions, and the practice and procedure of the district court in civil actions and proceedings are governed by the then current Federal Rules of Civil Procedure prescribed by the Supreme Court of the United States pursuant to section 2072 of Title 28, United States Code.

(b) Where the Federal Rules of Civil Procedure make applicable the law of the State in which the district court is held, the law of the Canal Zone governs proceedings in the United States District Court for the District of the Canal Zone. The words "state", "district", and "insular possession" include, if appropriate, the Canal Zone. The term "district court" includes the United States District Court for the District of the Canal Zone. The term "statute of the United States" includes, as far as concerns proceedings in the United States District Court for the District of the Canal Zone, an Act of Congress locally applicable to and in force in the Canal Zone.

§ 2. Admiralty procedure; fees and costs

The practice and procedure in admiralty in the district court, including fees and costs, is the same as in the United States district courts.

§ 3. Construction of title

The rule of the common law, that statutes in derogation thereof are to be strictly construed, does not apply to this title. This title establishes the law of the Canal Zone respecting the subjects to which it relates, and its provisions and all proceedings under it shall be liberally construed for the purpose of effecting its objects and promoting justice.

§ 4. Division of judicial remedies

Judicial remedies are divided into (1) actions and (2) special proceedings.

§ 5. Action defined

An action is an ordinary remedy in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.

§ 6. Special proceeding defined

Every remedy other than an action as defined by section 5 of this title is a special proceeding.

§ 7. Civil and criminal remedies not merged

When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

§ 8. Pending action defined

An action is pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

§ 9. Lost pleadings and papers

If an original pleading or paper is lost, the court may authorize a copy thereof to be filed and used instead of the original.

CHAPTER 3—LIMITATION OF ACTIONS

SUBCHAPTER I—LIMITATION GENERALLY

SUBCHAPTER II—COMPUTATION OF TIME; TOLLING OF STATUTE OF LIMITATIONS

Subchapter I—Limitation Generally

§ 41. Limitation of civil actions generally; special proceedings

(a) Civil actions are barred unless commenced within the periods prescribed in this chapter, after the cause of action has accrued, except where a different limitation is prescribed by statute.

(b) As used in this chapter, "action" includes, when necessary, a special proceeding of a civil nature.

§ 42. Periods of limitation

The periods for the commencement of actions are:

(1) Five years

(A) upon a judgment or decree of a court of the United States or of a State of the United States;

(B) for mesne profits of real property.

(2) Four years

(A) upon a contract, obligation, or liability founded upon an instrument in writing;

(B) subject to the provisions of section 44 of this title, to recover:

(i) upon a book account whether consisting of one or more entries;

(ii) upon an account stated based upon an account in writing, although the acknowledgment of the account stated need not be in writing;

(iii) a balance due upon a mutual, open, and current account, the items of which are in writing.

(3) Three years

(A) upon a liability created by statute, other than a penalty or forfeiture;

(B) for trespass upon or injury to real property;

(C) for taking, detaining, or injuring goods or chattels, including actions for the specific recovery of personal property;

(D) for relief on the ground of fraud or mistake in which case the cause of action does not accrue until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(4) Two years

(A) upon a contract, obligation, or liability not founded upon an instrument in writing; other than that mentioned in paragraph (2)(B) of this section;

(B) founded upon a contract, obligation, or liability, evidenced by a certificate, or abstract or guaranty of title of real property, or by a policy of title insurance, in which case the cause of action does not accrue until the discovery of the loss or damage suffered by the aggrieved party thereunder;

(C) against a marshal, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty including the nonpayment of money collected upon an execution; except an action for an escape as provided by paragraph (5)(D) of this section.

(5) One year

(A) upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the Government, except when the statute imposing it prescribes a different limitation;

(B) upon a statute, or upon an undertaking in a criminal action for a forfeiture or penalty to the Government of the Canal Zone;

(C) for libel, slander, assault, battery, false imprisonment, seduction, or for injury to or for the death of one caused by the wrongful act or neglect of another, or by a depositor against a bank for the payment of a forged or raised check, or a check that bears a false or unauthorized indorsement;

(D) against the marshal or other officer for the escape of a prisoner arrested or imprisoned on civil process.

§ 43. Actions not otherwise provided for

An action for relief not otherwise provided for is barred unless commenced within four years after the cause of action has accrued.

§ 44. Actions on accounts

For the purposes of section 42 of this title:

(1) "Book account" means a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of a contract or a fiduciary relation, and shows the debits and credits in connection therewith, and against whom and in favor of whom entries are made, is entered in the regular course of business as conducted by the creditor or fiduciary, and is kept in a reasonably permanent form and manner and is (A) in a bound book, or (B) on a sheet or sheets fastened in a book or to backing but detachable therefrom, or (C) on a card or cards of a permanent character, or is kept in any other reasonably permanent form and manner.

(2) Where an account stated is based upon an account of one item, the cause of action accrues from the date of said item, and where an account stated is based upon an account of more than one item, the cause of action accrues from the date of the last item.

(3) In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action accrues from the time of the last item proved in the account on either side.

§ 45. No limitation; action to recover bank deposits; effect of insolvency

There is no limitation to actions brought to recover money or other property deposited with a bank, banker, trust company, building and loan association, or savings and loan society.

This section does not apply to banks, bankers, trust companies, building and loan associations, and savings and loan societies which have become insolvent and are in process of liquidation and in such cases the statute of limitations shall be deemed to have commenced to run from the beginning of the process of liquidation. This section does not relieve a stockholder of a banking corporation or trust company from the stockholder's liability provided by law.

Subchapter II—Computation of Time; Tolling of Statute of Limitations

§ 71. Commencement of action

An action is commenced, within the meaning of this chapter, when the complaint is filed.

§ 72. Absence from Canal Zone

If, when the cause of action accrues against a person, he is absent from the Canal Zone, the term herein limited does not begin to run until his return to the Canal Zone. If, after the cause of action accrues against a person, he departs from the Canal Zone, the time of his absence is not part of the time limited for the commencement of the action.

§ 73. Persons under disabilities

If a person entitled to bring an action is at the time the cause of action accrues:

(1) under the age of majority; or

(2) mentally incompetent; or

(3) imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life; or

(4) a married woman, and her husband is a necessary party with her in commencing the action—

the time of the disability is not a part of the time limited for the commencement of the action.

§ 74. Death before expiration of limitation period

If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his representatives, after the expiration of that time, and within six months from his death.

If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives, after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

§ 75. Alien enemies in time of war

If a person is an alien subject or citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of an action.

§ 76. New action after reversal of judgment

If an action is commenced within the time prescribed therefor, and a judgment therein for the plaintiff is reversed on appeal, the plaintiff, or, if he dies and the cause of action survives, his representatives, may commence a new action within one year after the reversal.

§ 77. Commencement stayed by injunction or statute

When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

§ 78. Time of existence of disability

A person may not avail himself of a disability unless it existed at the time his right of action accrued.

§ 79. Two or more disabilities

When two or more disabilities coexist at the time the right of action accrues, the limitation does not attach until they are removed.

§ 80. Acknowledgment or promise; payment on account

(a) An acknowledgment or promise is not sufficient evidence of a new or continuing contract, by which to take the case out of the operation of this chapter, unless it is contained in a writing, signed by the party to be charged thereby.

(b) Notwithstanding subsection (a) of this section, a payment on account of principal or interest due on a promissory note made by the party to be charged is a sufficient acknowledgment or promise of a continuing contract to stop, from time to time as the payment is made, the running of the time within which an action may be commenced upon the principal sum or upon an installment of principal or interest due on the note, and to start the running of a new period of time, but such a payment of itself does not revive a cause of action once barred.

§ 81. Limitation laws of other jurisdictions

When a cause of action has arisen in a State of the United States, or in a foreign country, and by the laws thereof an action thereon may not there be maintained against a person by reason of the lapse of time, an action thereon may not be maintained against him in the Canal Zone, except in favor of one who has been a resident of the Zone, and who has held the cause of action from the time it accrued.

CHAPTER 5—PARTIES

Sec.
121. Assignment of thing in action not to prejudice defense.
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128. Actions by or against associates under common name; service; judgment.
129. Suing party by fictitious name.
130. Interpleader.

§ 121. Assignment of thing in action not to prejudice defense

In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any setoff or other defense existing at the time of, or before, notice of the assignment; but this section does not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before maturity.

§ 122. Married woman as party

A married woman may be sued without her husband's being joined as a party, and may sue without her husband's being joined as a party in all actions, including those for injury to her person, libel, slander, false imprisonment, or malicious prosecution, or for the recovery of her earnings.

§ 123. Defense by married woman

If a husband and wife are sued together, the wife may defend for her own right, and if the husband neglects to defend, she may defend for his right also.

§ 124. Seduction; action by unmarried female

An unmarried female may maintain, as plaintiff, an action for her own seduction occurring at a time when she was below the age of 21 years or when she was incapable of giving legal consent through temporary or permanent unsoundness of mind, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

§ 125. Same; action by parents

(a) An action for the seduction of an unmarried female occurring at a time when she was below the age of 21 years or when she was incapable of giving legal consent through temporary or permanent unsoundness of mind may be maintained by:

(1) the parent entitled to the services and earnings of the female; or

(2) if both parents are equally entitled to the services and earnings, the father, or upon his failure to act, the mother; or

(3) if the female is illegitimate, the mother.

(b) In an action brought pursuant to this section every element of damages to either parent may be recovered. The action may be maintained even though the child is not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there is no loss of service.

§ 126. Actions for wrongful death

(a) Whenever, by an injury done or happening within the Canal Zone, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is a married woman, entitle her or her husband,

either individually or jointly, to maitain an action and recover damages, the person who or corporation which is liable if death does not ensue is liable to an action for damages, notwithstanding the death of the person injured, and even though the death is caused under circumstances which constitute a felony.

(b) An action pursuant to this section shall be brought by and in the name of the personal representatives and within one year after the death of the deceased person. This section does not preclude assignment under section 26 of the Federal Employees' Compensation Act (5 U.S.C., sec. 776), by beneficiaries under that Act or their legal representatives, of causes of action created by this section.

(c) An action may not be maintained pursuant to this section if the person suffering injury and death, or any person for him, has recovered damages on account of the injury.

(d) In an action pursuant to this section the court or jury shall award such damages as it deems to be a fair and just compensation assessed with reference to the pecuniary injury, resulting from the death, to the surviving spouse and the children of the deceased, and if there is neither a surviving spouse nor child, then to the parents of the deceased, and if there is no parent, then to the brothers and sisters and other blood relatives dependent upon the deceased for support.

(e) Damages recovered in an action pursuant to this section shall be for the exclusive benefit of the surviving spouse and other persons enumerated by subsection (d) of this section, and shall be distributed to them, in the order named in that subsection, according to the laws in force in the Canal Zone applicable to the distribution of estates.

(f) This section does not authorize a suit against the United States nor modify or repeal any other law.

§ 127. Substitution of parties

An action or proceeding does not abate by the death or disability of a party, or by the transfer of an interest therein, if the cause of action survives or continues. The substitution of parties is governed by Rule 25 of the Federal Rules of Civil Procedure, including the time limitations specified in that rule.

§ 128. Actions by or against associates under common name; service; judgment

When two or more persons, associated in a business, transact the business under a common name, whether it comprises their names or not, the associates may sue or be sued by the common name. In actions against the associates, the summons may be served on one or more of the associates; and the judgment binds the joint property of all the associates, and the individual property of the party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability.

§ 129. Suing party by fictitious name

When the plaintiff is ignorant of the name of a defendant, he shall state that fact in the complaint, and the defendant may be designated in a pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.

§ 130. Interpleader

If a plaintiff or defendant makes a claim for interpleader pursuant to Rule 22 of the Federal Rules of Civil Procedure and deposits with the court the money or thing which is the subject of the claim as provided by Rule 67 of the Federal Rules of Civil Procedure, the court may make an order discharging him from liability to any of the conflicting claimants.

CHAPTER 7—COMMENCEMENT OF ACTIONS; SERVICE OF PROCESS

Sec.

§ 161. Service on infant or incompetent person

(a) Service upon an infant is made by delivering a copy of the summons and of the complaint to him personally; and if he is under the age of 14 years and resides within the Canal Zone also to his father, mother, or guardian, or if there is none within the Canal Zone then to any person having the care or control of the infant, or with whom he resides, or in whose service he is employed.

(b) Service upon an incompetent person is made by delivering a copy of the summons and of the complaint to him personally; and if he resides within the Canal Zone and has been judicially declared to be incapable of conducting his own affairs and a guardian has been appointed for him, also to his guardian.

§ 162. Service by publication; actions in which authorized

The court may order that service be made by the publication of the summons when:

(1) it appears by affidavit to the satisfaction of the court that the person on whom service is to be made:

(A) resides out of the Canal Zone; or

(B) has departed from the Zone; or

(C) after due diligence cannot be found within the Zone; or

(D) conceals himself to avoid the service of summons; or

(E) is a corporation having no officer or other person upon whom summons may be served who, after due diligence, can be found within the Zone; and

(2) it also appears by affidavit, or by the verified complaint on file, that:

(A) a cause of action exists against the defendant upon whom service is to be made, or that he is a necessary or proper party to the action; or

(B) it is an action which relates to or the subject of which is real or personal property in the Zone, in which the defendant person or corporation has or claims a lien or interest, actual or contingent, or in which the relief demanded consists wholly or in part in excluding the person or corporation from any interest therein.

§ 163. Same; manner of publication; service outside Canal Zone

(a) The court by its order for publication shall prescribe the form of the summons to be published, which shall include a brief statement of the relief demanded.

(b) The court shall direct the publication to be made in such newspaper or newspapers designated by the court as is or are most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week for three consecutive weeks. The last publication against a defendant residing out of the Canal Zone, or absent therefrom, may not be less than 40 days before the day on which the defendant is required to appear.

(c) In case of publication, if the residence of the nonresident or absent defendant is known, the court shall direct a copy of the summons and complaint to be forthwith deposited by the clerk in the post office, directed to the person to be served, at his place of residence. If the residence of the defendant is unknown, it shall be directed to his last known place of residence with the request to forward if not called for in five days.

(d) Upon application of the plaintiff in a case where service by publication may be ordered, the court shall authorize personal service upon the defendant outside the Canal Zone by delivery to him in person of a true copy of the summons and the complaint, by any person not a party to or otherwise interested in the subject matter in controversy. That service has only the effect of service of summons by publication. Return on that service shall be made under oath, with a notation of the time and place of service.

§ 164. Same; personal judgment

Except as provided by a statute of the United States other than sections 162 and 163 of this title, if jurisdiction is acquired over a person who is outside the Canal Zone by publication of summons or by service outside the Canal Zone, the court may render a personal judgment against him only if he was personally served with a copy of the summons and complaint, and was a resident of the Canal Zone (1) at the time of the commencement of the action, or (2) at the time that the cause of action arose, or (3) at the time of service.

§ 165. Same; default judgment

If the defendant fails to answer the complaint in an action where the service of the summons was by publication or where the summons was served outside the Canal Zone, the plaintiff, upon the expiration of the time for answering, may, upon proof of the publication or service, and that no answer has been filed, apply for judgment. The court shall thereupon require proof to be made of the allegations of the complaint; and require the plaintiff, or his agent, to be examined, on oath, respecting any payments that have been made to the plaintiff, or to anyone for his use, on account of any demand mentioned in the complaint, and may render judgment for the amount which he is entitled to recover. In actions involving merely the possession of real property where the complaint is verified and shows by proper allegations that no party to the action claims title to the real property involved, either by accession, transfer, will, or succession but only the possession thereof, the court may render judgment upon proof of occupancy by plaintiff and ouster by defendant.

§ 166. Relief from judgment; defendant not personally served

If the summons in an action has not been personally served on the defendant, the court, on such terms as may be just, may allow the defendant or his legal representative, at any time within one year after the rendition of any judgment in the action, to answer to the merits of the original action.

§ 167. Proof of service

(a) Proof of the service of summons and complaint is as follows:

(1) if served by the marshal or deputy, his certificate thereof;

(2) if by any other person, his affidavit thereof;

(3) in case of publication, the certificate of the clerk of the court to which a copy of the publication shall be attached; and a certificate of the clerk showing the deposit of a copy of the summons and complaint in the post office, if the same has been deposited; or

(4) the written admission of the defendant.

(b) In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of service.

§ 168. When jurisdiction acquired; voluntary appearance

From the time of the service of a copy of the summons and of the complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication when service by publication is ordered, the court has jurisdiction of the parties and control of all the subsequent proceedings.

The voluntary appearance of a defendant is equivalent to personal service of a copy of the summons and of the complaint upon him.

§ 169. Failure to serve all defendants

If the action is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

§ 170. Service on nonresident motorists and absent motorists

(a) The use or operation in the Canal Zone of a motor vehicle:

(1) by a nonresident; or

(2) in the business of a nonresident; or

(3) owned by a nonresident if so used or operated with his permission, express or implied—

is equivalent to an appointment by the nonresident of the executive secretary of the Canal Zone Government to be his true and lawful attorney upon whom may be served the summons in an action against him, growing out of an accident or collision in which the nonresident may be involved while using or operating the motor vehicle in the Canal Zone, or in which the motor vehicle may be involved while being used or operated in the Canal Zone in the business of the nonresident or with the permission, express or implied, of the nonresident owner. That use or operation shall be a signification of the nonresident's agreement that the summons against him which is served in the manner provided in this section shall be of the same legal force and validity as if served on him personally within the Canal Zone, and that the appointment of the executive secretary shall be irrevocable and binding on his executor or administrator.

(b) If the nonresident dies prior to the commencement of an action brought pursuant to this section, service of process shall be made on his executor or administrator in the same manner and on the same notice as is provided in the case of the nonresident himself. If an action has been duly commenced under this section by service upon a nonresident who dies thereafter, the court shall allow the action to be continued against his executor or administrator upon motion with such notice as the court deems proper.

(c) Service of the process shall be made by delivering a copy of the summons and complaint with a fee of $2 for each nonresident to be served to the executive secretary of the Canal Zone Government and such service shall be a sufficient service on the nonresident subject to compliance with subsection (d) or (e) of this section.

(d) A notice of the service on the executive secretary of the Canal Zone Government and a copy of the summons and complaint shall be forthwith sent by or on behalf of the plaintiff to the defendant by registered or certified mail with return receipt requested. The plaintiff shall file with the court the original summons, an affidavit of compliance with this section, and either a return receipt purporting to be signed by the defendant or a person qualified to receive his registered or certified mail, in accordance with postal rules and customs; or, if acceptance was refused by the defendant or his agent, the original envelope bearing a notation by the postal authorities that

receipt was refused, and an affidavit by or on behalf of the plaintiff that notice of the mailing or refusal was forthwith sent to the defendant by ordinary mail. If notice of service is mailed to a foreign country, other official proof of delivery of the mail may be filed in case the postal authorities are unable to obtain a return receipt. The foregoing papers shall be filed within 30 days after the return receipt, other official proof of delivery, or original envelope bearing a notation of refusal is received by the plaintiff. Service of process is complete 10 days after such papers are filed. The return receipt or other official proof of delivery shall constitute presumptive evidence that the notice mailed was received by the defendant or a person qualified to receive his registered or certified mail; and the notation of refusal shall constitute presumptive evidence that the refusal was by the defendant or his agent.

(e) In lieu of the mailing required by subsection (d) of this section, a notice of service on the executive secretary of the Canal Zone Government and a copy of the summons and complaint may be served on the defendant personally outside the Canal Zone. The service may be made by a resident of the Canal Zone not interested in the action, by a duly constituted public officer qualified to serve like process in the place where the service is made, by an attorney at law duly qualified to practice in the state or country where the service is made, or by a United States marshal or his deputy. Proof of personal service outside the Canal Zone shall be filed with the court within 30 days after the service, and service of process is complete 10 days after proof thereof is filed.

(f) The court may order necessary continuances to afford the defendant reasonable opportunity to defend the action.

(g) The executive secretary shall keep a record of all process served upon him under this section and the record shall show the day and hour of service.

(h) This section also applies to a resident who departs from the Canal Zone subsequent to the accident or collision and remains absent therefrom for 30 days continuously, whether the absence is intended to be temporary or permanent, and to his executor or administrator.

CHAPTER 9—PLEADINGS

Sec.

§ 201. Statute of limitations, how pleaded

In pleading the statute of limitations it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of section——[giving the number of the section and subdivision thereof, if it is so divided, relied upon] of the title. If the allegation is controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.

§ 202. Counterclaim not barred by death or assignment

When cross demands have existed between persons under such circumstances that, if one had brought an action against the other, a counterclaim could have been set up, the two demands shall be deemed compensated, so far as they equal each other, and neither can be deprived of the benefit thereof by the assignment or death of the other.

§ 203. Libel and slander; complaint

In an action for libel or slander it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it is sufficient to state, generally, that it was published or spoken concerning the plaintiff. If the allegation is controverted, the plaintiff must establish on the trial that it was so published or spoken.

§ 204. Same; answer

In the actions specified by section 203 of this title the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he proves the justification or not, he may give in evidence the mitigating circumstances.

CHAPTER 11—PROVISIONAL REMEDIES

SUBCHAPTER I—CIVIL ARREST AND BAIL

SUBCHAPTER II—CLAIM AND DELIVERY OF PERSONAL PROPERTY

SUBCHAPTER III—INJUNCTIONS

SUBCHAPTER IV—ATTACHMENT

SUBCHAPTER V—RECEIVERS

SUBCHAPTER VI—DEPOSITS IN COURT; HANDLING OF FUNDS BY CLERK

Subchapter I—Civil Arrest and Bail

§ 241. Restriction on civil arrest

A person may not be arrested in a civil action, except as prescribed in this Code.

§ 242. Grounds for arrest

The defendant may be arrested:

(1) in an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Canal Zone with intent to defraud his creditors;

(2) in an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office, or in a professional employment, or for a willful violation of duty;

(3) in an action to recover the possession of personal property unjustly detained, when the property, or a part thereof, has been concealed, removed, or disposed of, to prevent its being found or taken by the marshal;

(4) when the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property for the taking, detention, or conversion, of which the action is brought; or

(5) when the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

§ 243. Affidavit to obtain order

An order for the arrest of the defendant may be made when it appears to the court, by the affidavit of the plaintiff, or other person, that a sufficient cause of action exists, and that the case is one of those specified by section 242 of this title. The affidavit shall be either upon personal knowledge or upon information and belief; and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest is made, the affidavit shall be filed with the clerk of the court.

§ 244. Security by plaintiff

Before making an order of arrest, the court shall require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the court, which must be at least $500, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the arrest is wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking shall be filed with the clerk of the court.

§ 245. Time order made; form

An order of arrest may be made at the time of the issuing of the summons, or at any time afterwards before judgment.

The order shall require the marshal forthwith to arrest the defendant and hold him to bail in a specified sum, and to return the order at a time therein mentioned, to the clerk of the court.

§ 246. Delivery of order and affidavit to marshal and defendant

The order of arrest, with a copy of affidavit upon which it is made, shall be delivered to the marshal, who, upon arresting the defendant, shall deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

§ 247. Arrest and custody of defendant

The marshal shall execute the order of arrest by arresting the defendant and keeping him in custody until discharged by law.

§ 248. Discharge on bail or deposit

The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest.

§ 249. Giving of bail

The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant will at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

§ 250. Surrender of defendant

At any time before judgment, or within 10 days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the marshal.

§ 251. Arrest by bail; exoneration and liability of bail

For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him, or, by a written authority indorsed on a certified copy of the undertaking, may empower the marshal to do so.

Upon the arrest of defendant by the marshal, or upon his delivery to the marshal by the bail, or upon his own surrender, the bail are exonerated, if the arrest, delivery, or surrender takes place before the expiration of 10 days after judgment; but if the arrest, delivery, or surrender is not made within 10 days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within 10 days thereafter.

§ 252. Enforcement of liability of bail

If the bail neglect or refuse to pay the judgment within 10 days after they are finally charged, the court may, on motion made as provided by section 438 of Title 3, enter judgment against the bail for the amount of the original judgment.

§ 253. Exoneration of bail

The bail are exonerated by the death of the defendant or his imprisonment in jail or in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process.

§ 254. Return of marshal; filing of undertaking; acceptance or rejection of bail

Within the time limited for that purpose, the marshal shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return indorsed thereon, together with a copy of the undertaking of the bail. He shall retain in his possession the original undertaking until filed, as herein provided. If the plaintiff, within 10 days thereafter, does not serve upon the marshal a notice that he does not accept the bail, he is deemed to have accepted them, and the marshal is exonerated from liability. If a notice is not served within 10 days, the original undertaking shall be filed with the clerk of the court.

§ 255. Notice of justification of bail; new undertaking

Within five days after the receipt of notice, the marshal or defendant may give to the plaintiff or his attorney notice of the justification of the same, or other bail, specifying the places of residence and occupations of the latter, before the judge or clerk of the court, at a specified time and place; the time to be not less than five nor more than 10 days thereafter, except by consent of the parties. If other bail is given, there must be a new undertaking.

§ 256. Qualifications of bail

The qualifications of bail are as follows:

(1) each must be a resident of the Canal Zone; and

(2) each must be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this subchapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the wnole justification is equivalent to that of two sufficient bail.

§ 257. Justification of bail

For the purpose of justification, each of the bail must attend before the judge or clerk, at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

§ 258. Allowance of bail; exoneration of marshal

If the judge or clerk finds the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the marshal is thereupon exonerated from liability.

§ 259. Cash deposit in lieu of bail

Instead of giving bail, the defendant may, at the time of his arrest, deposit with the marshal the amount mentioned in the order. If the amount of the bail is reduced, as provided in this subchapter, the defendant may deposit the reduced amount instead of giving bail. In either case the marshal shall give the defendant a certificate of the deposit made, and the defendant shall be discharged from custody.

§ 260. Payment of deposit into court

Immediately after the deposit, the marshal shall pay it into court, and take from the clerk receiving it two certificates of the payment, one of which he shall deliver to the plaintiff's attorney, and the other to the defendant. For any default in making the payment, the same proceedings may be had on the official bond of the marshal, to collect the sum deposited, as in other cases of delinquency.

§ 261. Substitution of bail for deposit

If money is deposited, as provided by sections 259 and 260 of this title, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded to the defendant.

§ 262. Disposition of deposit

If money has been deposited and remains on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply it in satisfaction thereof; and after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment is in favor of the defendant, the clerk shall, under like direction of the court, refund to him the whole sum deposited and remaining unapplied.

§ 263. Liability of marshal as bail

If, after being arrested, the defendant escapes or is rescued, the marshal is liable as bail; but he may discharge himself from the liability by the giving of bail at any time before judgment.

§ 264. Proceedings on judgment against marshal

If a judgment is recovered against the marshal upon his liability as bail, and an execution thereon is returned unsatisfied in whole or in part, the same proceedings may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

§ 265. Vacation of order of arrest; reduction of bail

(a) A defendant arrested may, at any time before the trial of the action, or if there is no trial, before the entry of judgment, apply to the court, upon reasonable notice, to vacate the order of arrest or to reduce the amount of bail. If the application is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may

oppose it by affidavits or other proofs, in addition to those on which the order of arrest was made.

(b) If, upon the application, it appears that there was not sufficient cause for the arrest, the order shall be vacated; or if it appears that the bail was fixed too high, the amount shall be reduced.

Subchapter II—Claim and Delivery of Personal Property

§ 291. Claim for delivery

The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of the property to him as provided in this subchapter.

§ 292. Affidavit; contents

If a delivery is claimed, an affidavit shall be made by the plaintiff, or by someone in his behalf, showing:

(1) that the plaintiff is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;

(2) that the property is wrongfully detained by the defendant;

(3) the alleged cause of the detention thereof, according to his best knowledge, information, and belief;

(4) that it has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized, under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such a seizure; and

(5) the actual value of the property.

§ 293. Requisition to marshal to take property

The plaintiff or his attorney may, thereupon, by an indorsement in writing upon the affidavit, require the marshal to take the property from the defendant.

§ 294. Undertaking by plaintiff; taking of property; service on defendant

Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the marshal, to the effect that they are bound to the defendant in double the value of the property as stated in the affidavit for the prosecution of the action, for the return of the property to the defendants, if return thereof is adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the marshal shall forthwith take the property described in the affidavit, if it is in the possession of the defendant or his agent, and retain it in his custody. He shall, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering them to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with a person of suitable age and discretion, or, if neither has any known place of abode, by putting them in the nearest post office, directed to the defendant.

§ 295. Exception to plaintiff's sureties; justification

The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the marshal that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them.

When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. The marshal is responsible for the sufficiency of the sureties until the objection to them is either waived or until they justify. If the defendant excepts to the sureties,

he may not reclaim the property as provided by section 296 of this title.

§ 296. Undertaking by defendant for return of property

At any time before the delivery of the property to the plaintiff, the defendant may, if he does not except to the sureties of the plaintiff, require the return thereof, upon giving to the marshal a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if the delivery is adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property is not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided by section 301 of this title.

§ 297. Exception to defendant's sureties; justification

The plaintiff may, within two days after service upon him of a copy of the undertaking given to the marshal pursuant to section 296 of this title, give notice to the marshal that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them.

If the plaintiff excepts, the defendant's sureties, upon notice to the plaintiff of not less than two nor more than five days, shall justify before the judge or clerk of the court, in the same manner as upon bail on arrest; and upon the justification the marshal shall deliver the property to the defendant. The marshal is responsible for the defendant's sureties until they justify, or until the justification is completed or waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

§ 298. Qualifications of sureties

The qualifications of sureties shall be such as are prescribed by this title, in respect to bail upon an order of arrest.

§ 299. Property concealed in building or inclosure

If the property, or any part thereof, is concealed in a building or inclosure, the marshal shall publicly demand its delivery. If it is not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession.

§ 300. Keeping and delivery of property; fees and expenses

When the marshal has taken property as provided by this subchapter, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his fees for taking and his necessary expenses for keeping the same.

§ 301. Claims by third persons

If the property taken is claimed by a person other than the defendant or his agent, the provisions applicable in cases of third party claims after levy under execution apply.

§ 302. Filing and return by marshal

The marshal shall file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court, within 20 days after taking the property mentioned therein.

§ 303. Order protecting plaintiff in possession

After the property has been delivered to the plaintiff as provided in this subchapter, the court shall, by appropriate order, protect the plaintiff in possession of the property until the final determination of the action.

§ 304. Affidavit stating incorrect value; judgment against officer or sureties

When, in an action to recover the possession of personal property, the person making an affidavit did not truly state the value of the property, and the officer taking the property or the sureties on a bond or undertaking are sued for taking it, the officer or sureties may in their answer set up the true value of the property, and that the person in whose behalf the affidavit was made was entitled to the possession of the property when the affidavit was made, or that the value in the affidavit stated was inserted by mistake, the court shall disregard the value as stated in the affidavit, and give judgment according to the right of possession of the property at the time the affidavit was made.

Subchapter III—Injunctions

§ 321. Injunction defined; grant and enforcement

An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the district court, or the judge thereof, in any action brought in that court; and when granted by the judge, it may be enforced as an order of the court.

§ 322. Grounds for grant or denial of injunction

(a) An injunction may be granted when:

(1) it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) it appears by the complaint or affidavits that the commission or continuance of an act during the litigation would produce waste, or great or irreparable injury, to a party to the action;

(3) it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, an act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual;

(4) pecuniary compensation would not afford adequate relief;

(5) it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief:

(6) the restraint is necessary to prevent a multiplicity of judicial proceedings; or

(7) the obligation arises from a trust.

(b) An injunction may not be granted to:

(1) stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless the restraint is necessary to prevent a multiplicity of proceedings;

(2) prevent the execution of a public statute by officers of the law for the public benefit;

(3) prevent the breach of a contract, the performance of which would not be specifically enforced; or

(4) prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

Subchapter IV—Attachment

§ 341. Actions in which authorized

(a) The plaintiff, at the time of issuing the summons or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay the judgment, as provided in this subchapter, in the following cases:

(1) in an action upon a contract, express or implied, for the direct payment of money, where the contract is made or is payable in the Canal Zone, and is not secured by a mortgage or lien upon real or personal property, or a pledge of personal property, or, if originally so secured, the security has, without any act of the plaintiff or the person to whom the security was given, become valueless;

(2) in an action upon a contract, express or implied, against a defendant not residing in the Canal Zone, or who can not after due diligence be found within the Canal Zone, or who conceals himself to avoid service of summons; or

(3) in an action against a defendant not residing in the Canal Zone, or who has departed from the Canal Zone, or who can not after due diligence be found within the Canal Zone, or who conceals himself to avoid service of summons, to recover a sum of money as damages, arising from an injury to person or property in the Canal Zone, in consequence of negligence, fraud, or other wrongful act.

(b) An action upon any liability, existing under the laws of the Canal Zone, of a spouse, relative or kindred, for the support, maintenance, care or necessaries furnished to the other spouse, or other relatives or kindred, is deemed to be an action upon an implied contract within the term as used throughout all paragraphs of subsection (a) of this section.

§ 342. Affidavit for attachment

The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff showing:

(1) the facts specified by section 341 of this title which entitle him to the writ;

(2) the amount of the indebtedness claimed, over and above all legal setoffs or counterclaims, or the amount claimed as damages; and

(3) that the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor of the defendant.

§ 343. Undertaking on attachment; exceptions to sureties

Before issuing a writ of attachment, the clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than $200 and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, and that if the attachment is discharged on the ground that the plaintiff was not entitled thereto pursuant to section 341 of this title, the plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking.

At any time after the issuing of the attachment, but not later than five days after actual notice of the levy thereof, the defendant may ex-

cept to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two or more than five days, shall justify before the judge or clerk of the court in the same manner as upon bail on arrest; and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the judge or clerk shall issue an order vacating the writ of attachment.

§ 344. Direction and command of writ; more than one defendant

(a) The writ of attachment shall be directed to the marshal, and require him to attach and safely keep all the property of the defendant within the Canal Zone not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand against the defendant, the amount of which shall be stated in conformity with the complaint, unless the defendant gives him security by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy the demand against the defendant, besides costs, or in an amount equal to the value of the property of the defendant which has been or is about to be attached; in which case to take such undertaking.

(b) If the action is against more than one defendant, any defendant whose property has been or is about to be attached in the action may give the marshal the undertaking, and the marshal shall take the same, and the undertaking shall not subject the defendant to or be answerable for any demand against any other defendant, nor shall the marshal thereby be prevented from attaching or be obliged to release from attachment, any property of any other defendant. The defendant, at the time of giving the undertaking to the marshal, shall file with the marshal a verified statement wherein the defendant shall aver and declare that the other defendant or defendants in the action in which the undertaking was given has or have not any interest or claim of any nature whatsoever in or to the property. The statement shall further contain the character of the defendant's title and the manner in which he acquired title to the attached property. Before the attachment is released, the undertaking required by this section must be approved by the judge or, in the absence or disability of the judge, by the clerk of the court.

§ 345. Property subject to attachment; sale to satisfy judgment

The rights or shares which the defendant may have in the stock of a corporation or company, together with the interest and profit thereon, and all debts due the defendant, and all other property in the Canal Zone of the defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

§ 346. Method of attaching real and personal property; garnishment

The marshal to whom the writ of attachment is directed and delivered shall execute it without delay, and if the undertaking specified by section 344 of this title is not given, as follows:

(1) Real property shall be attached by filing with the registrar of property a copy of the writ, together with a description of the property attached, and a notice that it is attached; and by leaving a similar copy of the writ, description, and notice with an occupant of the property, if there is one; if not, then by posting it in a conspicuous place on the property attached.

(2) Real property, or an interest therein, belonging to the defendant, and held by any other person, shall be attached, by filing with the registrar of property a copy of the writ, together with a description of the property, and a notice that the real property, and any

interest of the defendant therein, held by or standing in the name of the other person [naming him], are attached; and by leaving with the occupant, if any, and with the other person, or his agent, if known and within the Canal Zone, or at the residence of either, if within the Canal Zone, a copy of the writ, with a similar description and notice. If there is no occupant of the property, a copy of the writ, together with the description and notice, shall be posted in a conspicuous place upon the property. The registrar shall index the attachment when filed, in the names both of the defendant and of the person by whom the property is held.

(3) Personal property, capable of manual delivery, shall be attached by taking it into custody.

(4) Stocks or shares, or interest in stocks or shares, of any corporation or company, shall be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached, in pursuance of the writ.

(5) Debts and credits and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing the debts, or having in his possession, or under his control, the credits and other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of the writ. In the case of attachment of growing crops, a copy of the writ, together with a description of the property attached, and a notice that it is attached, shall be recorded the same as in the attachment of real property.

§ 347. Attachment lien on real property

(a) The lien of the attachment on real property attaches and becomes effective upon the filing of a copy of the writ, together with a description of the property attached and a notice that it is attached, with the registrar of property. If the marshal does not complete the execution of the writ in the manner prescribed by section 346 of this title within 15 days next following the filing in the registrar's office the lien shall cease.

(b) The attachment shall be a lien upon all real property attached for a period of three years after the date of levy unless sooner released or discharged as provided by this subchapter, by dismissal of the action or by entry and docketing of judgment in the action. At the expiration of three years the lien shall cease and any proceeding or proceedings against the property under the attachment shall be barred. Upon motion of a party to the action, made not less than five nor more than 60 days before the expiration of the period of three years, the court in which the action is pending may extend the time of the lien for a period not exceeding two years from the date on which the original lien would expire, and the lien shall be extended for the period specified in the order upon the filing, before the expiration of the existing lien. of a certified copy of the order with the registrar of property. The lien may be extended from time to time in the manner herein prescribed.

§ 348. Garnishment; notice to garnishee

Upon receiving information in writing from the plaintiff or his attorney, that a person has in his possession, or under his control, credits or other personal property belonging to the defendant, or owes a debt to the defendant, the marshal shall serve upon the person a copy of the writ, and a notice that the credits, or other property or debts, as the case may be, are attached in pursuance of the writ.

§ 349. Same; liability of garnishee

Persons having in their possession, or under their control, credits or other personal property belonging to the defendant, or owing debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided by sections 346 and 348 of this title, unless the property is delivered up or transferred, or the debts are paid to the marshal, are liable to the plaintiff for the amount of the credits, property, or debts, until the attachment is discharged, or any judgment recovered by him is satisfied.

§ 350. Same; examination of garnishee and defendant; order for delivery or memorandum of property

(a) Persons owing debts to the defendant, or having in their possession or under their control, credits or other personal property belonging to the defendant, may be required to attend before the court, or in case of the absence or disability of the judge before the clerk of the court, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath.

(b) In lieu of, or in addition to, examination before the court, the plaintiff may examine any person referred to in subsection (a) of this section, including the defendant, in the manner provided by the Federal Rules of Civil Procedure for taking depositions.

(c) After the examination, the court may order personal property, capable of manual delivery, to be delivered to the marshal on such terms as may be just, having reference to any liens thereon or claims against it, and a memorandum to be given of all other personal property, containing the amount and description thereof.

§ 351. Marshal's return; inventory; memorandum of garnishee

The marshal shall make a full inventory of the property attached, and return it with the writ. To enable him to make a return as to debts and credits attached, he shall request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each; and if the memorandum is refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amounts and description of the debt or credit.

§ 352. Perishable property; custody of other property; collection of debts and credits

If any of the property attached is perishable, the marshal shall sell it in the manner in which such property is sold on execution. The proceeds, and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if it can be done without suit. The marshal's receipt is a sufficient discharge for the amount paid.

§ 353. Sale of attached property

If property is taken by an officer under a writ of attachment, and it is made to appear satisfactorily to the court that the interest of the parties to the action will be subserved by a sale thereof, the court may order the property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court to abide the judgment in the action. The order may be made only upon notice to the adverse party or his attorney, if the party has been personally served with a summons in the action.

§ 354. Claims by third persons

If a third person claims any attached personal property as his property, the provisions applicable in cases of third party claims after levy under execution apply.

§ 355. Satisfaction of judgment

If judgment is recovered by the plaintiff, the marshal shall satisfy it out of the property attached by him which has not been delivered to the defendant or a claimant, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it is sufficient for that purpose:

(1) by paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as are necessary to satisfy the judgment: and

(2) if a balance remains due, and an execution has been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remains in his hands. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

§ 356. Collection of balance due; return of surplus

If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance remains due, the marshal must proceed to collect the balance, as upon an execution in other cases. If the judgment has been paid, the marshal, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

§ 357. Plaintiff's remedies if execution is unsatisfied

If the execution is returned unsatisfied, in whole or in part, the plaintiff may enforce any undertaking given pursuant to sections 344 or 360 of this title, or he may proceed, as in other cases, upon the return of an execution.

§ 358. Judgment for defendant; discharge of attachment

If a defendant recovers judgment against the plaintiff and no appeal is perfected and undertaking executed, any undertaking received in the action, all the proceeds of sales and money collected by the marshal, and all the property attached, remaining in the marshal's hands, shall be delivered to the defendant or his agent, the order of attachment be discharged, and the property released therefrom.

§ 359. Discharge of attachment on defendant's undertaking

If a defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the district court for an order to discharge the attachment wholly or in part; and upon the execution of the undertaking specified by section 360 of this title, an order may be made releasing from the operation of the attachment, any or all of the property of the defendant attached; and all the property so released and all the proceeds of the sales thereof, shall be delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff. The justification must take place within five days after the notice of the filing of the undertaking.

§ 360. Requirements for defendant's undertaking

Before making an order prescribed by section 359 of this title, the court shall require an undertaking on behalf of the defendant, by at

least two sureties, to the effect that in case the plaintiff recovers judgment in the action against the defendant, by whom or in whose behalf the undertaking is given, the defendant will, on demand, redeliver the attached property so released to the proper officer, to be applied to the payment of any judgment in the action against the defendant, or in default thereof that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released not exceeding the amount of the judgment against the defendant. The court may fix the sum for which the undertaking must be executed, and if necessary in fixing the sum to know the value of the property released, it may be appraised by one or more disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the court and the property attached may not be released from the attachment without their justification if it is required.

§ 361. Discharge of attachment irregularly issued

(a) The defendant may also at any time, either before or after the release of the attached property, or before any attachment has been actually levied, apply on motion, upon reasonable notice to the plaintiff, that the writ of attachment be discharged on the ground that it was improperly or irregularly issued.

(b) If the motion is made upon affidavits on the part of the defendant, the plaintiff may oppose it by affidavits or other evidence, in addition to those on which the attachment was made.

(c) If upon the application it satisfactorily appears that the writ of attachment was improperly or irregularly issued it shall be discharged; but the attachment may not be discharged if at or before the hearing of the application, the writ of attachment, or the affidavit, or undertaking upon which the attachment was based is amended and made to conform to this subchapter.

§ 362. Return of writ; filing order releasing attachment

The marshal shall return the writ of attachment with the summons, if issued at the same time; otherwise, within 20 days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto. If an order has been made discharging or releasing an attachment upon real property, a certified copy of the order may be filed in the office of the registrar of property.

§ 363. Release of real property from attachment

An attachment as to real property may be released by a writing signed by the plaintiff, or his attorney, or the officer who levied the writ and acknowledged in the manner provided by chapter 27 of Title 4; and upon the filing of the release, the registrar of property shall note it on the record of the copy of the writ on file in his office. Such an attachment may also be released by an entry in the margin of the record thereof, in the registrar's office, in the manner provided for the discharge of mortgages by section 4127 of Title 4.

§ 364. Attachment of interest in decedent's estate

The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee, or devisee, may be attached by serving the personal representative of the decedent with a copy of the writ and a notice that the interest is attached. The attachment may not impair the powers of the representative over the property for the purposes of administration. A copy of the writ of attachment and of the notice shall also be filed in the office of the clerk of the court in which the estate is being administered and the personal representative shall report the attachment to the court when a petition for distribution is filed, and in the decree made upon the petition distribution shall be ordered to the heir, legatee, or devisee,

but delivery of the property shall be ordered to the officer making the levy subject to the claim of the heir, legatee, or devisee, or any person claiming under him. The property may not be delivered to the officer making the levy until the decree distributing the interest has become final.

Subchapter V—Receivers

§ 381. Appointment of receivers generally

A receiver may be appointed by the district court in an action pending therein:

(1) in an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or funds is in danger of being lost, removed, or materially injured;

(2) in an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

(3) after judgment, to carry the judgment into effect;

(4) after judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

(5) in the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and

(6) in all other cases where receivers have heretofore been appointed by the usages of courts of equity.

§ 382. Appointment of receivers upon dissolution of corporations

Upon the dissolution of a corporation having its principal place of business in the Canal Zone, the district court, on application of a creditor of the corporation, or of a stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that remain over among the stockholders or members.

§ 383. Qualifications of receivers; undertaking on ex parte appointment

A party, or attorney of a party, or person interested in an action, may not be appointed receiver therein without the written consent of the parties, filed with the clerk.

If a receiver is appointed upon an ex parte application, the court, before making the order, shall require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of the receiver and the entry by him upon his duties, in case the applicant has procured the appointment wrongfully, maliciously, or without sufficient cause. At any time after the appointment, the court may require an additional undertaking.

§ 384. Oath and undertaking of receiver

Before entering upon his duties, the receiver shall be sworn to perform them faithfully, and with two or more sureties, approved by the court, execute an undertaking to the Government of the Canal Zone in such sum as the court may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein.

§ 385. Powers of receivers

The receiver may, under the control of the court, bring and defend actions in his own name, as receiver; take and keep possession of the property, receive rents, collect debts, compound for and compromise the same, make transfers, and generally do such acts respecting the property as the court authorizes.

§ 386. Investment of funds

Funds in the hands of a receiver may be invested upon interest, by order of the court made upon the consent of all the parties to the action.

§ 387. Unclaimed funds in receiver's hands

A receiver having funds in his hands belonging to a person whose whereabouts are unknown to him, shall, before receiving his discharge as receiver, publish a notice, in one or more newspapers of general circulation in the Canal Zone, at least once a week for four consecutive weeks, setting forth the name of the owner of any unclaimed funds, the last known place of residence or post office address of the owner and the amount of the unclaimed funds.

Any funds remaining in his hands unclaimed for 30 days after the date of the last publication of the notice, shall be reported to the court. Upon order of the court, all such funds shall be paid to the Canal Zone Government accompanied with a copy of the order, setting forth the facts required in the notice herein provided. The funds shall be paid out by the Canal Zone Government to the owner thereof or his order in such manner and upon such terms as the court directs.

All costs and expenses connected with the advertising shall be paid out of the funds the whereabouts of whose owners are unknown.

Subchapter VI—Deposits in Court; Handling of Funds by Clerk

§ 411. Order for deposit of money or property or delivery to another party

If it is admitted by the pleadings, or shown upon the examination of a party to the action, that he has in his possession, or under his control, money or another thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court upon motion may order the same to be deposited in court or delivered to the party, upon such conditions as may be just, subject to the further direction of the court.

§ 412. Enforcement of order

If, in the exercise of its authority, a court has ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the court, in addition to punishing the disobedience, may make an order requiring the marshal to take the money, or thing, and deposit or deliver it in conformity with the direction of the court.

§ 413. Money deposited in registry of court

Money deposited with the clerk of the district court, by or for the use of any party, upon a judgment of the court or in a pending action or proceeding by virtue of the law or by direction of the court, as soon as deposited with the clerk, shall be deemed to be in the registry of the court.

(b) Money paid into court pursuant to Rule 67 of the Federal Rules of Civil Procedure shall be deposited and withdrawn in accordance with the provisions of this subchapter.

§ 414. Deposit of sums over $200 in depositary; disbursements; records

The clerk shall deposit in a depositary designed by the judge of the district court, in the name of that court, every sum of money deposited in the registry of the court which exceeds $200, as soon as it is received. The money may thereafter be paid out only on a check, voucher, or order of the court, or the judge thereof, countersigned by the clerk of the court. The clerk in each division of the district court shall make a record showing the date of receipt, the amount received, from whom received, and the case in which any such money is deposited in the registry of the court; and the date, amount, and to whom the same was paid out.

§ 415. Maintenance of general deposit account; interest; commission; deposit of funds

The clerk shall maintain a general deposit account in a designated depositary in which shall be deposited every cash fund exceeding $200 deposited in the registry of the court. Interest earned on the general account shall be retained by the clerk as his commission for receiving and caring therefor and shall be accounted for by him as fees of his office. The clerk may not charge a commission for handling a fund of $200 or less.

If, however, a fund exceeding $200 is likely to remain in the registry of the court for six months or more, and the parties so stipulate or the court so directs, the fund shall be deposited in a designated bank in a savings account at interest. The clerk's commission for caring for the fund in such case shall be paid only out of interest earned thereon, to the amount of one-fourth of the interest. The remainder of the interest shall be deemed a part of the fund and shall be paid out on order or decree of the court according to the exigency of the case.

§ 416. Designation of depositaries

The judge of the district court shall designate one or more depositaries in which money deposited in the registry of the court shall be deposited by the clerk.

§ 417. Deputy clerks and acting clerks

As used in sections 413–416 of this title, the word "clerk" includes the clerk of the district court, the deputy clerks thereof, and any acting clerk when performing the duties of the clerk or deputy clerk when they or any of them are absent on account of illness or vacation, or are unable to act from any cause.

§ 418. Disposition of unclaimed funds by clerk

When the clerk of the district court has in his hands for a period of two years or more any fund or moneys belonging to any person or persons, which he has been unable to disburse to the person or persons because of his inability to locate them, or because of their refusal to accept the same, the clerk shall upon order of the court turn the same over to the Canal Zone Government to be held and disposed of as provided in this section.

A person claiming to be entitled to an amount so deposited with the Canal Zone Government may, within five years after the deposit, petition the court for an order directing payment to the claimant. A copy of the petition shall be served on the Canal Zone Government and thereafter the amount may not be covered into the Treasury of the United States, as provided by this section, until so ordered by the court.

If no one claims the amount, as herein provided, or if a claim is made and disallowed and the court so directs, the amount devolves to the United States and shall be covered into the Treasury as miscellaneous receipts.

CHAPTER 13—TRIAL

SUBCHAPTER I—TRIAL BY JURY

SUBCHAPTER II—CONDUCT OF TRIAL

Subchapter I—Trial by Jury

§ 451. Jury trial of right

Except as otherwise provided by law, a party has a right of trial by jury of issues of fact in a civil case at law originating in the district court.

§ 452. Challenges

(a) In civil cases, each party is entitled to four peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. If two or more actions are consolidated for trial, the court may allow each party the number of peremptory challenges he would have if the actions were tried separately.

(b) Challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the court.

§ 453. Challenges for cause

Challenges for cause may be taken on one or more of the following grounds:

(1) a want of any of the qualifications prescribed to render a person competent as a juror;

(2) consanguinity or affinity within the fourth degree to a party, or to an officer of a corporation which is a party;

(3) standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, or debtor and creditor, to either party, or to an officer of a corporation which is a party, or being a member of the family of either party; or a partner in business with either party; or surety on a bond or obligation for either party, or being the holder of bonds or shares of the capital stock of a corporation which is a party; or having stood within one year previous to the filing of the complaint in the relation of attorney and client with either party or with the attorney for either party; but a depositor of a bank is not deemed

a creditor of the bank for the purpose of this paragraph solely by reason of his being a depositor;

(4) having served as a juror in a civil action or been a witness on a previous trial between the same parties, for the same cause of action; or having been summoned and attended the district court as a petit juror at any term held within one year prior to the challenge;

(5) interest on the part of the juror in the event of the action, or in the main question involved in the action;

(6) having an unqualified opinion or belief as to the merits of the action founded upon knowledge of its material facts or of some of them;

(7) the existence of a state of mind evincing enmity against or bias to either party; or

(8) that he is a party to an action pending in the court for which he is drawn and which action is set for trial before the panel of which he is a member.

§ 454. Jury to be sworn

As soon as the jury is completed, an oath shall be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between ———, plaintiff, and ———, defendant, and a true verdict render according to the evidence.

Subchapter II—Conduct of Trial

§ 471. Order of proceedings on trial

When the jury have been sworn, the proceedings shall be as follows, unless the judge, for special reasons, otherwise directs;

(1) the plaintiff, after stating the issue and his case, shall produce the evidence on his part;

(2) the defendant may then open his defense, and offer his evidence in support thereof;

(3) the parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permits them to offer evidence upon their original case;

(4) when the evidence is concluded, unless the case is submitted to the jury on either side or on both sides without argument, the plaintiff shall commence and may conclude the argument;

(5) if several defendants, having separate defenses, appear by different counsel, the court shall determine their relative order in the presentation of evidence and argument; and

(6) the court may then charge the jury.

§ 472. View by jury

When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which a material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, may speak to them on any subject connected with the trial.

§ 473. Instructions to jury

In charging the jury the court may state to them all matters of law which it thinks necessary for their information in giving their verdict; and, if it states the testimony of the case, it shall inform the jury that they are the exclusive judges of all questions of fact. The court shall furnish to either party, at the time, upon request, a statement

in writing of the points of law contained in the charge, or sign, at the time, a statement of the points prepared and submitted by the counsel of either party.

§ 474. Admonition when jury permitted to separate

If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

§ 475. Items taken with jury

Upon retiring for deliberation the jury may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them any exhibits which the court thinks proper and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

§ 476. Retirement and deliberation of jury; three-fourths verdict

After the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they shall be kept together in a convenient place, under charge of an officer, until at least three-fourths of them agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having them under his charge may not suffer any communication to be made to them, or make any himself, except to ask them if they or three-fourths of them are agreed upon a verdict, and he may not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

§ 477. Return to court for instructions

After the jury have retired for deliberation, if there is a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the parties or counsel.

§ 478. Discharge without verdict; retrial

If the jury are discharged, or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court may direct, unless the court directs the entry of judgment in accordance with a motion for a directed verdict pursuant to Rule 50 of the Federal Rules of Civil Procedure.

§ 479. Adjournment while jury absent; sealed verdict

While the jury are absent the court may adjourn from time to time, in respect to other business; but it is nevertheless open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict, at the opening of the court, in case of an agreement during a recess or adjournment for the day.

§ 480. Manner of giving verdict; three-fourths verdict; polling jury

When the jury, or three-fourths of them, have agreed upon a verdict, they shall be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. The verdict must be in writing, signed by the foreman, and shall be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If upon such an inquiry or polling, more than one-fourth of the jurors disagree thereto, the jury shall be sent out again, but if no such disagreement is expressed, the verdict is complete and the jury discharged from the case.

§ 481. Correction of informal or insufficient verdict

When the verdict is announced, if it is informal or insufficient, in not covering the issue submitted, it may be corrected by the jury under the advice of the court, or the jury may be again sent out.

§ 482. Entry of verdict

Upon receiving a verdict, an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where a special verdict is found, either the judgment rendered thereon, or if the case is reserved for argument or further consideration, the order thus reserving it.

CHAPTER 15—JUDGMENT AND EXECUTION

SUBCHAPTER I—JUDGEMENTS GENERALLY

SUBCHAPTER II—EXECUTION

SUBCHAPTER III—PROCEEDINGS SUPPLEMENTAL TO EXECUTION

SUBCHAPTER IV—JUDGMENTS AGAINST JOINT DEBTORS

SUBCHAPTER V—DISCHARGE OF PERSONS IMPRISONED ON CIVIL PROCESS

Subchapter I—Judgments Generally

§ 511. Interest on judgments

Judgments bear interest at the rate of 6 percent per annum from the date of entry.

§ 512. Satisfaction of judgment

Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction, which may recite payment of the judgment in full or the acceptance by the judgment creditor or assignee of record of any lesser sum in full satisfaction thereof. The acknowledgment may be made in the manner prescribed by chapter 27 of Title 4 and filed with the clerk or it may be made by indorsement on the face or the margin of the record. The acknowledgment or indorsement may be made by the judgment creditor, by the assignee of record, or by the attorney unless a revocation of his authority is filed.

Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney shall give the acknowledgment, or make the indorsement, and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

§ 513. Death of party before judgment

If a party dies after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. The judgment is payable in the course of administration on his estate.

§ 514. Action against officer or person holding bond or covenant of indemnity; defense by and judgment against surety

If an action is brought against an officer or person for an act for the doing of which he had theretofore received a valid bond or

covenant of indemnity, and he gives seasonable notice thereof in writing to the persons who executed the bond or covenant, and permits them to conduct the defense of the action, the judgment recovered therein is conclusive evidence against the persons so notified; and the court may, on motion of the defendant, upon notice of five days, and upon proof of the bond or covenant, and of the notice and permission, enter judgment against them for the amount so recovered and costs.

§ 515. Confession of judgment without action

(a) A judgment by confession may be entered without action either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this section. The judgment may be entered in any court having jurisdiction for like amounts.

(b) A statement in writing shall be made, signed by the defendant and verified by his oath:

(1) authorizing the entry of judgment for a specified sum;

(2) if it is for money due, or to become due, stating concisely the facts out of which it arose, and showing that the sum confessed therefor is justly due, or to become due; and

(3) if it is for the purpose of securing the plaintiff against a contingent liability, stating concisely the facts constituting the liability, and showing that the sum confessed thereunder does not exceed the same.

(c) If the judgment is to be entered in the district court, the plaintiff shall file the statement with the clerk of the district court and pay a fee of $8 to be recovered as costs in the judgment. Within 10 days after the filing, the clerk shall indorse upon the statement, and enter of record, a judgment of the district court for the amount confessed, with $8 costs.

(d) If the judgment is to be entered in a magistrate's court, the plaintiff shall file the statement with the magistrate and pay a fee of $5 to be recovered as costs in the judgment. The magistrate shall thereupon enter in his docket a judgment of the magistrate's court for the amount confessed, with $5 costs.

§ 516. Submission of controversy without action

(a) Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought; but it must appear, by affidavit, that the controversy is real and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment thereon, as if an action were pending.

(b) Judgment may be entered as in other cases, but without costs for any proceeding prior to the trial.

(c) The judgment may be enforced in the same manner as if it had been rendered in an action, and is in the same manner subject to appeal.

Subchapter II—Execution

§ 541. Time for issuance of execution

Subject to any stay of proceedings to enforce the judgment authorized by the Federal Rules of Civil Procedure, the party in whose favor judgment is given may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement upon the filing of a written request with the clerk of court. If, after

the entry of the judgment, the issuing of execution thereon is stayed or enjoined by any judgment or order of court, or by operation of law or the Federal Rules of Civil Procedure, the time during which it is so stayed or enjoined is excluded from the computation of the five years within which execution may issue.

§ 542. Issuance of execution; form and contents

A writ of execution shall be issued in the name of the Government of the Canal Zone, sealed with the seal of the court, and subscribed by the clerk, and be directed to the marshal, and intelligibly refer to the judgment, stating the court, the division where the judgment is entered, and if it is for money, the amount thereof, and the amount actually due thereon, and shall require the marshal to proceed substantially as follows:

(1) If it is against the property of the judgment debtor, it shall require the marshal to satisfy the judgment, with interest, out of the property of the debtor.

(2) If it is against property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it shall require the marshal to satisfy the judgment, with interest, out of such property.

(3) If it is against the person of the judgment debtor, it shall require the marshal to arrest the debtor and commit him to jail until he pays the judgment, with interest, or is discharged according to law.

(4) If it is for the delivery of the possession of property, it shall require the marshal to deliver the possession of the property, describing it, to the party entitled thereto; and it may at the same time require the marshal to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had.

§ 543. Return of execution

An execution may be made returnable at any time not less than 10 nor more than 60 days after its receipt by the marshal, to the division in which the judgment is entered.

§ 544. Methods for enforcement of judgments and orders

(a) If a judgment is for money, or the possession of property, it may be enforced by a writ of execution.

(b) If a judgment directs that the defendant be arrested, the execution may issue against the person of the judgment debtor, after the return of an execution against his property unsatisfied in whole or part.

(c) If a judgment requires the sale of property, it may be enforced by a writ reciting the judgment, or the material parts thereof, and directing the proper officer to execute the judgment, by making the sale and applying the proceeds in conformity therewith.

(d) If a judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom it is rendered, or upon the person or officer required thereby or by law to obey it, and obedience thereto may be enforced by the court.

(e) If an order for the payment of a sum of money is made by a court, it may be enforced by execution in the same manner as if it were a judgment.

§ 545. Execution after five years

A judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion, and after due notice to the judgment debtor accompanied by an affidavit or affidavits setting forth the reasons for failure to proceed in compliance with section 541 of this title. The failure to set forth reasons which are sufficient in the discretion of the court is ground for the denial of the motion. This section does not limit the jurisdiction of the court to order issuance of a writ of execution prior to the lapse of the five-year period in cases where the party in whose favor judgment is given is not entitled to a writ pursuant to section 541 of this title.

A judgment may also be enforced or carried into execution after the lapse of five years from the date of its entry, by judgment for that purpose founded upon supplemental proceedings; but this section does not revive a judgment for the recovery of money which has been barred by limitation on January 2, 1963.

§ 546. Execution after death of party

Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced, as follows:

(1) in case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest; or

(2) in case of the death of the judgment debtor, if the judgment is for the recovery of property, or the enforcement of a lien thereon.

§ 547. Property liable to execution; manner and effect of levy

(a) All goods, chattels, moneys, and other real and personal property, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, are liable to execution.

(b) Shares and interests in any corporation or company, and debts and credits, and all other real and personal property, and any interest in either real or personal property, and all other property not capable of manual delivery, may be levied upon or released from levy in like manner as like property may be attached or released from attachment.

(c) Until a levy, property is not affected by the execution. A levy does not bind any property for a longer period than one year from the date of the issuance of the execution; but an alias execution may be issued on the judgment and levied on any property not exempt from execution.

§ 548. Property exempt from execution or attachment

The following property is exempt from execution or attachment, except as herein otherwise specially provided, when claim for exemption is made to the same by the judgment debtor or defendant as provided by section 549 of this title:

(1) chairs, tables, desks, and books, to the value of $200 belonging to the judgment debtor;

(2) household furniture and utensils necessary for housekeeping and used for that purpose by the debtor, such as the debtor may select, of a value not exceeding $500; and all wearing apparel;

(3) tools and implements necessarily used by him in his trade or employment;

(4) the professional libraries of lawyers, judges, clergymen, doctors, school teachers, and music teachers, not exceeding $500 in value;

(5) the wages and earnings of all seamen and seagoing fishermen, not exceeding $300, regardless of where or when earned, and in addition to all other exemptions otherwise provided by any law; but where debts are incurred by any such person, or his wife or family for the common necessaries of life, one-half of the earnings above mentioned is nevertheless subject to execution or attachment to satisfy debts so incurred;

(6) the following percentages of the earnings of the defendant or judgment debtor, regardless of his place of residence, for his personal services rendered at any time within 30 days next preceding the levy of the process are exempt from attachment, execution, or garnishment without filing a claim for exemption as provided by section 549 of this title, and only one attachment or execution on the earnings of a defendant or judgment debtor shall be satisfied at one time:

(A) all the gross earnings exceeding $40 per week;

(B) 80 percent of the gross earnings exceeding $40 per week and not exceeding $100 per week; and

(C) 50 percent of the gross earnings exceeding $100 per week;

(7) all the nautical instruments and wearing apparel of a master, officer, or seaman of a vessel;

(8) all arms, uniforms, and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor;

(9) all moneys, benefits, privileges, or immunities accruing or in any manner growing out of life insurance, if the annual premiums paid do not exceed $500, and if they exceed that sum a like exemption exists which bears the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of the insurance that $500 bears to the whole annual premiums paid; in addition to the foregoing, all moneys, benefits or privileges belonging to or inuring to the benefit of the insured's spouse or minor children growing out of life insurance purchased with annual premiums not exceeding $500, or if the annual premiums exceeded that sum, a like exemption exists in favor of those persons which bears the same proportion to the moneys, benefits or privileges growing out of the insurance that $500 bears to the whole annual premiums paid; and

(10) all money received by a person as a pension or retirement or disability or death or other benefit from the United States Government, whether it is in his actual possession or deposited, loaned, or invested by him.

An article, however, or species of property specified by this section is not exempt from execution issued upon a judgment recovered for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

§ 549. Procedure for asserting and determining claims for exemption

The following procedure shall be followed in asserting and determining claims for exemption of property as provided by section 548 of this title:

(1) Unless otherwise specially provided, if the property specified by section 548 of this title is levied upon under writ of attachment or execution, the defendant or judgment debtor, in order to avail himself of his exemption rights as to the property, shall deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the paragraphs of section 548 on which he relies

for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address for the purpose of permitting service by mail upon him of the counter-affidavit and any notice of the motion herein provided.

(2) Forthwith upon receiving the affidavit of exemption the levying officer shall serve upon the plaintiff or the person in whose favor the writ runs (herein referred to as "the creditor"), either personally or by mail, a copy of the affidavit of exemption, together with a writing, signed by the levying officer, stating that the claim to exemption has been received and that the officer will release the property unless he receives from the creditor a counter-affidavit within five days after service of the writing.

(3) If the creditor desires to contest the claim to exemption, he shall within the period of five days file with the levying officer a counter-affidavit alleging that the property is not exempt within the meaning of the paragraphs relied upon, or if the claim to exemption is based on paragraph (1), (2), or (4) of section 548 of this title, alleging that the value of the property claimed to be exempt is in excess of the value stated in the applicable paragraphs, together with proof of service of a copy of the counter-affidavit upon the judgment debtor.

(4) If a counter-affidavit, with proof of service, is not so filed with the levying officer within the time allowed, the officer shall forthwith release the property.

(5) If a counter-affidavit, with proof of service, is so filed, either the creditor or the judgment debtor is entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim to exemption, or the value of the property claimed to be exempt. The hearing shall be granted by the court upon motion of either party made within five days after the counter-affidavit is filed with the levying officer, and the hearing shall be had within 15 days from date of the making of the motion unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of the hearing to the levying officer and to the other party and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of court, the motion is deemed made.

(6) If neither party makes such a motion within the time allowed, or if the levying officer is not served with a copy of the notice of hearing within 10 days after the filing of the counter-affidavit, the levying officer shall forthwith release the property to the judgment debtor.

(7) At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may make such orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(8) The levying officer in all cases shall retain physical possession of the property levied upon if it is capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption. A sale under execution may not be had prior to the final determination unless an order of the court hearing the claim for exemption so provides.

(9) At the hearing, the party claiming the exemption has the burden of proof. The affidavits and counter-affidavits shall be filed by the levying officer with the court and shall constitute the

pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption is deemed controverted by the counter-affidavit and both shall be received in evidence. Findings are not required in a proceeding under this section. When evidence other than the affidavit and counter-affidavit is not offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon; otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counter-affidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, which judgment is determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In the judgment the court shall make all proper orders for the disposition of the property or the proceeds thereof.

(10) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit the officer to either release the property attached or to continue to hold it or sell it, in accordance with the provisions of the writ previously delivered to him. Unless an appeal from the judgment be waived, or the judgment has otherwise become final, the officer shall continue to hold the property under attachment or execution, continuing the sale of any property held under execution until the judgment becomes final. If a claim to exemption pursuant to paragraph (6) of section 548 of this title is allowed by the judgment, the judgment debtor is entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court or unless the levying officer is served with a copy of a notice of appeal from the judgment.

(11) If any documents required hereunder are served by mail, the provisions of law or rules of court relating to service by mail are applicable thereto.

(12) If the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless the notice is waived, and to the levying officer.

(13) An appeal lies from any judgment under this section, to be taken in the manner provided for appeals in the court in which the proceeding is had.

§ 550. Execution of writ generally

The marshal shall execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment.

Any excess in the proceeds over the judgment and accruing costs shall be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court.

If there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the marshal, he shall levy only on such part of the property as the judgment debtor may indicate, if the property indicated is amply sufficient to satisfy the judgment and costs.

§ 551. Sale on execution or under power in deed of trust; notice

Before the sale of property on execution or under power contained in any deed of trust, notice thereof shall be given as follows:

(1) In case of perishable property: by posting written notice of the time and place of sale in three public places of the town where

the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.

(2) In case of other personal property: by posting a similar notice in three public places in the town where the sale is to take place, for not less than 5 days nor more than 10 days.

(3) In case of real property: by posting a similar notice particularly describing the property for 20 days, in three public places of the town where the property is to be sold and publishing a copy thereof once a week for the same period, in some newspaper of general circulation in the Canal Zone; and where real property is to be sold under the provision of any deed of trust the copy of the notice shall be posted in a conspicuous place on the property to be sold, at least 20 days before date of sale.

§ 552. Penalty for selling without notice or taking down or defacing notice

An officer selling without the notice prescribed by section 551 of this title shall forfeit $500 to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment before sale, shall forfeit $500.

§ 553. Conduct of sale

Sales of property under execution shall be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more may be sold. Neither the officer holding the execution nor his deputy may become a purchaser or be interested in any purchase at the sale. When the sale is of personal property, capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they shall be sold separately; or when a portion of the real property is claimed by a third person, and he requires it to be sold separately, it shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when the property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the marshal shall follow those directions.

§ 554. Nonpayment of bid; resale

(a) If a purchaser refuses to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss is occasioned thereby, the officer may recover the amount of the loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

(b) If a purchaser refuses to pay, the officer may reject any subsequent bid by him.

(c) Subsections (a) and (b) of this section do not render the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

§ 555. Rights of purchaser; certificate of sale

(a) When the purchaser of personal property capable of manual delivery pays the purchase money, the officer making the sale shall deliver the property to him, and, if desired, execute and deliver to him a certificate of the sale. The certificate conveys to the purchaser all the right which the debtor had in the property on the day the execution or attachment was levied.

(b) When the purchaser of personal property not capable of manual delivery pays the purchase money, the officer making the sale shall execute and deliver to him a certificate of sale. The certificate conveys to the purchaser all the right which the debtor had in the property on the day the execution or attachment was levied.

(c) Upon a sale of real property, the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor thereto on the date of the levy of the execution thereon. If property, real or personal, has been attached in the action, the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor on or at any time after the day the attachment was levied upon the property.

§ 556. Sales as absolute or subject to redemption; certificate of sale

Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption, as provided in this subchapter.

The officer shall give to the purchaser a certificate of sale, and file a duplicate thereof for record in the office of the registrar of property, which certificate must state the date of the judgment under which the sale was made and the names of the parties thereto, and contain:

(1) a particular description of the real property sold;
(2) the price bid for each distinct lot or parcel;
(3) the whole price paid; and
(4) if the property is subject to redemption, the certificate must so declare.

§ 557. Redemption; persons entitled to; redemptioners defined

Property sold subject to redemption, as provided in section 556 of this title, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

(1) the judgment debtor, or his successor in interest, in the whole or any part of the property; or

(2) a creditor having a lien or mortgage on the property sold, or on a share or part thereof, subsequent to that on which the property was sold.

The persons specified by paragraph (2) of this section are, in this subchapter, termed redemptioners.

§ 558. Redemption; time; amount of payment

The judgment debtor, or a redemptioner, may redeem the property from the purchaser any time within 12 months after the sale on paying the purchaser the amount of his purchase, with 1 percent per month thereon in addition, up to the time of redemption; and if the purchaser is also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which the purchase was made, the amount of the lien with interest.

§ 559. Subsequent redemptions; notice; marshal's deed; certificate

(a) If property is so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on the last redemption, with 2 percent thereon in addition, and, in addition, the amount of any liens held by the redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien.

(b) The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within 60 days after the last redemption, on paying the sum paid on the last previous redemption, with 2 percent thereon in addition, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own with interest.

(c) Written notice of redemption shall be given to the marshal and a duplicate filed with the registrar of property, and if the redemptioner has or acquires any lien other than that upon which the redemption was made, notice thereof shall in like manner be given to the marshal and filed with the registrar; and if such a notice is not filed, the property may be redeemed without paying such lien.

(d) If no redemption is made within 12 months after sale, the purchaser, or his assignee, is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed, and no other redemption has been made, and notice thereof given and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a marshal's deed; but, in all cases, the judgment debtor shall have the entire period of 12 months from the date of the sale to redeem the property.

(e) If the judgment debtor redeems, he shall make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeems, the effect of the sale is terminated and he is restored to his estate.

(f) Upon a redemption by the debtor, the person to whom the payment is made shall execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments. The certificate shall be filed and recorded in the office of the registrar of property, and the registrar shall note the record thereof in the margin of the record of the certificate of sale.

§ 560. Redemption; persons to whom payments made; tender

The payments mentioned in sections 558 and 559 of this title may be made to the purchaser or redemptioner, or for him, to the officer who made the sale. A tender of the money is equivalent to payment.

§ 561. Redemption; documents to be produced by redemptioner

A redemptioner shall produce to the officer or person from whom he seeks to redeem and serve with his notice to the marshal making the sale, or his successor in office:

(1) a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court where the judgment is docketed; or, if he redeems upon a mortgage or other lien, a note of the record thereof, certified by the registrar;

(2) a copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto; and

(3) an affidavit by himself or his agent, showing the amount then actually due on the lien.

§ 562. Restraining waste during period for redemption

Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor or for the repair of fences or for fuel for his family, while he occupies the property.

§ 563. Rents and profits

The purchaser from the time of the sale until a redemption, and a redemptioner from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding the redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for the redemption, demands in writing of the purchaser or creditor, or his assigns, a written and verified statement of the amounts of the rents and profits thus received, the period for redemption is extended five days after the sworn statement is given by the purchaser or his assigns, to the redemptioner or debtor. If the purchaser or his assigns shall, for a period of one month from and after demand, fail or refuse to give the statement, the redemptioner or debtor may bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of the rents and profits, and until fifteen days from and after the final determination of the action, the right of redemption is extended to the redemptioner or debtor.

§ 564. Eviction of purchaser or failure to obtain possession; revival of judgment

If the purchaser of real property sold on execution, or his successor in interest, is evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at a marshal's sale, or his successor in interest, fails to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, after notice and on motion of the party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by the purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

§ 565. Contribution among judgment debtors; repayment of surety

If property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such a case the person so paying or contributing is entitled to the benefit of the judgment, to enforce contribution or repayment, if, within 10 days after his payment, he files with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of the notice, the clerk shall make an entry thereof in the margin of the docket.

§ 566. Claims by third persons; filing of claim; undertaking by plaintiff

(a) If tangible or intangible personal property levied on, whether or not it is in the actual possession of the levying officer, is claimed by a third person as his property by a written claim verified by his oath or that of his agent, setting out the reasonable value thereof, his title and right to the possession thereof, and delivered, together with a copy thereof, to the officer making the levy, the officer shall release the property and the levy unless the plaintiff, or the person in whose favor the writ runs, within five days after written demand by the officer, gives the officer an undertaking executed by at least two good and sufficient sureties, in a sum equal to double the value of the property levied upon.

(b) The undertaking shall be made in favor of and shall indemnify the third person against loss, liability, damages, costs and counsel fees, by reason of the levy or the seizing, taking, collecting, withholding, or sale of the property by the officer. Where the property levied upon is required by law to be registered or recorded in the name of the owner and it appears that at the time of the levy the defendant or judgment debtor was the registered or record owner of the property and the plaintiff, or the person in whose favor the writ runs, caused the levy to be made and maintained in good faith, and in reliance upon the registered or record ownership, there shall be no liability thereunder to the third person by the plaintiff, or the person in whose favor the writ runs, or his sureties, or the levying officer.

(c) Exceptions to the sufficiency of the sureties and their justification may be had and taken in the same manner as upon an undertaking on attachment. If they, or others in their place, fail to justify at the time and place appointed, the officer shall release the property and the levy. If exception is not taken within five days after notice of receipt of the undertaking, the third person is deemed to have waived objections to the sufficiency of the sureties.

(d) If objection is made to the undertaking, by the third person, on the ground that the amount thereof is not sufficient, or if for any reason it becomes necessary to ascertain the value of the property involved, the property involved may be appraised by one or more disinterested persons, appointed for that purpose by the court in which the action is pending or from which the writ issued, or by a judge thereof, or the court or judge may direct a hearing to determine the value of the property.

If, upon the appraisal or hearing, the court or judge finds that the undertaking given is not sufficient, an order shall be made fixing the amount of the undertaking, and within five days thereafter an undertaking in the amount so fixed may be given in the same form and manner and with the same effect as the original.

(e) The officer making the levy may demand and exact the undertaking provided for in this section notwithstanding any defect, informality or insufficiency of the verified claim delivered to him. The officer is not liable for damages to a third person for the levy upon, or the collection, taking, keeping or sale of the property if a claim is not delivered as provided in this section, nor, in any event, is the officer liable for the levy upon, or the holding, release or other disposition of the property in accordance with the provisions of this section and section 567 of this title.

(f) If the undertaking is given, the levy shall continue and the officer shall retain any property in his possession for the purposes of the levy under the writ; except that if an undertaking is given under section 568 of this title, the property and the levy shall be released.

§ 567. Same; hearing to determine title to property

(a) If a verified third party claim is delivered to the officer as provided by section 566 of this title upon levy of execution or attachment, whether an undertaking mentioned in that section is given or not, the plaintiff, or the person in whose favor the writ runs, the third party claimant, or any one or more joint third party claimants, is entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining title to the property in question.

(b) The hearing shall be granted by the court upon petition therefor filed within 10 days after the delivery of the third party claim to the officer. The hearing shall be had within 20 days from the filing of the petition, unless continued as herein provided. Ten days' notice of the hearing shall be given to the officer, to the plaintiff or the person in whose favor the writ runs, and to the third party claimant, or their attorneys, specifying that the hearing is for the purpose of determining title to the property in question; but notice need not be given to the party filing the petition. The court may continue the hearing beyond the 20-day period, but good cause must be shown for any such continuance.

(c) The court may order the sale of perishable property held by the officer and direct the disposition of the proceeds of the sale. The court may, by order, stay execution sale, or forbid a transfer or other disposition of the property involved, until the proceedings for the determination of the title may be commenced and prosecuted to termination, and may require, as a condition of the order, such bond as the court may deem necessary. The orders may be modified or vacated by the judge granting them, or by the court in which the proceeding is pending, at any time prior to the termination of the proceedings, upon such terms as may be just.

(d) At the hearing had for the purpose of determining title, the third party claimant has the burden of proof. The third party claim delivered to the officer shall be filed by him with the court and shall constitute the pleading of the third party claimant, subject to the power of the court to permit an amendment in the interest of justice, and it is deemed controverted by the plaintiff or other person in whose favor the writ runs. This section does not deprive anybody of the right to a jury trial in any case where that right is given by law, but a jury trial may be waived in any such case in like manner as in the trial of an action. Findings are not required in any proceedings under this section.

(e) At the conclusion of the hearing the court shall give judgment determining the title to the property in question, which is conclusive as to the right of the plaintiff, or other person in whose favor the writ runs, to have the property levied upon, taken, or held, by the officer and to subject the property to payment or other satisfaction of his judgment. In the judgment the court may make all proper orders for the disposition of the property or the proceeds thereof. If the property or levy has been released by the officer for want of an undertaking, and final judgment is for the plaintiff or other person in whose favor the writ runs, the officer shall retake or levy upon the property on the writ if the writ is still in his hands, or if the writ has been returned, another writ may be issued on which the officer may take or otherwise levy upon the property.

(f) An appeal lies from any judgment determining title under this section, to be taken in the manner provided for appeals from the court in which such proceeding is had.

§ 568. Same; undertaking by claimant

(a) Where property levied upon under execution to satisfy a judgment for the payment of money is claimed, in whole or in part, by a third person, other than the judgment debtor, and an undertaking has been given by the judgment creditor as provided in section 566 of this title, the claimant may give an undertaking as provided in this section, which shall release the property described in the undertaking from the lien and levy of the execution.

(b) The undertaking, with two sureties, shall be executed by the third person claiming in whole or in part the property upon which execution is levied in double the estimated value of the property claimed by the third person; except that in no case need the undertaking be for a greater sum than double the amount for which the execution is levied. Where the estimated value of the property claimed by the third person is less than the sum for which the execution is levied, the estimated value shall be stated in the undertaking, and the undertaking shall be conditioned that if the property claimed by the third person is finally adjudged to be the property of the judgment debtor, the third person will pay of the judgment upon which execution has issued a sum equal to the value, as estimated in the undertaking, of the property claimed by the third person, and the property claimed shall be described in the undertaking.

(c) The undertaking shall be filed in the action in which the execution issued and a copy thereof served upon the judgment creditor or his attorney in the action.

(d) Within 10 days after the service of the copy of the undertaking, the judgment creditor may object to the undertaking on the ground of inability of the sureties, or either of them, to pay the sum for which they become bound in the undertaking, and upon the ground that the estimated value of property therein is less than the market value of the property claimed. The objection to the undertaking shall be made in writing, specifying the ground or grounds of objection, and if the objection is made to the undertaking that the estimated value therein is less than the market value of the property claimed, the objection shall specify the judgment creditor's estimate of the market value of the property claimed. The written objection shall be served upon the third person giving the undertaking and claiming the property therein described.

(e) Exceptions to the sufficiency of the sureties and their justification may be had or taken in the same manner as upon an undertaking on attachment. If they, or others in their place, fail to justify at the time and place appointed, the officer shall not release the property. If objection is not taken as provided in this section, the judgment creditor is deemed to have waived objections to the sufficiency of the sureties.

(f) When objection is made to the undertaking upon the ground that the estimated value of the property claimed, as stated in the undertaking, is less than the market value of the property claimed, the third person may accept the estimated value stated by the judgment creditor in the objection, and a new undertaking may be at once filed with the judgment creditor's estimate stated therein as the estimated value, and objection may not thereafter be made upon that ground. If the judgment creditor's estimate of the market value is not accepted, the value of the property shall be determined as provided in section 566 of this title.

(g) The sureties shall justify upon the undertaking as required by section 431 of Title 3.

(h) The undertaking shall become effective for the purpose herein specified 10 days after service of a copy thereof on the judgment

creditor, unless objection to the undertaking is made as herein provided, and if objection is made to the undertaking filed and served, then the undertaking shall become effective for such purposes when an undertaking is given as herein provided.

§ 569. Attachments and executions on mortgaged personal property

(a) Except as provided in subsection (b) of this section, before mortgaged personal property is taken under attachment or execution issued at the suit of a creditor of the mortgagor, the officer shall pay or tender to the mortgagee the amount of the mortgage debt and interest or deposit the amount thereof with the registrar of property, payable to the order of the mortgagee.

(b) When an attachment or execution creditor presents to the officer a verified statement that the mortgage is void or invalid for reasons therein specified and delivers to the officer a good and sufficient indemnity bond in double the amount of the mortgage debt or double the value of the mortgaged property, as the officer may determine and require, the officer shall take the property, and, in the case of an execution, sell it in the manner provided by law.

The bond shall be made to both the officer and the mortgagee and shall indemnify them and each of them for the taking of the property against loss, liability, damages, costs, and counsel fees.

(c) When the property is taken after payment or tender of deposit as provided for in subsection (a) of this section and is sold under process the officer shall apply the proceeds of the sale as follows:

(1) to the repayment of the sum paid to the mortgagee, with interest from the date of the payment; and

(2) the balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

(d) When the property is taken after presentation to the officer of the verified statement and bond mentioned in subsection (b) of this section and is sold under process the officer shall apply the proceeds of the sale as follows:

(1) to the satisfaction of the amount specified in the process including interest and costs; and

(2) the balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

Subchapter III—Proceedings Supplemental to Execution

§ 601. Examination of judgment debtor

When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the marshal, is returned unsatisfied in whole or in part, the judgment creditor, at any time after the return is made, is entitled to an order from the judge of the court, requiring the judgment debtor to appear and answer concerning his property before the judge, or a referee appointed by him, at a time and place specified in the order.

§ 602. Order for judgment debtor to appear; arrest; bail

(a) After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of the judge of the court that a judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, the judge may, by an order, require the judgment debtor to appear at a specified time and place before the judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution.

(b) Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appears to him that there is danger of the debtor's absconding, order the marshal to arrest the debtor and bring him before the judge. Upon being brought before the judge, the judgment debtor may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the judge or referee, as may be directed during the pendency of proceedings and until the final termination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into the undertaking he may be committed to jail.

§ 603. Payment by debtor of judgment debtor

After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the marshal the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and the marshal's receipt is a sufficient discharge for the amount so paid.

§ 604. Examination of debtor of judgment debtor

After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of the judgment debtor, or is indebted to him in an amount exceeding $50, the judge may, by an order, require the person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

§ 605. Witnesses

Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this subchapter, in the same manner as upon the trial of an issue.

§ 606. Order applying property toward satisfaction of judgment

The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of the debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment; but an order may not be made as to money or property in the hands of any other person or claimed to be due from him to the judgment debtor, if the person claims an interest in the property adverse to the judgment debtor or denies the debt.

§ 607. Third person claiming interest or denying debt; action by judgment creditor

If it appears that a person, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the judgment creditor may maintain an action against that person for the recovery of the interest or debt; and the judge or referee may, by order, forbid a transfer or other disposition of the interest or debt, until an action can be commenced and prosecuted to judgment. The order may be modified or vacated by the judge or referee granting it, or the court in which the action is brought, at any time, upon such terms as may be just.

§ 608. Contempt

If any person, party, or witness disobeys an order of the referee, properly made, in the proceedings before him under this subchapter, he may be punished by the court or judge ordering the reference, for a contempt.

Subchapter IV—Judgments Against Joint Debtors

§ 631. Summoning unserved joint debtors to show cause why they should not be bound by judgment

When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in section 169 of this title, those who were not originally served with the summons, and did not appear in the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

§ 632. Form and service of summons

The summons specified in section 631 of this title shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and be returnable within the same time, as the original summons. It is not necessary to file a new complaint.

§ 633. Affidavit to accompany summons

The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon.

§ 634. Answer

Upon such a summons, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, by reason of any defense existing at the commencement of the action.

§ 635. Pleadings

If the defendant, in his answer, denies the judgment, or sets up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he denies his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, constitute the written allegations, subject to the right of the parties to amend their pleadings as in other cases.

§ 636. Trial; amount of verdict or decision

The issues formed may be tried as in other cases; but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict is found or a decision rendered against him, it may not be for an amount exceeding the amount remaining unsatisfied on the original judgment, with interest thereon.

Subchapter V—Discharge of Persons Imprisoned on Civil Process

§ 661. Persons confined on execution issued on judgment; conditions for discharge

Any person confined in jail, on an execution issued on a judgment rendered in a civil action, shall be discharged therefrom upon the conditions specified in this subchapter.

§ 662. Notice of application for discharge

Such person must cause a notice in writing to be given to the plaintiff, his agent, or attorney, that at a certain time and place he will apply to the judge of the court from which the execution issued for the purpose of obtaining a discharge from his imprisonment.

§ 663. Service of notice

The notice must be served upon the plaintiff, his agent, or attorney, one day at least before the hearing of the application.

§ 664. Examination before judge

At the time and place specified in the notice, the person shall be taken before the judge, who shall examine him under oath concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and the judge may also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

§ 665. Written interrogatories to prisoner

The plaintiff in the action may, upon the examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they shall, if required by him, be proposed and answered in writing, and the answer shall be signed and sworn to by the prisoner.

§ 666. Oath of prisoner

If, upon the examination, the judge is satisfied that the prisoner is entitled to his discharge, he shall administer to him the following oath, to wit:

"I, ——— ———, do solemnly swear that I have not any estate, real or personal, to the amount of $50, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to hinder, delay, or defraud my creditors, so help me God."

§ 667. Order for discharge

After administering the oath, the judge shall issue an order that the prisoner be discharged from custody, and the officer, upon the service of the order, shall discharge the prisoner forthwith, if he is imprisoned for no other cause.

§ 668. Frequency of applications for discharge

If the judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding 10 days, in the same manner as above provided, and the same proceedings shall thereupon be had.

§ 669. Finality of discharge

The prisoner, after being so discharged, is forever exempted from arrest or imprisonment for the same debt, unless he is convicted of having willfully sworn falsely upon his examination before the judge, or in taking the oath prescribed in section 666 of this title.

§ 670. Judgment remains in force

The judgment against any prisoner who is discharged remains in full force against any estate which may then or at any time afterward belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner, in like manner as if he had never been committed.

§ 671. Discharge on order of plaintiff

The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

§ 672. Discharge on failure of plaintiff to pay for support of prisoner

If a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent, or attorney shall advance to the jailer, on the commitment, sufficient money for

the support of the prisoner for one week, and shall make the like advance for every successive week of his imprisonment; and in case of failure to do so, the jailer shall forthwith discharge the prisoner from custody, and the discharge has the same effect as if made by order of the creditor.

CHAPTER 17—PROCEDURE IN MAGISTRATES' COURTS

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—COMMENCEMENT OF ACTIONS; SERVICE OF PROCESS

SUBCHAPTER III—PLEADINGS

SUBCHAPTER IV—PROVISIONAL REMEDIES

Article A—Civil Arrest and Bail

Article B—Claim and Delivery of Personal Property

Article C—Attachment

SUBCHAPTER V—TRIAL

SUBCHAPTER VI—JUDGMENT

SUBCHAPTER VII—EXECUTION

SUBCHAPTER VIII—APPEALS TO DISTRICT COURT

Subchapter I—General Provisions

§ 711. Provisions applicable to magistrates' courts

(a) Magistrates' courts being courts of limited jurisdiction, this title, other than this chapter, applies to magistrates' courts and the proceedings therein only to the extent to which it is specifically made applicable by this chapter.

(b) The Federal Rules of Civil Procedure do not apply to magistrates' courts unless:

(1) they are incorporated by reference in a section of this title and the section is applicable to the magistrates' courts under this chapter; or

(2) they are specifically made applicable by this chapter.

(c) When a provision of law or of the Federal Rules of Civil Procedure governing the district court is applicable to the magistrates' courts, references therein to the court or judge shall be deemed to refer to the magistrate; references to the marshal shall be deemed to refer to the constable; and references to the clerk of the district court shall be deemed to refer to the magistrate. With respect to the Federal Rules of Civil Procedure, the provisions of subsection (b) of section 1 of this title apply.

§ 712. Rules of procedure in magistrates' courts

(a) The district court may from time to time make and amend rules governing civil procedure in the magistrates' courts not inconsistent with law.

(b) Each magistrate may from time to time make and amend rules governing civil procedure in his court not inconsistent with law or with the rules adopted by the district court under subsection (a) of this section. Copies of rules and amendments so made by a magistrate shall be filed promptly with the district court.

§ 713. Territorial limits of process

All process of magistrates' courts may be served anywhere within the territorial limits of the Canal Zone and, when a statute so provides, beyond the territorial limits of the Canal Zone.

§ 714. Filling blanks in summons and other papers

The summons, execution, and every other paper made or issued by a magistrate's court, except a subpoena, shall be issued without a blank left to be filled by another, otherwise it is void.

§ 715. Receipt and disposition of money

Magistrates shall receive from the constables all money collected on any process or order issued from their courts, and shall pay it, and all money paid to them in their official capacity, over to the parties entitled or authorized to receive it, without delay.

§ 716. Surety bonds and undertakings

Chapter 11 of Title 3, relating to surety bonds and undertakings, applies in civil actions in the magistrates' courts.

§ 717. Dockets

(a) Each magistrate shall keep a book, denominated a "docket," in which he shall enter:

(1) the title of every action or proceeding;

(2) the object of the action or proceeding; and if a sum of money is claimed, the amount thereof;

(3) the date of the summons, and the time of its return; and if an order to arrest the defendant is made, or a writ of attachment is issued, a statement of the fact;

(4) the time when the parties, or either of them, appear, or their nonappearance, if default is made; a minute of the pleadings and motions; if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleadings;

(5) every adjournment, stating on whose application and to what time;

(6) the judgment of the court, specifying the costs included and the time when rendered;

(7) the issuing of the execution, when issued and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the magistrate, when and by whom; and

(8) the receipt of a notice of appeal, if any is given, and of the appeal bond.

(b) The several particulars specified in subsection (a) of this section shall be entered under the title of the action to which they relate, and, unless otherwise provided, at the time when they occur. The entries in a magistrate's docket, or a transcript thereof, certified by the magistrate, or his successor in office, are prima facie evidence of the facts so stated.

(c) A magistrate shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index, in the alphabetical order of the first letter of the family name.

§ 718. Computation of time

Rule 6(a) of the Federal Rules of Civil Procedure applies to the computation of time in civil actions in the magistrates' courts.

§ 719. Service and filing of pleadings and other papers; motions; notice of orders or judgments

The following provisions of the Federal Rules of Civil Procedure apply to the magistrates' courts:

(1) Rule 5, relating to the service and filing of pleadings and other papers;

(2) Rule 6(d), relating to the time for service of motions and affidavits;

(3) Rule 6(e), relating to additional time after service by mail;

(4) Rule 7(b)(1), relating to motions; and

(5) Rule 77(d), relating to notice of orders or judgments.

§ 720. Limitation of actions

Sections 41–45 and 71–82 of this title apply to the magistrates' courts to the extent to which they refer to the limitation of actions which are within the jurisdiction of the magistrates' courts.

§ 721. Parties; appearance in person or by attorney; other provisions

(a) Parties in magistrates' courts may appear and act in person or by attorney. A corporation may appear and act only by an attorney at law.

(b) Sections 121–130 of this title and Rules 17–25 of the Federal Rules of Civil Procedure apply to the magistrates' courts.

§ 722. Particular actions; miscellaneous provisions

(a) Part 2 of this title, relating to particular proceedings, applies to magistrates' courts only as specifically provided therein.

(b) Sections 3–9 of this title apply to the magistrates' courts.

Subchapter II—Commencement of Actions; Service of Process

§ 741. Commencement of action

An action in a magistrate's court is commenced by filing a complaint.

§ 742. Time for issuance of summons

The court shall indorse on the complaint the date upon which it was filed, and at any time within one year thereafter the plaintiff may have summons issued.

§ 743. Waiver of summons

At any time after the complaint is filed, the defendant may, in writing, or by appearing and pleading, waive the issuing of summons.

§ 744. Form of summons

The summons shall be directed to the defendant, signed by the magistrate, and shall contain:

(1) the title of the court, name of the subdivision in which the action is brought, and the names of the parties thereto;

(2) a direction that the defendant appear and answer before the magistrate, as specified in section 745 of this title;

(3) a notice that unless the defendant so appears and answers, the plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or will apply to the court for the relief demanded in the complaint; and

(4) the name of plaintiff's attorney, if he appears by attorney.

§ 745. Time for appearance of defendant

The time specified in the summons for the appearance of the defendant shall be as follows:

(1) if an order of arrest is indorsed upon the summons, forthwith;

(2) in all other cases, within 5 days, if the summons is served in the subdivision in which the action is brought; within 10 days, if served in another subdivision.

§ 746. Alias summons

(a) If the summons is returned without being served upon any or all of the defendants, or if it has been lost, the magistrate, upon the demand of the plaintiff, may issue an alias summons, in the same form as the original, except that he may fix the time for the appearance of the defendant at a period not to exceed 90 days from its date.

(b) The magistrate may, within a year from the date of the filing of the complaint, issue as many alias summonses as may be demanded by the plaintiff.

§ 747. Service of summons

(a) The summons may be served by the constable of any magistrate's court or by any other person of the age of 18 years or over not a party to the action.

(b) Sections 161–170 and 713 of this title and subdivisions (d), (e), (g), and (h) of Rule 4 of the Federal Rules of Civil Procedure apply to the service and return of summons of the magistrates' courts.

Subchapter III—Pleadings

§ 771. Form of pleadings

Pleadings in magistrates' courts:

(1) are not required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended;

(2) may, except the complaint, be oral or in writing;

(3) need not be verified, unless otherwise provided in this chapter;

(4) if in writing, shall be filed with the magistrate; and

(5) if oral, shall be entered in substance in the docket.

§ 772. Pleadings allowed; motions

(a) The pleadings are:

(1) the complaint by the plaintiff; and

(2) the answer by the defendant.

(b) Demurrers to the complaint or to the answer may not be used. In lieu thereof, the defendant may make a motion to dismiss the complaint or the plaintiff may make a motion to strike the answer.

§ 773. Complaint

The complaint in magistrates' courts is a concise statement, in writing, of the facts constituting the plaintiff's cause of action; or a copy of the account, note, bill, bond, or instrument upon which the action is based.

§ 774. Motion to dismiss complaint

(a) At any time before answering, the defendant may make a motion to dismiss the complaint, asserting any of the following defenses or objections which appear upon the face of the complaint:

(1) lack of jurisdiction over the subject matter;

(2) lack of jurisdiction over the person;

(3) improper venue;

(4) insufficiency of process;

(5) insufficiency of service of process;
(6) failure to state a claim upon which relief can be granted;
(7) failure to join an indispensable party; or
(8) that the complaint is so vague or ambiguous that the defendant cannot reasonably be required to frame an answer.

(b) The motion to dismiss shall distinctly specify the grounds upon which any of the defenses or objections to the complaint are taken. The defenses or objections may be taken to the whole complaint or to any claim for relief stated therein.

(c) Any defense or objection to the complaint which may be made by motion to dismiss, other than that it is so vague and ambiguous that the defendant cannot reasonably be required to frame an answer, may be made either by motion to dismiss or in the answer, at the option of the defendant.

§ 775. Answer; counterclaims

(a) The answer may contain a denial of any or all of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense or a counterclaim upon which an action might be brought by the defendant against the plaintiff, or his assignor, in a magistrate's court.

(b) Section 202 of this title, relating to counterclaims in case of death or assignment, applies to the magistrates' courts.

§ 776. Failure to set up counterclaim

If the defendant omits to set up, as a counterclaim, a claim which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim, and does not require for its adjudication the presence of third parties of whom the court can not acquire jurisdiction, and upon which an action might have been brought in the magistrate's court by the defendant against the plaintiff or his assignor, neither the defendant nor his assignee may afterwards maintain an action against the plaintiff therefor.

§ 777. Motion to strike answer; objections and defenses to answer

(a) When the answer contains new matter in avoidance, or constituting a defense or a counterclaim, the plaintiff may, at any time before the trial, make a motion to strike the answer for insufficiency, stating therein the grounds of the motion.

(b) Whether or not the plaintiff makes a motion to strike the answer, the averments in the answer shall be taken as denied or avoided, and the plaintiff may assert at the trial any objection or defense in law or in fact to the answer.

§ 778. Proceedings on motions

The proceedings on motions are as follows:

(1) if the motion to dismiss the complaint is granted, the plaintiff may amend his complaint within such time, not exceeding two days, as the court allows;

(2) if the motion to dismiss the complaint is denied, the defendant may answer forthwith;

(3) if the motion to strike the answer is granted, the defendant may amend his answer within such time, not exceeding two days, as the court allows; and

(4) if the motion to strike the answer is denied, the action shall proceed as if no motion had been interposed.

§ 779. Amendment of pleadings

(a) At any time before the conclusion of the trial, either party may amend any pleading. If the amendment is made after the issue, and it appears to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of the amendment, the adjournment shall be granted. When an adjournment is granted, the court may also require the payment of costs to the adverse party as a condition to the allowance of the amendment made after issue is joined.

(b) When a pleading is amended, the adverse party may answer or make a motion with respect to it within such time as the court allows, not exceeding five days after notice of the amendment.

§ 780. Admission of genuineness of documents contained in pleadings

If the complaint or answer contains a copy or consists of the original of the written obligation upon which the action is brought or the defense founded, the genuineness and due execution of the instrument are deemed admitted, unless the answer denying the same is verified, or unless the plaintiff, within two days after the service on him of the answer, files with the magistrate an affidavit denying the same, and serves a copy thereof on the defendant.

§ 781. Order for inspection of account or document

When the cause of action or counterclaim arises upon an account or instrument for the payment of money only, the court, at any time before the trial, may order the original to be exhibited to the inspection of, and a copy to be furnished to, the adverse party, at such time as may be fixed in the order. If the order is not obeyed, the account or instrument may not be given in evidence.

§ 782. Signing and verification of pleadings

Rule 11 of the Federal Rules of Civil Procedure applies to the signing and verification of written pleadings in the magistrates' courts.

Subchapter IV—Provisional Remedies

Article A—Civil Arrest and Bail

§ 801. Order of arrest; grounds for arrest

(a) A person may not be arrested in a civil action in a magistrate's court, except as prescribed in this Code.

(b) An order to arrest the defendant may be indorsed by the magistrate on a summons and the defendant may be arrested thereon by the constable at the time of serving the summons, and brought before the magistrate, and there detained until duly discharged:

(1) in an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Canal Zone with intent to defraud his creditors;

(2) in an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by one who received it in a fiduciary capacity;

(3) when the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or

(4) when the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors.

§ 802. Affidavit and undertaking for order of arrest

(a) Before an order for an arrest is made, the party applying shall prove to the satisfaction of the magistrate by the affidavit of himself, or another person, the facts upon which the application is founded.

(b) The plaintiff shall also execute and deliver to the magistrate a written undertaking in the sum of $300, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the arrest is wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking.

§ 803. Arrested defendant taken before magistrate; bail

(a) The defendant, immediately upon being arrested, shall be taken before the magistrate who made the order. If the magistrate is absent or unable to try the action or disqualified, the officer shall immediately take the defendant before the magistrate of another subdivision, who shall take jurisdiction of the action and proceed thereon, as if the summons had been issued and the order of arrest made by him.

(b) The defendant shall be discharged from arrest upon giving bail in, or upon depositing, an amount fixed by the magistrate, and sections 248–265 of this title apply.

§ 804. Notice of arrest to plaintiff

The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

§ 805. Custody of defendant

The officer making the arrest shall keep the defendant in custody until he is discharged by law.

Article B—Claim and Delivery of Personal Property

§ 821. Procedure for claim and delivery

In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons or at any time thereafter before answer, claim the delivery of the property to him. Sections 292–304 of this title apply to the claim when made in magistrates' courts.

Article C—Attachment

§ 831. Actions in which attachment authorized; affidavit

A writ to attach the property of the defendant shall be issued by the magistrate at the time of or after issuing summons in actions in which the sum claimed exclusive of interest exceeds $25, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in section 342 of this title.

§ 832. Undertaking on attachment; exceptions to sureties

Before issuing the writ, the magistrate shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, in a sum not less than $50 nor more than $300, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

At any time after the issuing of the attachment, but not later than five days after the notice of its levy, the defendant may except to the

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sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to they shall justify in the manner and within the time provided in section 343 of this title, otherwise the magistrate shall order the writ of attachment vacated.

§ 833. Direction and command of writ; more than one defendant; service outside subdivision

(a) The writ shall be directed to the constable and require him to attach and safely keep all the property of the defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand against the defendant, the amount of which shall be stated in conformity with the complaint, unless the defendant, whose property has been or is about to be attached, gives him security by the undertaking of two sufficient sureties in an amount sufficient to satisfy the demand against the defendant besides costs; in which case to take such undertaking.

(b) If the action is against more than one defendant, any defendant whose property has been or is about to be attached may give the constable the undertaking, and the constable shall take the same, and the undertaking shall not subject the defendant to or be answerable for any demand against any other defendant, nor shall the constable thereby be prevented from attaching or be obliged to release from attachment, any property of any other defendant. The defendant, at the time of giving the undertaking to the constable, shall file with the constable a statement duly verified under oath, wherein he shall aver and declare that the other defendant or defendants in the action in which the undertaking was given has or have not any interest or claim of any nature whatsoever in or to the property. The statement shall further contain the character of the defendant's title and the manner in which he acquired title to the attached property.

§ 834. Application of other provisions

Sections 345–364 of this title apply to attachments issued in magistrates' courts. For this purpose, the reference in section 346 to the undertaking provided for by section 344 of this title shall be deemed to refer to the undertaking provided for by section 833 of this title.

Subchapter V—Trial

§ 861. Notice of trial or hearing

(a) When all parties served with process have appeared, or some of them have appeared and the remaining defendants have made default, the magistrate shall fix the day for the trial of the cause or hearing on a motion, and give notice thereof to the parties who have appeared.

(b) The notice shall be in writing, signed by the magistrate, and in substantially the following form:

In the Magistrate's Court, Subdivision of ———, Canal Zone.
——— plaintiff, *v.* ——— defendant

To ——— plaintiff, or ——— attorney for plaintiff, and to ——— defendant, or ——— attorney for defendant:

You and each of you will please take notice that the undersigned magistrate before whom the above-entitled cause is pending, has set for hearing the motion of ———, filed in said cause (or has set the said cause for trial, as the case may be), before me at ———, at ——— o'clock —m., on the —— day of ———, 19—.

Dated this ——— day of ———, 19—.

(Signed) ——— ———,
Magistrate.

(c) The notice shall be served upon all parties who have appeared in the manner provided by section 719 of this title. It shall be served at least 10 days before the trial or hearing if served by mail, and at least 5 days before the trial or hearing if personally served.

(d) The magistrate shall enter on his docket the date of trial or hearing. When the notice is served by mail the magistrate shall enter on his docket the date of mailing, and the entry shall be prima facie evidence of the fact of service.

§ 862. Time for commencement of trial

(a) Unless postponed, as provided in this subchapter, or unless transferred to another subdivision, the trial of the action shall commence at the expiration of one hour from the time specified in the notice provided for by section 861 of this title, and be continued, without adjournment for more than 24 hours at any one time, until all the issues therein are disposed of.

(b) The parties are entitled to one hour in which to appear after the time fixed in the notice mentioned in section 861 of this title, but are not bound to remain longer than that time unless both parties have appeared and the magistrate being present is engaged in the trial of another cause.

(c) If either party fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party.

§ 863. Postponement by court

The court may, of its own motion, postpone the trial:

(1) for not more than one day, if, at the time fixed by law or by an order of the court for the trial, the court is engaged in the trial of another action; or

(2) for not more than two days, if, by an amendment of the pleadings, or the allowance of time to make an amendment or to plead, a postponement is rendered necessary.

§ 864. Postponement by consent

By consent of the parties given in writing or in open court, the court may postpone the trial to a time agreed upon by the parties.

§ 865. Postponement on application of party

The trial may be postponed upon the application of either party, for a period not more than four months, under the following conditions:

(1) The party making the application shall prove, by his own oath or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial, and shall show in what respect the testimony expected is material, and that he has used due diligence to procure it and has been unable to do so.

(2) If the application is on the part of the plaintiff, and the defendant is under arrest, a postponement for more than three hours discharges the defendant from custody, but the action may proceed notwithstanding, and the defendant is subject to arrest on execution in the same manner as if he had not been discharged.

(3) If the application is on the part of a defendant under arrest, before it can be granted he shall execute an undertaking, with two or more sufficient sureties, to be approved by, and in a sum to be fixed by, the magistrate, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action, not exceeding the amount specified in the undertaking. When the undertaking is filed, the magistrate shall order the defendant to be discharged from custody.

(4) The party making the application shall, if required by the adverse party, consent that the testimony of any witness of the adverse party, who is in attendance, may be then taken by deposition before the magistrate, and that the testimony so taken may be read on the trial, with the same effect, and subject to the same objection, as if the witness was produced.

(5) The court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial may not be postponed.

§ 866. Adjournment; undertaking

Unless by consent, an adjournment may not be granted for a period longer than 10 days, upon the application of either party, except upon condition that that party file an undertaking, in an amount fixed by the magistrate, with two sureties to be approved by the magistrate, to the effect that he will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

§ 867. Mode of trial of issues

Issues of law and issues of fact shall both be tried by the court.

§ 868. Evidence

Part 3 of this title, relating to evidence, applies to the magistrates' courts unless otherwise specifically provided therein.

Subchapter VI—Judgment

§ 891. Default judgment

(a) If the defendant fails to appear and to answer or move to dismiss the complaint within the time specified in the summons, then, upon proof of service of summons:

(1) if the action is based upon a contract, and is for the recovery of money or damages only, the court shall render judgment in favor of plaintiff for the sum specified in the summons; or

(2) in all other actions the court shall hear the evidence offered by the plaintiff, and render judgment in his favor for such sum not exceeding the amount stated in the summons, as appears by the evidence to be just.

(b) In the following cases the same proceedings shall be had and judgment rendered in like manner as if the defendant had failed to appear and answer or move to dismiss the complaint:

(1) if the complaint has been amended, and the defendant fails to answer it, as amended, within the time allowed by the court;

(2) if the motion to dismiss the complaint is denied, and the defendant fails to answer within the time allowed by the court, not to exceed five days; or

(3) if the motion to strike the answer is granted, and the defendant fails to amend the answer within the time allowed by the court.

§ 892. Judgment of dismissal without prejudice

(a) Judgment that the action be dismissed, without prejudice to a new action, may be entered with costs, in the following cases:

(1) when the plaintiff voluntarily dismisses the action before it is finally submitted; or fails to prosecute the action to judgment with reasonable diligence;

(2) when the plaintiff fails to appear at the time fixed for trial or hearing, or at the time to which the action has been postponed, or within one hour thereafter; or

(3) when, after a motion to dismiss the complaint has been granted, the plaintiff fails to amend it within the time allowed by the court.

(b) If a counterclaim has been pleaded or affirmative relief sought by the defendant in his answer, the action shall not be dismissed against the defendant's objection unless the counterclaim or request for affirmative relief can remain pending for independent adjudication by the court.

(c) If a provisional remedy has been allowed and the action is dismissed under this section, the undertaking shall thereupon be delivered by the magistrate to the defendant who may have his action thereon.

§ 893. Judgment of dismissal for failure to bring to trial

Judgment of dismissal shall be entered if the plaintiff fails to bring the action to trial within two years after the case is brought to an issue of law or fact, except where the parties have stipulated in writing that the time may be extended.

§ 894. Affirmative judgment for defendant on counterclaim

Affirmative judgment may be rendered for the defendant on his counterclaim if the defendant proves that he is entitled to more than the plaintiff has proven or if the plaintiff fails to prove that he is entitled to any judgment.

§ 895. Remission of amount exceeding jurisdiction

When the amount found due to either party exceeds the sum for which the magistrate is authorized to enter judgment, that party may remit the excess, and judgment may be rendered for the residue.

§ 896. Time for entry of judgment

Judgment shall be entered within 30 days after the submission of the case to the court.

§ 897. Form and entry of judgment; arrest; notice of judgment

The judgment of a magistrate shall be entered substantially in the form required by section 1703 of this title in an action to recover the possession of personal property. Where the defendant is subject to arrest and imprisonment thereon the fact shall be stated in the judgment. A judgment has no effect for any purpose until so entered.

Notice of the rendition of judgment shall be given to the parties to the action in writing signed by the magistrate. The notice shall be substantially in the form of the abstract of judgment required in section 898 of this title. The notice shall be served upon the parties in the manner provided by section 719 of this title within five days after rendition of the judgment.

§ 898. Abstract of judgment

The magistrate, on the demand of a party in whose favor judgment is rendered, shall give him an abstract of the judgment in substantially the following form (filling blanks according to the facts):

Canal Zone, Magistrate's Court, Subdivision of ———, ———, plaintiff, v. ———, defendant. Judgment entered for plaintiff (or defendant) for $———, on the ——— day of ———.

I certify that the foregoing is a correct abstract of a judgment rendered in said action in this court.

——— ———, Magistrate.

Date of abstract ———.

§ 899. Relief from judgment or order; clerical mistakes; harmless error

(a) On such terms as may be just, and on payment of costs, the court may relieve a party from a judgment by default taken against him by his mistake, inadvertence, surprise, or excusable neglect, but the application for relief shall be made within 10 days after notice of the entry of the judgment and upon an affidavit showing good cause therefor.

(b) Upon motion of the injured party and notice to the adverse party the magistrate may correct clerical mistakes in his judgment as entered, so as to conform to the judgment ordered. The magistrate may set aside a void judgment upon motion of either party to the action after notice to the adverse party, and thereupon the action shall be treated as if judgment had not been entered.

(c) Rule 61 of the Federal Rules of Civil Procedure, relating to harmless error, applies to the magistrates' courts.

§ 900. Confession of judgment or submission of controversy without action

(a) Judgments upon confession may be entered as provided by section 515 of this title in either magistrate's court specified in the confession.

(b) Section 516 of this title, relating to submission of a controversy without action, applies to the magistrates' courts.

§ 901. Offer of judgment before trial

If the defendant, at any time before the trial, offers in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued. If the plaintiff does not accept the offer before the trial, and fails to recover in the action a sum in excess of the offer, he may not recover costs incurred after the offer, but costs shall be adjudged against him, and, if he recovers, be deducted from his recovery. The offer and failure to accept it may not be given in evidence nor affect the recovery, otherwise than as to costs.

§ 902. Other provisions governing judgments

Sections 511–514 and 631–636 of this title apply to judgments of the magistrates' courts.

Subchapter VII—Execution

§ 921. Time for issuance of execution

Execution for the enforcement of a judgment of a magistrate's court may be issued by the magistrate who entered the judgment, or his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of judgment.

§ 922. Stay of execution

The court, or the magistrate thereof, may stay the execution of any judgment, including any judgment in a case of forcible entry or unlawful detainer, for a period not exceeding 10 days.

§ 923. Contents of execution

The execution shall be directed to the constable, and be subscribed by the magistrate and bear date the day of its delivery to the officer. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the magistrate before whom, and of the subdivision where, and the time when it was rendered; the amount of judgment, if it is for money; and, if less than the whole is due, the true amount due thereon. It shall contain, in like cases, simi-

lar directions to the constable, as are required by the provisions of chapter 15 of this title, in an execution to the marshal.

§ 924. Renewal of execution

An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date thereof, and subscribed by the magistrate. The renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

§ 925. Duty of constable; execution of writ

The constable to whom the execution is directed shall execute it in the same manner as the marshal is required by the provisions of chapter 15 of this title to proceed upon execution directed to him; and the constable, when the execution is directed to him, is vested for that purpose with the same powers as those of the marshal.

§ 926. Proceedings supplemental to execution

Sections 601–608 of this title, relating to proceedings supplemental to execution, apply to the magistrates' courts.

§ 927. Discharge of persons imprisoned on civil process

Sections 661–672 of this title, relating to the discharge of persons imprisoned on civil process, apply to the magistrates' courts.

Subchapter VIII—Appeals to District Court

§ 951. Time for appeal; notice of appeal

Any party dissatisfied with the judgment rendered in a civil action in a magistrate's court may appeal therefrom to the district court, at any time within 30 days after notice of the rendition of the judgment.

The appeal is taken by filing a notice of appeal with the magistrate, and serving a copy on the adverse party. The notice shall state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part, and whether the appeal is taken on questions of law or fact or both.

§ 952. Appeal on question of law

When a party appeals to the district court on a question of law alone, he shall, within 10 days after notice of the rendition of judgment, prepare a statement of the case and file it with the magistrate. The statement shall contain the grounds upon which the party intends to rely upon the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within 10 days after receiving notice that the statement is filed, the adverse party, if dissatisfied with it, may file amendments. The proposed statement and amendments shall be settled by the magistrate, and if an amendment is not filed the original statements stand as adopted. The statement thus adopted or as settled by the magistrate, with a copy of the docket of the magistrate, and all motions filed with him by the parties during the trial, and the notice of appeal, may be used on the hearing of the appeal before the district court.

§ 953. Appeal on questions of fact, or law and fact; trial de novo

When a party appeals to the district court on questions of fact, or on questions of both law and fact, a statement need not be made, but the action shall be tried de novo in the district court.

§ 954. Filing of papers on appeal; benefit of legal objections

(a) Upon receiving the notice of appeal, and on payment of the fees payable on appeal under sections 348 and 349 of Title 3 and not

included in the judgment, and filing an undertaking as required in section 955 of this title, and after settlement or adoption of the statement, if any, the magistrate shall, within five days, transmit to the clerk of the district court:

(1) if the appeal is on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal, and the undertaking filed; or

(2) if the appeal is on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and all other papers filed in the cause, the notice of appeal, and the undertaking filed.

(b) The magistrate may be compelled by the district court, by an order entered upon motion, to transmit the papers, and may be fined for neglect or refusal to transmit them. A certified copy of the order may be served on the magistrate by the party or his attorney.

(c) In the district court, either party may have the benefit of all legal objections made in the magistrate's court.

§ 955. Undertaking on appeal

(a) An appeal from a magistrate's court is not effectual for any purpose, unless an undertaking is filed with two or more sureties in the sum of $25 for the payment of the costs on the appeal, or, if a stay of proceedings is claimed, in the sum of $25 plus a sum equal to the amount of the judgment, including costs, when the judgment is for the payment of money; or plus twice the value of the property including costs, when the judgment is for the recovery of specific personal property. The undertaking shall be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs, if the appeal is withdrawn or dismissed, or the amount of any judgment and all costs that may be recovered against him in the action in the district court.

(b) When the action is for the recovery of or to enforce or foreclose a lien on specific personal property, the undertaking shall be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal is withdrawn or dismissed, or any judgment and costs that may be recovered against him in the action in the district court, and will obey any order made by the court therein.

(c) When the judgment appealed from directs the delivery of possession of real property, the execution of the same may not be stayed unless a written undertaking is executed on the part of the appellant, with two or more sureties, to the effect that, during the possession of the property by the appellant, he will not commit, or suffer to be committed any waste thereon, and that if the appeal is dismissed or withdrawn, or the judgment affirmed, or judgment is recovered against him in the action in the district court, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof; or that he will pay any judgment and costs that may be recovered against him in the action in the district court, not exceeding a sum to be fixed by the magistrate of the court from which the appeal is taken and specified in the undertaking.

(d) A deposit with the magistrate of the sum of $50 plus the amount of the judgment, including all costs appealed from, or plus the value of the property, including all costs, in actions for the recovery of specific personal property, is equivalent to the filing of the undertaking, and in such cases the magistrate shall transmit the money to the clerk of the district court to be paid out by him on the order of the court.

§ 956. Filing of undertaking; exception to and justification of sureties

The undertaking on appeal shall be filed within five days after the filing of the notice of appeal, and notice of the filing of the undertaking shall be given to the respondent. The adverse party may except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before the magistrate within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal shall be regarded as if no such undertaking had been given.

§ 957. Stay of proceedings on filing undertaking

If an execution is issued, on the filing of the undertaking staying proceedings, the magistrate shall, by order, direct the officer to stay all proceedings on it. The officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver it to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees are not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the fees.

§ 958. Powers of district court on appeal

(a) Upon an appeal heard upon a statement of the case, the district court may review all orders affecting the judgment appealed from, and may set aside, or confirm, or modify any or all of the proceedings, subsequent to and dependent upon the judgment, and may, if necessary or proper, order a new trial.

(b) When the action is tried de novo on appeal, the trial shall be conducted in all respects as other trials in the district court. The provisions of this title as to changing the place of trial, and all the provisions as to trials in the district court, are applicable to trials on appeal in the district court.

(c) For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the district court, after notice, may order the appeal to be dismissed, with costs; and if it appears to the court that the appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding 25 percent of the judgment appealed from.

(d) Judgments rendered in the district court on appeal have the same force and effect and may be enforced in the same manner as judgments in actions commenced in the district court.

§ 959. Dismissal of appeal for failure to bring to trial

An action appealed from the magistrate's court to the district court may not be further prosecuted, and further proceedings may not be had therein, and all appealed actions shall be dismissed by the district court, on its own motion, or on the motion of any party interested therein whether named in the complaint as a party or not, where the appealing party fails to bring the appeal to trial within one year from the date of filing the appeal in the district court, unless the time is otherwise extended by a written stipulation by the parties to the action filed with the clerk of the district court.

§ 960. Dismissal of appeal; return of papers; jurisdiction of magistrate

Upon dismissal of the appeal the clerk of the district court shall return all the papers to the court from which the appeal was taken, and the magistrate shall have jurisdiction the same as if an appeal had not been taken.

PART 2—PARTICULAR PROCEEDINGS

CHAPTER 51—DECLARATORY JUDGMENTS

§ 1501. Declaratory judgments generally

Sections 2201 and 2202 of Title 28, United States Code, apply to declaratory judgments in the district court. The district court has jurisdiction of an action for a declaratory judgment regardless of the amount of the principal sum in controversy.

CHAPTER 53—FRAUDULENT CONVEYANCES

§ 1531. Action to set aside fraudulent conveyance; undertaking

Where an action is commenced to set aside a transfer or conveyance of property on the grounds that the transfer or conveyance was made to hinder, delay, or defraud a creditor or creditors, the transferee or grantee to whom it is alleged the property was so transferred or conveyed, or the successors or assigns of the transferee or grantee, may give an undertaking as provided in this chapter, and when the undertaking is given, the transferee or grantee to whom it is alleged the property was so transferred or conveyed, or the successors or assigns of the transferee or grantee, may sell, encumber, transfer, convey, mortgage, pledge, or otherwise dispose of the property, or any part thereof, which is alleged to have been so transferred or conveyed, so that the purchaser, encumbrancer, transferee, mortgagee, grantee, or pledgee of the property, will take, own, hold, and possess the property unaffected by the action or the judgment which may be rendered therein.

§ 1532. Conditions of undertaking

The undertaking, with two sureties, shall be executed by the transferee or grantee to whom it is alleged the property was transferred or conveyed to hinder, delay, or defraud creditors, or the successor or assign of the transferee or grantee, in double the estimated value of the property so alleged to have been transferred or conveyed; except that in no case need the undertaking be for a greater sum than double the amount of the debt or liability alleged to be due and owing to the plaintiff in the action commenced to set aside the transfer and conveyance. The estimated value of the property shall be stated in the undertaking. The undertaking shall be conditioned that, if it is adjudged in the action that the transfer or conveyance was made to hinder, delay or defraud a creditor or creditors, then that the transferee or grantee or the succcessor or assigns of the transferee or grantee giving the undertaking will pay to the plaintiff in the action a sum equal to the value, as estimated in the undertaking, of the prop-

erty alleged to have been transferred or conveyed to hinder, delay, or defraud creditors, or the sum adjudged to be due and owing by the transferor of the property to the plaintiff, whichever is the lesser sum.

§ 1533. Filing and serving undertaking

The undertaking shall be filed in the action and a copy thereof served upon the plaintiff or his attorney in the action.

§ 1534. Objections to sureties and estimated value

Within 10 days after service of the copy of the undertaking, the plaintiff may object to the undertaking on the ground of inability of the sureties, or either of them, to pay the sum for which they become bound in the undertaking, and upon the ground that the estimated value of the property therein is less than the market value of the property. The objection to the undertaking shall be made in writing, specifying the ground or grounds of objection, and if the objection is made to the undertaking that the estimated value therein is less than the market value of the property, the objection shall specify the plaintiff's estimate of the market value of the property. The written objection shall be served upon the transferee or grantee, or the successor or assigns of the transferee or grantee giving the undertaking.

§ 1535. Justification of sureties; determination of sufficiency

Exceptions to the sufficiency of the sureties and their justification may be had or taken in the same manner as upon an undertaking on attachment. If they, or others in their place, fail to justify at the time and place appointed, the undertaking shall not become effective. If objection is not taken as provided in this section and section 1534 of this title, the plaintiff is deemed to have waived objections to the sufficiency of the sureties.

§ 1536. Determination of estimated value of property

When objection is made to the undertaking upon the ground that the estimated value of the property, as stated in the undertaking, is less than the market value of the property, the transferee or grantee, or the successor or assign of the transferee or grantee giving the undertaking may accept the estimated value stated by the plaintiff in the objection, and a new undertaking may be at once filed with the plaintiff's estimate stated therein as the estimated value, and objection may not thereafter be made upon that ground. If the plaintiff's estimate of the market value is not accepted, the value of the property shall be determined as provided in section 566 of this title.

§ 1537. Justification of sureties

The sureties shall justify upon the undertaking as required by section 431 of Title 3.

§ 1538. Effectiveness of undertaking

The undertaking shall become effective for the purpose stated in section 1531 of this title, 10 days after service of a copy thereof on the plaintiff, unless objection to the undertaking is made as provided by section 1534 or 1536 of this title, and in case objection is so made to the undertaking filed and served, it shall become effective for that purpose when an order is made by the court approving the sureties, when the surety or sureties are objected to, or affirming the estimate of the value of property when objection is made thereto, or if any objection to the undertaking is sustained by the court when a new undertaking is filed and served as required by section 1535 or 1536, to which no objection is made, or if made is not sustained by the court.

§ 1539. Judgment against sureties

If judgment is rendered in the action that the alleged transfer or conveyance was made to hinder, delay, or defraud creditors, then judgment shall be rendered in the action without further proceeding in favor of the plaintiff and against the principal and sureties on the undertaking for the sum for which the undertaking was executed according to the conditions thereof.

CHAPTER 55—HABEAS CORPUS

§ 1571. Right to writ of habeas corpus

A person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of the imprisonment or restraint.

§ 1572. Application for writ

Application for the writ of habeas corpus shall be made by petition signed either by the person for whose relief it is intended or by another person in his behalf, and verified by the oath of the person making the application. The petition shall specify:

(1) that the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty;

(2) the officer or person by whom he is so confined or restrained, naming all the parties if they are known or describing them if they are not known;

(3) the place where the person is so confined or restrained; and

(4) in what the alleged illegality consists, if the imprisonment is alleged to be illegal.

§ 1573. Grant of writ by district court

The writ of habeas corpus may be granted by the district court or the judge thereof, upon petition by or on behalf of a person restrained of his liberty. When a petition is presented the court or judge shall grant it without delay if it appears that it ought to issue.

§ 1574. Grant of writ by magistrate's court

During the absence of the district judge, the powers conferred upon him and the jurisdiction conferred upon the district court by this chapter may be exercised by a magistrate or a magistrate's court; but the magistrate herein referred to must be other than the one who committed the person to jail. In the event the magistrate or magistrate's court denies the writ, the proceedings may be begun and proceeded with de novo before the district court or judge upon his return.

§ 1575. Form of writ

The writ shall be directed to the person having custody of or restraining the person on whose behalf the application is made, and shall command him to have the body of that person before the court or judge before whom the writ is returnable at a time and place therein specified.

§ 1576. Service of writ

If the writ is directed to a ministerial officer of the court out of which it issues, it shall be delivered by the clerk to the officer without delay, as other writs are delivered for service. If it is directed to any other person, it shall be delivered to the officer of the court and be by him served upon the person by delivering it to him without delay. If the person to whom the writ is directed can not be found, or refuses admittance to the officer or person serving or delivering the writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to a conspicuous place on the outside, either of his dwelling house or of the place where the person is confined or under restraint.

§ 1577. Defect of form; disobedience forbidden

A writ of habeas corpus may not be disobeyed for defect of form, if it sufficiently appears therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought.

§ 1578. Proceedings upon disobedience to writ

If the person to whom the writ is directed refuses, after service, to obey it, the court or judge, upon affidavit, shall issue an attachment against him, directed to any officer, commanding him forthwith to apprehend that person and bring him immediately before the court or judge; and upon being so brought, he shall be committed to jail until he makes due return to the writ, or is otherwise legally discharged.

§ 1579. Damages for failure to obey writ

If the officer or person to whom the writ is directed refuses obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding $1,000, to be recovered by action in any court of competent jurisdiction.

§ 1580. Contents of return

(a) The person upon whom the writ is served shall state in his return plainly and unequivocally:

(1) whether he has or has not the person in his custody, or under his power or restraint; and

(2) if he has the person in his custody or power, or under his restraint, he shall state the authority and cause of the imprisonment or restraint.

(b) If the person is detained by virtue of a writ, warrant or other written authority, a copy thereof shall be annexed to the return, and the original produced and exhibited to the court or judge on the hearing of the return.

(c) If the person upon whom the writ is served had the person in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred the custody or restraint to another, the return shall state particularly to whom, at what time and place, for what cause, and by what authority, the transfer took place.

(d) The return shall be signed by the person making it, and, except when the person is a sworn public officer and makes the return in his official capacity, it shall be verified by his oath.

§ 1581. Production of body

The person to whom the writ is directed, if it is served, shall bring the body of the person in his custody or under his restraint, according to the command of the writ, except in the cases specified in section 1582 of this title.

§ 1582. Illness of person in custody

When, from sickness or infirmity of the person directed to be produced, he can not, without danger, be brought before the court or judge, the person in whose custody or power he is may state that fact in his return to the writ, verifying it by affidavit. If the court or judge is satisfied of the truth of the return, and the return to the writ is otherwise sufficient, the court or judge may proceed to decide on the return and to dispose of the matter as if the person had been produced on the writ, or the hearing thereof may be adjourned until he can be produced.

§ 1583. Hearing on return

Immediately after the return, the court or judge before whom the writ is returned shall proceed to hear and examine the return, and such other matters as may be properly submitted to the hearing and consideration of the court or judge.

§ 1584. Procedure for hearing

The person brought before the court or judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful or that he is entitled to his discharge.

The court or judge shall thereupon proceed in a summary way to hear such proof as may be produced against the imprisonment or detention, or in favor of it, and to dispose of the person as the justice of the case may require. The court or judge may require and compel the attendance of witnesses, by process of subpoena and attachment, and do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

§ 1585. Custody pending judgment

Until judgment is given on the return, the court or judge before whom a person may be brought on the writ may commit him to the custody or restraint from which he was taken, or place him in such care or under such custody as his age or circumstances may require.

§ 1586. Discharge from custody or restraint

If legal cause is not shown for the imprisonment or restraint, or for the continuation thereof, the court or judge shall discharge the person from the custody or restraint under which he is held.

§ 1587. Remand of person detained by virtue of process

If the time during which the person may be legally detained in custody has not expired, the court or judge shall remand him if it appears that he is detained in custody:

(1) by virtue of lawful process issued by a court or judge in a case where the court or judge has jurisdiction; or

(2) by virtue of a warrant or final judgment or decree of a competent court of criminal jurisdiction, or of process issued upon such a warrant, judgment or decree.

§ 1588. Discharge of person detained by virtue of process

If it appears on the return of the writ that the prisoner is in custody by virtue of process from a court of the Canal Zone, or judge or officer thereof, the prisoner may be discharged in any of the following cases, notwithstanding the provisions of section 1587 of this title:

(1) when the jurisdiction of the court or officer has been exceeded;

(2) when the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge;

(3) when the process is defective in a matter of substance required by law, rendering the process void;

(4) when the process, though proper in form, has been issued in a case not allowed by law;

(5) when the person having custody of the prisoner is not the person allowed by law to detain him;

(6) where the process is not authorized by an order, judgment or decree of a court, nor by a provision of law; or

(7) where a person has been committed on a criminal charge without reasonable or probable cause.

§ 1589. Defect of form in warrant of commitment

If a person is committed to prison, or is in custody of an officer on a criminal charge, by virtue of a warrant of commitment of a court, the person may not be discharged on the ground of a mere defect of form in the warrant of commitment.

§ 1590. Writ for person committed on criminal charge

A person who has been committed on a criminal charge may be brought before the district judge on a writ of habeas corpus.

§ 1591. Hearing and disposition where charge or process defective

If it appears to the court or judge by affidavit or otherwise or upon the inspection of the process or warrant of commitment and such other papers in the proceedings as may be shown to the court or judge, that the person is guilty of a criminal offense or ought not to be discharged, although the charge is defective or not substantially set forth in the process or warrant of commitment, the court or judge shall cause the complainant or other necessary witnesses to be subpoenaed to attend at such time as ordered, to testify before the court or judge; and upon the examination he may discharge the prisoner, admit him to bail if the offense is bailable, or recommit him to custody, as may be just and legal.

§ 1592. Remand to custody

If a person brought before the court or judge on the return of the writ is not entitled to his discharge, and is not bailed, where bail is allowable, the court or judge shall remand him to custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was is legally entitled thereto.

§ 1593. Recommitment to proper custody

If a person is held under illegal restraint or custody, or another person is entitled to the restraint or custody of the person, the judge or court may order the person to be committed to the restraint or custody of the person who is by law entitled thereto.

§ 1594. Imprisonment after discharge

A person who has been discharged by order of the court or judge upon habeas corpus may not be again imprisoned or restrained, or kept in custody, for the same cause, except in the following cases:

(1) if he has been discharged from custody on a criminal charge, and is afterwards committed for the same offense, by legal order or process; or

(2) if, after a discharge for defect of proof, or for defect of the process, warrant or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the preceding offense.

§ 1595. Warrant in lieu of writ of habeas corpus

(a) When it appears to the district court or judge that anyone is illegally held in custody, confinement or restraint, and that there is reason to believe that he will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer an irreparable injury before compliance with the writ of habeas corpus can be enforced, the court or judge may cause a warrant to be issued, reciting the facts, and directed to any court officer, commanding the officer to take the person thus held in custody, confinement or restraint, and forthwith bring him before the court or judge, to be dealt with according to law.

(b) The court or judge may also insert in the warrant a command for the apprehension of the person charged with the illegal detention and restraint.

(c) The officer to whom the warrant is delivered shall execute it by bringing the person or persons therein named before the court or judge who directed the issuing of the warrant.

(d) The person alleged to have the person under illegal confinement or restraint may make return to the warrant as in case of a writ of habeas corpus, and it may be denied, and like allegations, proofs and trial may thereupon be had as upon a return to a writ of habeas corpus.

(e) If the person is held under illegal restraint or custody, he shall be discharged; and if not, he shall be restored to the care or custody of the person entitled thereto.

§ 1596. Time of issuance and service of writs and process

All writs and process authorized by this chapter may be issued and served on any day and at any time.

§ 1597. Issuance and return of writs and process

(a) All writs, warrants, process and subpoenas authorized by this chapter shall be issued by the clerk of the court, and, except subpoenas, be sealed with the seal of the court and served and returned forthwith, unless the court or judge specifies a particular time for the return.

(b) All such writs and process, when made returnable before a judge, shall be returned before him at the place of holding court, and there heard and determined.

§ 1598. Motion to vacate or correct sentence

Section 2255 of Title 28, United States Code, applies to prisoners in custody under sentences of the district court, but it does not apply to prisoners in custody under sentences of the magistrates' courts.

CHAPTER 57—HOSPITALIZATION OF MENTALLY ILL

§ 1631. Definitions

As used in this chapter:

"designated examiner" means a licensed physician registered by the Health Bureau as specially qualified, under standards established by it, in the diagnosis of mental or related illness;

"Health Bureau" means the Health Bureau of the Canal Zone Government, under the supervision of the health director;

"health director" means the director of the Health Bureau of the Canal Zone Government;

"hospital" means a Canal Zone Government hospital or institution, or part thereof, equipped to provide in-patient care and treatment for the mentally ill;

"interested party" means an interested responsible adult including but not limited to the legal guardian, spouse, parent, adult child, or next of kin of an allegedly mentally ill individual or patient;

"licensed physician" means an individual licensed under the laws of the Canal Zone to practice medicine and a medical officer of the Government of the United States while in the Canal Zone in the performance of his official duties;

"mentally ill individual" means an individual having a psychiatric or other disease which substantially impairs his mental health; and

"patient" means an individual under observation, care and treatment in a hospital pursuant to this chapter.

§ 1632. Authority to receive patients

The head of a hospital may receive therein for observation, diagnosis, care, and treatment any individual eligible for treatment at Canal Zone medical facilities whose admission is applied for by one of the following means:

(1) Any individual, including a minor with consent of parent or guardian, may be admitted upon application by the individual.

(2) Any individual may be admitted upon written application by an interested party, by the health director, or by the head of any

institution in which the individual may be, if the application is accompanied by a certificate of a licensed physician stating that on a basis of an examination held not more than 15 days prior to the individual's admission, the individual is in his opinion mentally ill, or has symptoms of mental illness, and because of his illness either:

(A) is likely to injure himself or others if allowed to remain at liberty, or

(B) is in need of care or treatment in a hospital.

§ 1633. Emergency hospitalization

(a) If the certificate by a licensed physician under section 1632(2) of this title states a belief that the individual (A) is likely to injure himself or others if allowed to remain at liberty, or (B) is in need of immediate hospitalization, any interested party or peace officer may, upon indorsement of the certificate for that purpose by the health director or by the judge of the district court or a magistrate in the Canal Zone, take the individual into custody, apply to a hospital for his admission, and transport him thereto.

(b) Any interested party or peace officer who has good and valid reason to believe that an individual is mentally ill, and because of his illness is likely to injure himself or others if not immediately restrained, pending examination or certification by a licensed physician or pending indorsement of the certification as provided in subsection (a) of this section, may take the individual into custody, apply to a hospital for his admission, and transport him thereto. The application for admission shall state the circumstances under which the individual was taken into custody and the reason for the applicant's belief concerning the individual's mental condition.

§ 1634. Newly-admitted patients

(a) The head of the hospital shall cause to be held a preliminary examination by a designated examiner, within a period not to exceed 48 hours after the close of the day of admission of every patient, to determine if there is a reasonable necessity existing for his continued hospitalization and immediate medical care.

(b) At the end of the 48-hour period, a patient so admitted pursuant to section 1632(2) or 1633 of this title shall, without need of application therefor, be discharged if a preliminary examination has not been held or if, upon examination, the designated examiner refuses or fails to certify to the head of the hospital that in his opinion the patient is mentally ill and either is likely to injure himself or others if allowed at liberty, or is in need of care or treatment in a hospital and because of his illness lacks sufficient insight or capacity to make a responsible decision concerning his hospitalization. In the case of such a discharge, notice thereof shall be given to the person who applied for the patient's admission and, if the indorsement procedures of section 1633 of this title were utilized, to the appropriate indorsing official or court.

(c) A patient admitted pursuant to section 1632(2) or 1633 of this title may remain for treatment on a voluntary basis under the same conditions prescribed for patients admitted pursuant to section 1632(1) of this title, with the provisions of section 1635 of this title applying with respect to discharge. If a patient admitted pursuant to section 1632(2) or 1633 of this title elects to remain for treatment on a voluntary basis, the head of the hospital shall certify that the patient has at the time sufficient insight or capacity to make responsible application for his own hospitalization. In these instances, notice shall be given of the patient's decision to remain on a voluntary basis to the health director and to the person who applied for the patient's admission and, where the indorsement procedures of section 1633 of this title were utilized, to the appropriate indorsing official or court.

§ 1635. Right to discharge on application; emergency detention

(a) An individual after 30 days following admission to a hospital pursuant to section 1632(1) of this title, or an individual admitted to a hospital pursuant to section 1632(2) or 1633 of this title, shall be forthwith discharged therefrom upon his request or upon the request in writing of an interested party or peace officer, and notice of discharge shall be given as prescribed in section 1649 of this title, except that:

(1) if admitted pursuant to section 1632(1) of this title, his discharge may be conditioned upon his agreement;

(2) if under 21 years of age and admitted pursuant to section 1632(1) of this title, his discharge prior to becoming 21 years of age may be conditioned upon the consent of his parent or guardian;

(3) if the head of the hospital, within 48 hours from the receipt of the request, files with a judge of the district court a certification that in his opinion the discharge of the patient would be unsafe to the patient or others, the discharge may be postponed for a period not to exceed 5 days for the commencement of commitment proceedings pursuant to section 1637 of this title; and if the judge of the district court finds that, because of existing circumstances, proceedings for judicial hospitalization cannot reasonably be instituted in such time, the discharge may be postponed for a period not to exceed 15 days.

(b) The head of the hospital shall provide reasonable means and arrangements for informing patients of their right to discharge, as provided by this section and other sections of this chapter, and for assisting them in making and presenting requests for discharge.

§ 1636. Petition for judicial determination

A patient hospitalized pursuant to section 1632, 1633, or 1637 of this title may have the need for his continued hospitalization determined or redetermined on his own petition or that of an interested party to the judge of the district court. Upon receipt of the petition, the court shall conduct proceedings in accordance with section 1637 of this title, except that the proceedings need not be conducted if the petition is filed sooner than:

(1) 6 months after the issuance of an order of hospitalization pursuant to section 1637 of this title; or

(2) 1 year after the filing of a previous petition under this section; or

(3) 30 days after the voluntary application and admission of a patient.

§ 1637. Hospitalization upon court order; judicial procedure; not adjudication of legal incompetency

(a) An interested party, a licensed physician, a peace officer, the head of an institution in which the individual may be hospitalized, or the health director may, by filing an application with a judge of the district court, commence proceedings for the hospitalization of an individual by judicial commitment.

(b) Upon receipt of an application, the judge of the district court shall give notice thereof to the proposed patient, to his legal guardian, if any, and to one or more of the other interested parties, if any.

(c) As soon as practicable after notice of the commencement of proceedings is given, the court shall appoint two designated examiners to examine the proposed patient and to report to the court their findings as to the mental condition of the patient and his need for care or treatment in a hospital. The court may consider the choice of the patient in appointing the examiners. If the designated examiners report that the

proposed patient refuses to submit to an examination, the court shall give notice to the proposed patient and order him to submit to the examination. The order may direct that the proposed patient be taken into custody and detained pending a hearing.

(d) The examination shall be held at a hospital or other medical facility, at the home of the proposed patient, or at another suitable place not likely to have a harmful effect on his health.

(e) If the report of the designated examiners states that the proposed patient is not mentally ill, the court shall, without taking any further action, terminate the proceedings and dismiss the application. Otherwise, the court shall forthwith fix a date for, and give notice of, a hearing to be held not more than 15 days from receipt of the report of the designated examiners.

(f) The proposed patient, the applicant, the legal guardian and other interested parties, as determined by the court, shall be given notice and afforded an opportunity to appear at the hearing to testify, and to present and cross-examine witnesses, and the court may, in its discretion, receive the testimony of any other person. The proposed patient need not be present, and the court may exclude all persons not necessary for the conduct of the proceedings. The hearings shall be conducted as informally as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The entire proceeding may be recorded stenographically or with the use of mechanical recording devices as the court may approve. The court shall, in any event, prepare and maintain a summary record of all relevant and material evidence which may be offered concerning the mental condition of the proposed patient and may relax the rules of evidence to the extent of receiving affidavits, certificates of licensed physicians and other writings of similar apparent authenticity and reliability. An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither he nor others provide counsel the court shall appoint counsel.

(g) If, upon completion of the hearing and consideration of the record, the court finds the patient is:

(1) mentally ill; and

(2) (A) because of his illness is likely to injure himself or others if allowed to remain at liberty; or (B) is in need of immediate care or treatment in a hospital, and because of his illness, lacks sufficient insight or capacity to make a responsible decision concerning his hospitalization,

the court shall order his hospitalization for an indeterminate period; otherwise, the court shall terminate the proceedings and dismiss the application. If the court orders the hospitalization of the proposed patient, a copy of the summary of proceedings shall accompany the patient to the hospital.

(h) The order of hospitalization shall be directed to the Health Bureau and it is the responsibility of the health director to assure the carrying out of the order.

(i) Notwithstanding any other provision of this chapter, commitment proceedings under this section may not be commenced with respect to a patient admitted pursuant to section 1632(1) of this title unless release of the patient has been requested pursuant to section 1635 of this title.

(j) An order for hospitalization pursuant to this section does not constitute a judicial determination of legal incompetency. Proceedings for a determination of legal competency of, and the appointment of a guardian for, a patient who has been ordered hospitalized may be instituted prior to, concurrently with, or following the completion of proceedings under this section.

§ 1638. Detention under special circumstances

(a) Pending his removal to a hospital, a patient taken into custody pursuant to section 1633 or 1637 of this title, or ordered to be hospitalized pursuant to section 1637 of this title, may be detained in a medical facility, his home, or any other suitable facility under such reasonable conditions as the health director may fix, but he may not, except because of and during an extreme emergency, be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. The health director shall take such reasonable measures, including provision for medical care, as may be necessary to assure proper care of an individual temporarily detained pursuant to this section.

(b) Notwithstanding any other provision of this chapter, a patient may not be released or discharged from custody during the pendency of proceedings for judicial hospitalization if, in the opinion of the head of the hospital, it would be unsafe to the patient or others, unless the court, upon the application of the patient or of an interested party, determines justifiable reason exists for release or discharge.

§ 1639. Habeas corpus

An individual detained pursuant to this chapter is entitled to the writ of habeas corpus upon proper petition by himself or an interested party to any court in the Canal Zone generally empowered to issue the writ of habeas corpus.

§ 1640. Transportation

When an individual is about to be hospitalized under the provisions of this chapter, the Health Bureau shall, upon the request of a person having a proper interest in the individual's hospitalization, arrange for the individual's transportation to the hospital with suitable medical or nursing attendants and by such means as may be suitable for his medical condition. When practicable, the individual to be hospitalized shall be permitted to be accompanied by one or more of his friends or relatives.

§ 1641. Notice of hospitalization or discharge

(a) When a patient has been admitted to a hospital pursuant to this chapter other than upon his own application, the head of the hospital shall notify immediately the patient's legal guardian, parent or parents, spouse, or next of kin, if known.

(b) The head of the hospital admitting an individual under any provision of this chapter, or discharging an individual so admitted, shall forthwith make a report thereof to the health director, and, if the patient was hospitalized under section 1637 of this title, to the district court.

§ 1642. Right to humane care and treatment

The Health Bureau shall be guided by the principles of humane care and treatment, and, to the extent that facilities, equipment and personnel are available, shall provide medical care or treatment in accordance with the highest standards of accepted medical practice.

§ 1643. Mechanical restraints

Mechanical restraints may not be applied to a patient unless determined by the head of the hospital to be required by the medical needs of the patient. Every use of a mechanical restraint and reasons therefor shall be made a part of the clinical record of the patient over the signature of the head of the hospital.

§ 1644. Right to communicate and receive visitors; exercise of civil rights

(a) Subject to the general rules and regulations of the hospital and, with respect to paragraphs (1) and (2) of this subsection, except to the extent that the head of the hospital determines that it is necessary for the medical welfare of the patient to impose restrictions, every patient may:

(1) communicate by sealed mail or otherwise with persons, including official agencies, inside or outside the hospital;

(2) receive visitors; and

(3) exercise all civil rights including, but not limited to, the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity.

(b) Notwithstanding any limitations authorized by this section on the right of communication, every patient may communicate by sealed mail with the health director, the Governor of the Canal Zone, and, if admitted pursuant to section 1637 of this title, with the judge of the district court who ordered his hospitalization.

(c) Any limitations imposed by the head of a hospital on the exercise of these rights by a patient and the reasons for the limitations shall be made a part of the clinical record of the patient.

§ 1645. Transfer of patients generally

The health director may transfer a patient from one hospital to another if the health director determines that it would be consistent with the medical needs of the patient to do so. When a patient is transferred, written notice thereof shall be given to any one of the following persons: the patient's legal guardian, parent or parents, spouse, or next of kin, or, if none is known, to any other interested party, and, if the patient was hospitalized pursuant to section 1637 of this title, to the judge of the district court.

§ 1646. Release on convalescent status

The head of a hospital may release a patient on convalescent status when he believes that that status is in the best interest of the patient. Convalescent status shall, as far as practicable, include provisions for continuing responsibility to and by the hospital, and for a plan of treatment on an outpatient basis or under the direction of a licensed physician. Periodically, at intervals consistent with good medical practice and with then-existing circumstances, the head of the hospital shall re-examine the facts relating to the condition of the patient on a convalescent status and, if he determines that hospitalization is no longer necessary, he shall discharge the patient.

§ 1647. Readmission

Prior to discharge, the head of the hospital from which a patient is given convalescent status may at any time readmit the patient. If there is reason to believe that it is in the best interests of the patient to be rehospitalized, the health director or the head of the hospital may issue an order for the immediate rehospitalization of the patient. Such an order, if not voluntarily complied with, shall, upon the indorsement by the judge of the district court or by a magistrate in the Canal Zone, authorize any peace officer to take the patient into custody and transport him to the hospital.

§ 1648. Disclosure of information; penalties

(a) All certificates, applications, records and reports, other than an order of the court, made for the purposes of this chapter, and directly or indirectly identifying a patient or former patient or an

individual whose hospitalization has been sought under this chapter together with clinical information relating to such patients, shall be kept confidential and shall not be disclosed by any person except insofar as:

(1) the individual identified, or his legal guardian, if any (or if he is a minor, his parent or legal guardian), consents; or

(2) disclosure may be necessary to carry out any of the provisions of this chapter; or

(3) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make disclosure would be contrary to the public interest.

(b) Nothing in this section precludes disclosure, upon proper inquiry, of information concerning current medical condition to the members of the immediate family of a patient.

(c) Whoever violates any provision of this section shall be fined not more than $500 or imprisoned in jail not more than one year, or both.

§ 1649. Discharge upon medical review

(a) The head of a hospital shall cause the condition of every patient to be reviewed as frequently as is consistent with good medical practice, and whenever the head of a hospital determines that the conditions justifying hospitalization no longer exist, the patient shall be discharged even if he was admitted on his own application and regardless of section 1635(a)(1) of this title, and the Health Bureau so notified.

(b) If the patient was admitted on other than his own application, notice of the discharge shall also be given to any one of the following persons: the patient's legal guardian, parent or parents, spouse, or next of kin, or, if none is known, to any other interested party, and, if the patient was hospitalized pursuant to section 1637 of this title, to the judge of the district court.

§ 1650. Discharge other than upon medical review

(a) A patient may be discharged by the head of a hospital without regard to the patient's condition in any case in which:

(1) the patient has been ordered excluded or deported from the Canal Zone;

(2) arrangments have been made, in the case of persons having a transient status in the Canal Zone, for the patient's departure from the Canal Zone; or

(3) arrangements have been made for the patient's transfer to another jurisdiction for treatment.

(b) Notice of discharge under this section shall be given as prescribed by section 1649 of this title.

§ 1651. Discharge of prisoners

Notwithstanding any other provision of this chapter, whenever a patient:

(1) is under the unexpired sentence of a court; or

(2) was committed to a hospital pursuant to section 4864 of Title 6 and the criminal proceedings against him are still pending; or

(3) was committed to a hospital pursuant to sections 4456 and 4457 of Title 6—

the head of the hospital shall only discharge the patient into the custody of the warden of the institution from which he was taken, or in the case of commitments pursuant to section 4864 of Title 6, to the warden of the jail.

§ 1652. Payment of charges

Payment of charges by or on behalf of patients hospitalized or transported pursuant to this chapter shall be in accordance with the rates prescribed by applicable law.

§ 1653. Receiving members of Armed Forces and Public Health Service beneficiaries

The head of a hospital may receive and detain as patients mentally ill members of the United States Army, Navy, Air Force, and Marine Corps, and beneficiaries of the United States Public Health Service, for observation and care pending their transfer to the United States, upon the order of the official in charge of the respective service in the Canal Zone.

§ 1654. Additional powers of health director

In addition to the specific authority granted by other provisions of this chapter, the health director may prescribe the form of application, records, reports, and medical certificates provided for under this chapter and the information required to be contained therein, and adopt such rules and regulations not inconsistent with the provisions of this chapter as he finds to be reasonably necessary for proper and efficient hospitalization of the mentally ill.

§ 1655. Powers of magistrates in absence of district judge

During the absence of the district judge, the powers conferred upon him and the jurisdiction conferred upon the district court by this chapter may be exercised by a magistrate or a magistrate's court.

§ 1656. Unwarranted commitments; penalties

Whoever causes, or attempts to cause, or conspires with another person to cause an individual to be committed under section 1637 of this title, knowing or having reasonable grounds for believing that the individual is not mentally ill, and in need of hospitalization, shall be fined not more than $10,000 or imprisoned in the penitentiary not more than 10 years, or both.

CHAPTER 59—PROPERTY ACTIONS

SUBCHAPTER I—PROPERTY ACTIONS GENERALLY; CONFLICTING CLAIMS

SUBCHAPTER II—MORTGAGE FORECLOSURE

SUBCHAPTER III—NUISANCE AND WASTE

SUBCHAPTER IV—FORCIBLE ENTRY AND DETAINER

Subchapter I—Property Actions Generally; Conflicting Claims

§ 1691. Action to quiet title to real and personal property

(a) An action may be brought by any person against another who claims an estate or interest in real or personal property adverse to him, for the purpose of determining the adverse claim.

(b) In an action to quiet title to, or to determine adverse claims to, real or personal property, when the validity or interpretation of a gift, devise, bequest, or trust, under any will or instrument purporting to be a will, whether admitted to probate or not, is involved, the will, or instrument purporting to be a will, is admissible in evidence; and all questions concerning the validity of any gift, devise, bequest, or trust therein contained, save such as belong exclusively to the probate jurisdiction, shall be determined in the action. If the will has been admitted to probate and interpreted by a decree of the district court, which decree has become final, the interpretation shall be conclusive as to the proper construction of the will, or any part thereof, so construed, in an action under this section.

§ 1692. Costs

If the defendant in an action under section 1691 of this title disclaims in his answer any interest or estate in the property, or suffers judgment to be taken against him without answer, the plaintiff cannot recover costs.

§ 1693. Recovery of property; termination of plaintiff's right pending action

In an action for the recovery of property, if the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

§ 1694. Value of improvements as set-off

When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the value of the improvements shall be allowed as a setoff against the damages.

§ 1695. Mortgage not a conveyance

A mortgage of real property is not deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without foreclosure and sale.

§ 1696. Injunction against injury during foreclosure or after execution sale

The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or, after a sale on execution, before a conveyance.

§ 1697. Damages for injury after execution sale

When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale, and before possession is delivered under the conveyance.

§ 1698. Alienation of real property pending action

An action for the recovery of real property against a person in possession is not prejudiced by any alienation made by that person, either before or after the commencement of the action.

§ 1699. Joinder of defendants; writ of possession

In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making the adverse claim and persons in possession may be joined as defendants, and if the judgment is for the plaintiff, he may have a writ for the possession of the premises, as against the defendants in the action, against whom the judgment has passed.

§ 1700. Tenants in common, etc., as parties

All persons holding as tenants in common, joint tenants, or copartners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

§ 1701. Description of real property in pleadings

In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it.

§ 1702. Verdict in action to recover personal property

In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claims a return thereof, the jury, if their verdict is in favor of the plaintiff, or if in favor of defendant and they also find that he is entitled to a return thereof, shall find the value of the property, and, if so instructed, the value of specific portions thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of the property.

§ 1703. Judgment in action to recover personal property

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the property.

§ 1704. Application of chapter to magistrates' courts

Sections 1691–1701, 1703, 1731–1734, and 1762 of this title apply to the magistrates' courts insofar as they relate to actions within the jurisdiction of the magistrates' courts. Sections 1801–1819 of this title apply to the magistrates' courts as provided by section 1819 of this title.

Subchapter II—Mortgage Foreclosure

§ 1731. Foreclosure of mortgages on real and personal property

(a) There may be but one action for the recovery of a debt, or the enforcement of a right, secured by mortgage upon real or personal property, which action shall be in accordance with the provisions of this subchapter. In the action the court may, by its judgment, direct the sale of the encumbered property (or as much thereof as may be necessary), and the application of the proceeds of the sale to the payment of the costs of court, and the expenses of the sale, and the amount due plaintiff, including, where the mortgage provides for the payment of attorney's fees, such sum for the fees as the court finds reasonable, not exceeding the amount named in the mortgage.

(b) The court may, by its judgment, or at any time after judgment, appoint a commissioner to sell the encumbered property. It shall require of him an undertaking in an amount fixed by the court, with sufficient sureties, to be approved by the court, to the effect that the commissioner will faithfully perform the duties of his office according to law. Before entering upon the discharge of his duties he shall file the undertaking, so approved, together with his oath that he will faithfully perform the duties of his office.

(c) If it appears from the marshal's return, or from the commissioner's report, that the proceeds are insufficient, and a balance still remains due, the clerk shall enter judgment for the balance against the defendant or defendants personally liable for the debt.

(d) A person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the office of the registrar of property at the time of the commencement of the action, need not be made a party to the action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding the unrecorded conveyance or lien as if he had been a party to the action.

(e) If the court appoints a commissioner for the sale of the property, the commissioner shall sell it in the manner provided by law for the sale of like property by the marshal upon execution; and sections 541–569 of this title apply to sales made by a commissioner, and the powers therein given and the duties therein imposed on the marshal are extended to the commissioner.

§ 1732. Disposition of surplus

If there is surplus money remaining, after payment of the amount due on the mortgage, lien, or encumbrance, with costs, the court may cause it to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

§ 1733. Debt becoming due at different times

If the debt for which the mortgage, lien, or encumbrance is held is not all due, the sale shall cease as soon as sufficient of the property has been sold to pay the amount due, with costs; and afterwards, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. If the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, with a rebate of interest where a rebate is proper.

§ 1734. Commissioner's oath, bond, report, and compensation

Before entering upon his duties, the commissioner shall take an oath to perform them faithfully, and the court shall require of him an undertaking, with sufficient sureties, to be approved by the court, in an amount to be fixed by the court, to the effect that he will faithfully perform the duties of commissioner according to law.

Within 30 days after the sale, the commissioner shall file with the clerk of the court in which the action is pending, a verified report and account of the sale, together with the proper affidavits showing that the regular and required notice of the time and place of the sale was given, and the report and account shall have the same force and effect as the marshal's return in sales under execution.

In all cases of sale made by a commisisoner, the court in which the proceedings are pending shall fix a reasonable compensation for the commissioner's service, which shall not be less than $10.

Subchapter III—Nuisance and Waste

§ 1761. Abatement of nuisance; damages

An action may be brought in the district court by a person whose property is injuriously affected, or whose personal enjoyment is lessened by a nuisance, as defined in section 5031 of Title 4, and by the judgment in the action the nuisance may be enjoined or abated as well as damages recovered therefor.

A civil action may be brought in the district court by the United States attorney in the name of the Government of the Canal Zone to abate a public nuisance, as defined by section 5032 of Title 4.

§ 1762. Actions for waste; treble damages

If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commits waste thereon, a person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Subchapter IV—Forcible Entry and Detainer

§ 1801. Forcible entry defined

Every person is guilty of a forcible entry who either:

(1) by breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or

(2) after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

§ 1802. Forcible detainer defined

Every person is guilty of a forcible detainer who either:

(1) by force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether it was acquired peaceably or otherwise; or

(2) in the nighttime, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender them to the former occupant.

The occupant of real property, within the meaning of this subchapter, is one who, within five days preceding the unlawful entry, was in the peaceable and undisturbed possession of the lands.

§ 1803. Unlawful detainer defined

A tenant of real property, for a term less than life, is guilty of unlawful detainer:

(1) When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any. In the case of a tenancy at will, however created, the tenancy is terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed by section 1804 of this title, to remove from the premises within a period

of not less than 30 days to be specified in the notice, and a tenant continuing in possession after the expiration of the notice period is guilty of unlawful detainer.

(2) When he continues in possession, in person or by subtenant, without the permission of his landlord, or the successor in estate of his landlord, if any, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' written notice, requiring its payment, stating the amount which is due, or possession of the property, has been served upon him and if there is a subtenant in actual occupation of the premises, also upon the subtenant. The notice may be served at any time within one year after the rent becomes due.

(3) When he continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' written notice, requiring the performance of the conditions or covenants, or the possession of the property, has been served upon him, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture. If the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or his subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this subchapter, to obtain possession of the premises let to a subtenant, in case of his unlawful detention of the premises underlet to him.

(4) A tenant or subtenant assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, upon service of three days' notice to quit upon the person or persons in possession, is entitled to restitution of possession of the demised premises under the provisions of this subchapter.

§ 1804. Service of notice:

The notices required by section 1803 of this title may be served, either:

(1) by delivering a copy to the tenant personally; or

(2) if he is absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or

(3) if the place of residence and business can not be ascertained, or a person of suitable age or discretion can not be found there, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such a person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated.

Service upon a subtenant may be made in the same manner.

§ 1805. Parties defendant

(a) A person other than the tenant of the premises and subtenant, if there is one, in the actual occupation of the premises when the complaint is filed, need not be made a party defendant in the proceeding, and a proceeding shall not be dismissed for the nonjoinder of any person who might have been made a party defendant, but when it appears that any party served with process, or appearing in the proceeding, is guilty of the offense charged, judgment shall be rendered against him. If a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by paragraph (2) of section 1803 of this title upon the tenant of the premises, the fact that the notice was not served on each subtenant does not constitute a defense to the action.

(b) If a married woman is a tenant or subtenant, her coverture does not constitute a defense; but if her husband is not joined, or unless she is doing business as a sole trader, an execution issued upon a personal judgment against her may only be enforced against property on the premises at the commencement of the action.

(c) All persons who enter the premises under the tenant, after the commencement of the suit, are bound by the judgment, as if they had been made parties to the action.

§ 1806. Parties generally

Except as provided in section 1805 of this title, the provisions of section 721 of this title, relating to parties to civil actions in the magistrates' courts, apply to proceedings under this subchapter.

§ 1807. Complaint; issuance of summons

The plaintiff in his complaint, which shall be verified, shall set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence, which may have accompanied the alleged forcible entry or forcible or unlawful detainer, and claim damages therefor. If the unlawful detainer charged is after default in the payment of rent, the complaint shall state the amount of the rent.

Upon the filing of the complaint, a summons shall be issued thereon.

§ 1808. Form and service of summons

The summons shall require the defendant to appear and answer within three days after the service of the summons upon him, and shall notify him that if he fails to so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint. In all other respects the summons, or any alias summons in the proceedings, shall be issued and served and returned in the same manner as summons in a civil action.

§ 1809. Arrest of defendant

If the complaint presented establishes, to the satisfaction of the magistrate, fraud, force, or violence, in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant.

§ 1810. Default judgment

If, at the time appointed, the defendant does not appear and defend, the court shall enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.

§ 1811. Appearance and answer of defendant

On or before the day fixed for his appearance, the defendant may appear and answer or move to dismiss the complaint.

§ 1812. Trial; showing required

(a) On the trial of a proceeding for a forcible entry or forcible detainer, the plaintiff shall be required to show, in addition to the forcible entry or forcible detainer complained of, only that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer.

(b) The defendant may show in his defense that he or his ancestors, or those whose interest in the premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such a showing is a bar to the proceedings.

§ 1813. Amendment to conform to evidence; continuance

When, upon the trial of a proceeding under this subchapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, and other than the offense charged in the complaint, the magistrate shall order that the complaint be forthwith amended to conform to the proofs; and the amendment shall be made without any imposition of terms. A continuance may not be permitted upon account of the amendment unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

§ 1814. Judgment

If upon the trial the finding of the court is in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings are for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(b) The court shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer is after default in the payment of rent. Judgment against the defendant guilty of the forcible entry, or forcible or unlawful detainer, may be entered in the discretion of the court either for the amount of the damages and rent found due, or for three times the amount so found.

(c) When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment may not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or a subtenant, or a mortgagee of the term, or another party interested in its continuance, may pay into court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the court for the unlawful detainer, and the costs of the proceedings, and thereupon the judgment shall be satisfied and the tenant be restored to his estate.

(d) If payment as provided in this section is not made within five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

§ 1815. Relief against forfeiture of lease

The court may relieve a tenant against a forfeiture of a lease, and restore him to his former estate, in case of hardship, where application for such relief is made within 30 days after the forfeiture is declared by the judgment of the court, as provided in section 1814 of this

title. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It shall be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, shall be served on the plaintiff in the judgment, who may appear and contest the application. The application may not be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, as far as the same is practicable, be made.

§ 1816. Appeals

The provisions of Sections 951–960 of this title, relating to appeals, except insofar as they are inconsistent with the provisions of this subchapter, apply to the proceedings specified by this subchapter.

§ 1817. Stay pending appeal

An appeal taken by the defendant does not stay proceedings upon the judgment unless the magistrate before whom the same was rendered so directs.

§ 1818. Rules of practice

Except as otherwise provided by this subchapter, the provisions governing civil actions in the magistrates' courts are applicable to, and constitute the rules of practice in, the proceedings mentioned in this subchapter.

§ 1819. Jurisdiction of magistrates' courts

Jurisdiction of proceedings under this subchapter is in the magistrates' courts, as provided by section 171 of Title 3.

CHAPTER 61—WRITS

SUBCHAPTER I—EXTRAORDINARY WRITS GENERALLY

SUBCHAPTER II—WRIT OF REVIEW

SUBCHAPTER III—REMEDIES FORMERLY AVAILABLE BY WRIT OF MANDATE

SUBCHAPTER IV—WRIT OF PROHIBITION

Subchapter I—Extraordinary Writs Generally

§ 1851. Application of other provisions

Except as otherwise provided by this chapter, the provisions governing civil actions in the district court apply to and constitute the rules of practice in the proceedings mentioned in this chapter.

§ 1852. Issuance, return, and hearing

Writs of review and prohibition issued by the district court, may, in the discretion of the court, be made returnable, and a hearing thereon be had, at any time.

Subchapter II—Writ of Review

§ 1871. Writ of review defined

The writ of certiorari may be denominated the writ of review.

§ 1872. Grant by district court; grounds

A writ of review may be granted by the district court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of the tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

§ 1873. Application; notice

The application shall be made on the verified petition of the party beneficially interested. The court may require a notice of the application to be given to the adverse party, or may grant the writ without notice.

§ 1874. Direction of writ

The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified.

§ 1875. Contents of writ

The writ of review shall command the party to whom it is directed to certify fully to the district court, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with sufficient certainty), that they may be reviewed by the court; and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

§ 1876. Stay of proceedings

If a stay of proceedings is not intended, the words requiring the stay shall be omitted from the writ. These words may be inserted or omitted, in the discretion of the court, but if they are omitted, the power of the inferior court or officer is not suspended or the proceedings stayed.

§ 1877. Service of writ

The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

§ 1878. Scope of review

The review upon this writ may not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of the tribunal, board, or officer.

§ 1879. Return; hearing; judgment

If the return of the writ is defective, the court may order a further return to be made.

When a full return has been made, the court shall hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling, or modifying the proceedings below.

§ 1880. Transmittal of copy of judgment

A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceedings certified up.

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Subchapter III—Remedies Formerly Available by Writ of Mandate

§ 1901. Order to compel performance of duty or admission to office

(a) In an appropriate action, or upon an appropriate motion in an action, under the practice prescribed in the Federal Rules of Civil Procedure and in this title, the district court may issue a mandatory order to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by the inferior tribunal, corporation, board, or person.

(b) The order shall be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.

§ 1902. Penalty for disobedience of order

When an order has been issued under section 1901 of this title and directed to any inferior tribunal, corporation, board, or person, if it appears to the court that a member of the tribunal, corporation, or board, or the person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the order, the court may, upon motion, impose a fine of not more than $1,000. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the order is obeyed, and may make any orders necessary and proper for the complete enforcement of the order.

Subchapter IV—Writ of Prohibition

§ 1921. Writ of prohibition defined

The writ of prohibition arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when the proceedings are without or in excess of the jurisdiction of the tribunal, corporation, board, or person.

§ 1922. Issuance by district court; petition

A writ of prohibition may be issued by the district court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

§ 1923. Alternative or peremptory writ

The writ of prohibition is either alternative or peremptory. The alternative writ shall command the party to whom it is directed to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the district court, and to show cause before the court, at a specified time and place, why the party should not be absolutely restrained from any further proceedings in the action or matter. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, and so forth, shall be omitted, and a return day inserted.

§ 1924. Procedure generally; penalties

(a) The provisions governing procedure in civil actions in the district court apply to proceedings on a writ of prohibition.

(b) Section 1902 of this title applies to the disobedience of a writ of prohibition.

PART 3—EVIDENCE

CHAPTER 101—GENERAL PROVISIONS

§ 2501. Application of provisions

(a) Except as otherwise provided, this Part applies to the district court and to the magistrates' courts.

(b) Except as otherwise provided, and subject to the provisions of Title 6, this Part applies to civil actions and to criminal actions.

(c) As used in this Part, "civil action" includes special proceedings of a civil nature.

§ 2502. Persons authorized to administer oaths

Every court, every judge, or clerk of any court, every magistrate, and every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, may administer oaths or affirmations.

§ 2503. Form of oath

An oath, or affirmation, in an action or proceeding, may be administered as follows, the person who swears, or affirms, expressing his assent when addressed in the following form: "You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in this issue (or matter), pending between ——— and ———, shall be the truth, the whole truth, and nothing but the truth, so help you God."

§ 2504. Variation according to belief of witness

(a) Whenever the court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which, in his opinion, is more solemn or obligatory, the court may adopt that mode.

(b) When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if any.

§ 2505. Form of affirmation or declaration

Any person who desires it may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting, when addressed, in the following form: "You do solemnly affirm (or declare) that" and so forth, as provided by section 2503 of this title.

CHAPTER 103—SUBPOENAS; RIGHTS AND DUTIES OF WITNESSES

Sec.

§ 2551. Subpoenas generally

A subpoena in a civil action issued by the district court or by a magistrate's court is governed by Rule 45 of the Federal Rules of Civil Procedure, except that a subpoena issued by either court for a trial or hearing or for the taking of a deposition may be served, and attendance of the witness may be required, anywhere within the Canal Zone.

§ 2552. Duty of witness to attend

A witness served with a subpoena shall attend at the time appointed, with any papers under his control lawfully required by the subpoena, and answer all pertinent and legal questions; and, unless sooner discharged, shall remain until the testimony is closed.

§ 2553. Period of attendance

A witness has a right to be detained only as long as the interests of justice require it.

§ 2554. Forfeiture for disobedience

Except in a criminal action, and in addition to any other penalty, a witness disobeying a subpoena shall forfeit to the party aggrieved the sum of $100, and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

§ 2555. Warrant for arrest of witness

In case of failure of a witness to attend, the court issuing the subpoena, upon proof of the service thereof, and of the failure of the witness to attend, may issue a warrant to the marshal or constable to arrest the witness and bring him before the court, officer, or board where his attendance was required.

§ 2556. Warrant of commitment

A warrant of commitment, issued by a court pursuant to this chapter, shall specify therein, particularly, the cause of the commitment, and if it is for refusing to answer a question, the question shall be stated in the warrant.

§ 2557. Immunity of witness from civil arrest

(a) A person who has been, in good faith, served with a subpoena to attend as a witness in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

(b) The arrest of a witness contrary to subsection (a) of this section is void, and, when willfully made, is a contempt of the court. The person making the arrest is responsible to the witness arrested for double the amount of the damages which may be assessed against him,

and is also liable to an action by the party serving the witness with the subpoena, for the damages sustained by him in consequence of the arrest.

(c) An officer is not liable for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the witness, if the witness party claims the exemption, and makes an affidavit stating that:

(1) he has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued;

(2) he has not thus been served by his own procurement, with the intention of avoiding an arrest; and

(3) he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpoena.

The affidavit may be taken by the officer, and exonerates him from liability for discharging the witness when arrested.

(d) The court or officer before whom the attendance is required may discharge the witness from an arrest made in violation of subsection (a) of this section.

§ 2558. Persons present

A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by the court or officer.

§ 2559. Prisoner as witness

(a) Except in a criminal action, if the witness is confined in a jail or prison within the Canal Zone, an order may be made by the district court for his examination in the prison upon deposition, or for his temporary removal and production before the district court, a magistrate's court, or an officer.

(b) The order may be made only on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

§ 2560. Concealed witness

If a witness is concealed in a building or vessel, so as to prevent the service of a subpoena upon him, the district court or magistrate's court issuing the subpoena may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the marshal or constable serve the subpoena; and the marshal or constable shall serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

§ 2561. Interpreters

(a) If a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

(b) Any person, a resident of the proper division or subdivision, may be summoned by a court or judge to appear before the court or judge to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a subpoena. A person so summoned who fails to attend at the time and place named in the summons is guilty of a contempt.

§ 2562. Witness fees

(a) Witnesses in the district court, either in actions or special proceedings, are entitled to $4 per day and 10 cents for each mile going to the place of trial from their homes by the nearest route of usual travel. Mileage may be charged but once in the action unless the

witness is compelled to attend more than one term of court, and an allowance may not be made for mileage except that traveled within the Canal Zone.

(b) Witnesses in magistrates' courts are entitled to $2 per day and the travel fees provided by subsection (a) of this section.

(c) Fees to which a witness may be entitled in a civil action shall be allowed on the affidavit of the witness, stating the number of days he has attended and the amount of mileage to which he is entitled, to be taken and preserved by the clerk of the court, magistrate, or other officer before whom the witness was called to testify, and a certificate of the allowance shall be given to the witness. On final taxation of costs the truth of the affidavit may be contested and this allowance may be set aside in whole or in part as the facts require.

(d) A witness is not entitled to compensation for his attendance in more than one case or on more than one side of the same case at the same time, but may elect in which of several cases or on which side of the case, when he is summoned by both sides, to claim his attendance. A person who is compelled to attend court on other business is not entitled to compensation as a witness.

CHAPTER 105—PRODUCTION OF EVIDENCE

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—AFFIDAVITS

SUBCHAPTER III—DEPOSITIONS AND DISCOVERY

Subchapter I—General Provisions

§ 2591. Mode of taking testimony

The testimony of witnesses may be taken in three modes:

(1) by affidavit;
(2) by deposition; and
(3) by oral examination.

§ 2592. Oral examination defined

An oral examination is an examination in presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

Subchapter II—Affidavits

§ 2611. Affidavit defined

An affidavit is a written declaration under oath, made without notice to the adverse party.

§ 2612. Use of affidavits

An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy,

the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly permitted by another provision of this Code.

§ 2613. Proof of publication

(a) Evidence of the publication of a document or notice required by law, or by an order of a court or judge, to be published in a newspaper, may be given by the affidavit of the printer of the newspaper, or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when, and the paper in which, the publication was made.

(b) If the affidavit is made in an action or special proceeding pending in a court, it may be filed with the court or the clerk thereof. The original affidavit, or a copy thereof, certified by the judge of the court or clerk having it in custody, is prima facie evidence of the facts stated therein.

§ 2614. Persons before whom affidavits taken

(a) An affidavit to be used before a court, judge, or officer of the Canal Zone may be taken before any officer authorized to administer oaths.

(b) An affidavit taken in a State of the United States, to be used in the Canal Zone, may be taken before a commissioner appointed by the Governor of the Canal Zone to take affidavits in the State, or before any notary public in a State, or before any judge or clerk of a court of record having a seal.

(c) An affidavit taken in a foreign country to be used in the Canal Zone, may be taken before an ambassador, minister, consul, vice-consul, or consular agent of the United States, or before any judge of a court of record having a seal in the foreign country.

(d) When an affidavit is taken before a judge of a court in a State, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that the judge is a member thereof, shall be certified by the clerk of the court, under the seal thereof.

(e) An affidavit may be taken before an officer of the armed forces as provided by section 725 of Title 4.

Subchapter III—Depositions and Discovery

§ 2641. Depositions and discovery generally

(a) Except as provided in this section, Rules 26–37 of the Federal Rules of Civil Procedure apply both to the district court and to the magistrates' courts in civil actions.

(b) For the purpose of taking depositions in the Canal Zone for use outside the Canal Zone, proceedings in aid thereof shall be had in the district court.

(c) In an action in a magistrate's court, a deposition may be taken outside the Canal Zone only upon an order of the magistrate's court, upon notice to the parties, granting leave to take the deposition. In proceedings under this subsection, references in Rules 26–37 and 45 of the Federal Rules of Civil Procedure to a notice to take a deposition shall be deemed to refer to an order of a magistrate's court granting leave to take a deposition.

An order of a magistrate's court under this subsection, or a commission or letters rogatory issued by a magistrate's court under Rule 28(b) of the Federal Rules of Civil Procedure, shall have attached thereto a certificate of the clerk of the district court, under the seal of the district court, to the effect that the person issuing the order, commission, or letters rogatory was an acting magistrate at the date of the order.

(d) Proceedings before action, pursuant to Rule 27(a) of the Federal Rules of Civil Procedure, to perpetuate testimony regarding a matter which may be cognizable in either the district court or a magistrate's court may be brought only in the district court. A deposition so taken may be used as provided in Rule 27(a)(4) in an action subsequently brought in either the district court or a magistrate's court.

§ 2642. Depositions for use outside Canal Zone; Uniform Foreign Depositions Act

(a) Whenever any mandate, writ, or commission is issued out of any court of record in any State of the United States or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in the Canal Zone, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in the district court in the Canal Zone.

(b) This section shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those States which enact it.

(c) This section may be cited as the Uniform Foreign Depositions Act.

§ 2643. Depositions in foreign countries

Sections 1781 and 1785 of Title 28, United States Code, apply to commissions and letters rogatory issued by the district court and the magistrates' courts.

§ 2644. Subpoena of witness in foreign country; contempt

Sections 1783 and 1784 of Title 28, United States Code, apply to civil and criminal actions in the district court but not in the magistrates' courts.

CHAPTER 107—PRESENTATION OF EVIDENCE

Sec.

§ 2681. Control of judge over presentation of evidence

In civil actions, and in criminal actions except as otherwise provided by Title 6 of this Code or an applicable provision of Title 18 of the United States Code, the judge controls the conduct of the trial to the end that the evidence shall be presented honestly, expeditiously and in such form as to be readily understood, and in his discretion determines, among other things:

(1) in what order evidence shall be offered and witnesses shall be called and examined;

(2) how many counsel for a party may examine or cross-examine a witness;

(3) how many witnesses a party may reasonably call to testify to a material matter;

(4) whether to call witnesses of his own motion, and whether and to what extent to interrogate a witness by whomever called;

(5) whether to exclude, of his own motion, evidence which would violate a privilege of a person who is neither a party nor the witness from whom the evidence is sought if the privilege has not been waived or otherwise terminated, or which would be excluded on appropriate objection by an adverse party;

(6) what reasonable restraints shall be imposed upon the examiner of a witness in order that the witness be not misled, intimidated, harassed or unduly disconcerted;

(7) to what extent and in what circumstances a party calling a witness shall be permitted, and a party not calling him shall be forbidden, to put to the witness questions suggesting the desired answers;

(8) to what extent and in what circumstances a party cross-examining a witness may be forbidden to examine him concerning material matter not inquired about on a previous examination by the judge or by an adverse party;

(9) whether or upon what condition a party may put questions or use any writing, object or other means for the purpose of reviving the memory of a witness;

(10) whether a witness in communicating admissible evidence may use as a substitute for oral testimony or in addition to it a writing, model, device or any other understandable means of communication, and whether a means so used may be admitted in evidence;

(11) whether counsel may use a writing, model or other device as a means of conveying a reasonably accurate understanding of his interpretation of admitted evidence;

(12) whether or upon what condition an adverse party shall upon demand made at the trial submit for inspection to the demanding party a writing or object found by the judge to be in the control of the adverse party and readily accessible and to constitute or contain evidence admissible against the adverse party; and

(13) whether or not an exhibit which has been received in evidence shall be available to the jury after its retirement to deliberate upon the verdict.

§ 2682. Presence of parties

Upon a trial, a witness may be heard only in the presence and subject to the examination of all the parties, if they choose to attend and examine.

§ 2683. Exclusion of witnesses

(a) In his discretion, on his own motion or on the request of a party, the judge may exclude from the courtroom any witness not at the time under examination, so that he may not hear the testimony of other witnesses. A party to the action or proceeding may not be so excluded; and if a corporation is a party, it is entitled to the presence of one of its officers, to be designated by its attorney.

(b) In a criminal action, the judge may also cause the witnesses to be kept separate and to be prevented from conversing with each other until they are examined.

§ 2684. Postponement for absence of evidence

A motion to postpone a trial on the ground of the absence of evidence may be made only upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it.

The court may require the moving party, where application is made on account of the absence of a material witness, to state upon affidavit the evidence which he expects to obtain. If the adverse party thereupon admits that the evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial may not be postponed.

CHAPTER 109—ADMISSIBILITY OF EVIDENCE; UNIFORM RULES OF EVIDENCE

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—JUDICIAL NOTICE

SUBCHAPTER III—PRESUMPTIONS

SUBCHAPTER IV—WITNESSES

SUBCHAPTER V—PRIVILEGES

SUBCHAPTER VI—EXTRINSIC POLICIES AFFECTING ADMISSIBILITY

SUBCHAPTER VII—EXPERT AND OTHER OPINION TESTIMONY

SUBCHAPTER VIII—HEARSAY EVIDENCE

SUBCHAPTER IX—AUTHENTICATION AND CONTENT OF WRITINGS

Subchapter I—General Provisions

§ 2731. Definitions

"Evidence" means the means from which inferences may be drawn as a basis of proof in duly constituted judicial or fact-finding tribunals, and includes testimony in the form of opinion, and hearsay.

"Relevant evidence" means evidence having any tendency in reason to prove any material fact.

"Proof" means all of the evidence before the trier of the fact relevant to a fact in issue which tends to prove the existence or non-existence of such fact.

"Burden of proof" means the obligation of a party to meet the requirements of a rule of law that the fact be proved either by a preponderance of the evidence or by clear and convincing evidence or beyond a reasonable doubt, as the case may be. Burden of proof is synonymous with "burden of persuasion."

"Burden of producing evidence" means the obligation of a party to introduce evidence when necessary to avoid the risk of a directed verdict or peremptory finding against him on a material issue of fact.

"Conduct" includes all active and passive behavior, both verbal and non-verbal.

"The hearing", unless some other is indicated by the context of the section where the term is used, means the hearing at which the question under a section is raised, and not some earlier or later hearing.

"Finding of fact" means the determination from proof or judicial notice of the existence of a fact. A ruling implies a supporting finding of fact; separate or formal finding is not required unless required by a statute or rule applicable in the Canal Zone.

"Guardian" means the person, committee, or other representative authorized by law to protect the person or estate or both of an incompetent (or of a *sui juris* person having a guardian) and to act for him in matters affecting his person or property or both. An incompetent is a person under disability imposed by law.

"Judge" means member or members or representative or representatives of a court conducting a trial or hearing at which evidence is introduced.

"Trier of fact" includes a jury and a judge when he is trying an issue of fact other than one relating to the admissibility of evidence.

"Verbal" includes both oral and written words.

"Writing" means handwriting, typewriting, printing, photostating, photographing and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

§ 2732. Scope of chapter

Except to the extent to which it may be relaxed by other procedural rule or statute applicable to the specific situation, this chapter applies in every proceeding, both criminal and civil, conducted by or under the supervision of a court, in which evidence is produced.

§ 2733. Undisputed matter; pre-trial conferences and admissions

If there is no bona fide dispute between the parties as to a material fact in a civil action, the issues for trial may be limited in a pre-trial conference or a party may obtain an admission of facts or of genuineness of documents as provided by Rules 16 and 36 of the Federal Rules of Civil Procedure.

§ 2734. Effect of erroneous admission of evidence

Errors in the admission of evidence are governed by Rules 46 and 61 of the Federal Rules of Civil Procedure in civil actions, and by Rules 51 and 52 of the Federal Rules of Criminal Procedure in criminal actions.

§ 2735. Effect of erroneous exclusion of evidence

A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous exclusion of evidence unless (1) it appears of record that the proponent of the evidence either made known the substance of the evidence in a form and by a method approved by the judge, or indicated the substance of the expected evidence by questions indicating the desired answers, and (2) the court which passes upon the effect of the error or errors is of opinion that the excluded evidence would probably have had a substantial influence in bringing about a different verdict or finding.

§ 2736. Limited admissibility

When relevant evidence is admissible as to one party or for one purpose and is inadmissible as to other parties or for another purpose, the judge upon request shall restrict the evidence to its proper scope and instruct the jury accordingly.

§ 2737. General abolition of disqualifications and privileges of witnesses, and of exclusionary rules

Except as otherwise provided in this chapter, (1) every person is qualified to be a witness, and (2) no person has a privilege to refuse to be a witness, and (3) no person is disqualified to testify to any matter, and (4) no person has a privilege to refuse to disclose any matter or to produce any object or writing, and (5) no person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any object or writing, and (6) all relevant evidence is admissible.

§ 2738. Preliminary inquiry by judge

When the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is stated in this chapter to be subject to a condition, and the fulfillment of the condition is in issue, the issue is to be determined by the judge, and he shall indicate to the parties which one has the burden of producing evidence and the burden of proof on such issue as implied by the section under which the question arises. The judge may hear and determine such matters out

of the presence or hearing of the jury, except that on the admissibility of a confession the judge, if requested, shall hear and determine the question out of the presence and hearing of the jury. But this section shall not be construed to limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Subchapter II—Judicial Notice

§ 2761. Facts which must or may be judicially noticed

(a) Judicial notice shall be taken without request by a party, of the common law, constitutions and public statutes in force in every state, territory and jurisdiction of the United States, and of such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute.

(b) Judicial notice may be taken without request by a party, of (1) private acts and resolutions of the Congress of the United States, and duly enacted ordinances and duly published regulations of any agency of the United States, and (2) the laws of foreign countries, and (3) such facts as are so generally known or of such common notoriety within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute, and (4) specific facts and propositions of generalized knowledge which are capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy.

(c) Judicial notice shall be taken of each matter specified in paragraph (b) of this section if a party requests it and (1) furnishes the judge sufficient information to enable him properly to comply with the request and (2) has given each adverse party such notice as the judge may require to enable the adverse party to prepare to meet the request.

§ 2762. Determination as to propriety of judicial notice and tenor of matter noticed

(a) The judge shall afford each party reasonable opportunity to present to him information relevant to the propriety of taking judicial notice of a matter or to the tenor of the matter to be noticed.

(b) In determining the propriety of taking judicial notice of a matter or the tenor thereof, (1) the judge may consult and use any source of pertinent information, whether or not furnished by a party, and (2) no exclusionary rule except a valid claim of privilege shall apply.

(c) If the information possessed by or readily available to the judge, whether or not furnished by the parties, fails to convince him that a matter falls clearly within section 2761 of this title, or if it is insufficient to enable him to notice the matter judicially, he shall decline to take judicial notice thereof.

(d) In any event the determination either by judicial notice or from evidence of the applicability and the tenor of any matter of common law, constitutional law, or of any statute, private act, resolution, ordinance or regulation falling within section 2761 of this title, is a matter for the judge and not for the jury.

§ 2763. Instructing the trier of fact as to matter judicially noticed

If a matter judicially noticed is other than the common law or constitution or public statutes of the United States, the judge shall indicate for the record the matter which is judicially noticed and if the matter would otherwise have been for determination by a trier of fact other than the judge, he shall instruct the trier of the fact to accept as a fact the matter so noticed.

§ 2764. Judicial notice in proceedings subsequent to trial

(a) The failure or refusal of the judge to take judicial notice of a matter, or to instruct the trier of fact with respect to the matter, shall not preclude the judge from taking judicial notice of the matter in subsequent proceedings in the action.

(b) The rulings of the judge pursuant to sections 2761, 2762, and 2763 of this title are subject to review.

(c) The reviewing court in its discretion may take judicial notice of any matter specified by section 2761 of this title whether or not judicially noticed by the judge.

(d) A judge or a reviewing court taking judicial notice under paragraph (a) or (c) of this section of matter not theretofore so noticed in the action shall afford the parties reasonable opportunity to present information relevant to the propriety of taking such judicial notice and to the tenor of the matter to be noticed.

Subchapter III—Presumptions

§ 2791. Definition

A presumption is an assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the action.

§ 2792. Effect of presumptions

Subject to section 2794 of this title, and except for presumptions which are conclusive or irrefutable under the rules of law from which they arise, (1) if the facts from which the presumption is derived have any probative value as evidence of the existence of the presumed fact, the presumption continues to exist and the burden of establishing the non-existence of the presumed fact is upon the party against whom the presumption operates, (2) if the facts from which the presumption arises have no probative value as evidence of the presumed fact, the presumption does not exist when evidence is introduced which would support a finding of the non-existence of the presumed fact, and the fact which would otherwise be presumed shall be determined from the evidence exactly as if no presumption was or had ever been involved.

§ 2793. Inconsistent presumptions

If two presumptions arise which are conflicting with each other the judge shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance both presumptions shall be disregarded.

§ 2794. Burden of proof not relaxed as to some presumptions

A presumption, which by a rule of law may be overcome only by proof beyond a reasonable doubt, or by clear and convincing evidence, shall not be affected by section 2792 or 2793 of this title and the burden of proof to overcome it continues on the party against whom the presumption operates.

Subchapter IV—Witnesses

§ 2821. Disqualification of witness; interpreters

A person is disqualified to be a witness if the judge finds that (1) the proposed witness is incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth. An interpreter is subject to all the provisions of this chapter relating to witnesses.

§ 2822. Oath

Every witness before testifying shall be required to express his purpose to testify by the oath or affirmation required by law.

§ 2823. Prerequisites of knowledge and experience

As a prerequisite for the testimony of a witness on a relevant or material matter, there must be evidence that he has personal knowledge thereof, or experience, training or education if such be required. Such evidence may be by the testimony of the witness himself. The judge may reject the testimony of a witness that he perceived a matter if he finds that no trier of fact could reasonably believe that the witness did perceive the matter. The judge may receive conditionally the testimony of the witness as to a relevant or material matter, subject to the evidence of knowledge, experience, training or education being later supplied in the course of the trial.

§ 2824. Evidence generally affecting credibility

Subject to sections 2825 and 2826 of this title, for the purpose of impairing or supporting the credibility of a witness, any party including the party calling him may examine him and introduce extrinsic evidence concerning any conduct by him and any other matter relevant upon the issues of credibility.

§ 2825. Limitations on evidence of conviction of crime as affecting credibility

A witness, including an accused who appears as a witness in a criminal proceeding, may not be impeached by evidence of his conviction of a crime, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of a felony.

§ 2826. Further limitations on admissibility of evidence affecting credibility

As affecting the credibility of a witness (1) in examining the witness as to a statement made by him in writing inconsistent with any part of his testimony it shall not be necessary to show or read to him any part of the writing provided that if the judge deems it feasible the time and place of the writing and the name of the person addressed, if any, shall be indicated to the witness; (2) extrinsic evidence of prior contradictory statements, whether oral or written, made by the witness, may in the discretion of the judge be excluded unless the witness was so examined while testifying as to give him an opportunity to identify, explain or deny the statement; (3) evidence of traits of his character other than honesty or veracity or their opposites, shall be inadmissible; (4) evidence of specific instances of his conduct relevant only as tending to prove a trait of his character, shall be inadmissible.

Subchapter V—Privileges

§ 2851. Privilege of accused

(a) Every person has in any criminal action in which he is an accused a privilege not to be called as a witness and not to testify.

(b) An accused in a criminal action has a privilege to prevent his spouse from testifying in such action with respect to any confidential communication had or made between them while they were husband and wife, excepting only (1) in an action in which the accused is charged with (A) a crime involving the marriage relation, or (B) a crime against the person or property of the other spouse or the child of either spouse, or (C) a desertion of the other spouse or a child of either spouse, or (2) as to the communication, in an action in which the accused offers evidence of a communication between himself and his spouse.

(c) An accused in a criminal action has no privilege to refuse, when ordered by the judge, to submit his body to examination or to do any act in the presence of the judge or the trier of the fact, except to refuse to testify.

§ 2852. Definition of incrimination

A matter will incriminate a person within the meaning of this chapter if it constitutes, or forms an essential part of, or, taken in connection with other matters disclosed, is a basis for a reasonable inference of such a violation of the laws applicable in the Canal Zone or of any law of the United States as to subject him to liability to punishment therefor, unless he has become for any reason permanently immune from punishment for such violation.

§ 2853. Self-incrimination; exceptions

Subject to sections 2851 and 2864 of this title, every natural person has a privilege, which he may claim, to refuse to disclose in an action or to a public official of the Government of the Canal Zone or to any agency of the United States or any officer thereof any matter that will incriminate him, except that under this section:

(1) if the privilege is claimed in an action the matter shall be disclosed if the judge finds that the matter will not incriminate the witness; and

(2) no person has the privilege to refuse to submit to examination for the purpose of discovering or recording his corporal features and other identifying characteristics, or his physical or mental condition; and

(3) no person has the privilege to refuse to furnish or permit the taking of samples of body fluids or substances for analysis; and

(4) no person has the privilege to refuse to obey an order made by a court to produce for use as evidence or otherwise a document, chattel or other thing under his control constituting, containing or disclosing matter incriminating him if the judge finds that, by the applicable rules of the substantive law, some other person or a corporation, or other association has a superior right to the possession of the thing ordered to be produced; and

(5) a public official or any person who engages in any activity, occupation, profession or calling does not have the privilege to refuse to disclose any matter which the statutes or regulations governing the office, activity, occupation, profession or calling require him to record or report or disclose concerning it; and

(6) a person who is an officer, agent or employee of a corporation or other association, does not have the privilege to refuse to disclose any matter which the statutes or regulations governing the corporation or association or the conduct of its business require him to record or report or disclose; and

(7) subject to section 2825 of this title, a defendant in a criminal action who voluntarily testifies in the action upon the merits before the trier of fact does not have the privilege to refuse to disclose any matter relevant to any issue in the action.

§ 2854. Lawyer-client privilege

(a) General Rule. - Subject to section 2864 of this title, and except as otherwise provided by paragraph (b) of this section communications found by the judge to have been between lawyer and his client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (1) if he is the witness to refuse to disclose any such communication, and (2) to prevent his lawyer from disclosing it, and (3) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (A) in the course of its transmittal between the client and the

lawyer, or (B) in a manner not reasonably to be anticipated by the client, or (C) as a result of a breach of the lawyer-client relationship. The privilege may be claimed by the client in person or by his lawyer, or if incompetent, by his guardian, or if deceased, by his personal representative. The privilege available to a corporation or association terminates upon dissolution.

(b) Exceptions. The privileges do not extend (1) to a communication if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the client to commit or plan to commit a crime or a tort, or (2) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by *inter vivos* transaction, or (3) to a communication relevant to an issue of breach of duty by the lawyer to his client, or by the client to his lawyer, or (4) to a communication relevant to an issue concerning an attested document of which the lawyer is an attesting witness, or (5) to a communication relevant to a matter of common interest between two or more clients if made by any of them to a lawyer whom they have retained in common when offered in an action between any of such clients.

(c) Definitions. As used in this section (1) "client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or the lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity; and includes an incompetent whose guardian so consults the lawyer or the lawyer's representative in behalf of the incompetent, (2) "communication" includes advice given by the lawyer in the course of representing the client and includes disclosures of the client to a representative, associate or employee of the lawyer incidental to the professional relationship, (3) "lawyer" means a person authorized, or reasonably believed by the client to be authorized to practice law in any state or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer.

§ 2855. Physician-patient privilege

(a) As used in this section, (1) "patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of his physical or mental condition, consults a physician, or submits to an examination by a physician; (2) "physician" means a person authorized or reasonably believed by the patient to be authorized, to practice medicine in the state or jurisdiction in which the consultation or examination takes place; (3) "holder of the privilege" means the patient while alive and not under guardianship or the guardian of the person of an incompetent patient, or the personal representative of a deceased patient; (4) "confidential communication between physician and patient" means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

(b) Except as provided by paragraphs (c), (d), (e) and (f) of this section, a person, whether or not a party, has a privilege in a civil action or in a prosecution for a misdemeanor to refuse to disclose, and to prevent a witness from disclosing, a communication, if he claims the privilege and the judge finds that (1) the communication was a

confidential communication between patient and physician, and (2) the patient or the physician reasonably believed the communication to be necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor, and (3) the witness (A) is the holder of the privilege or (B) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (C) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the physician or his agent or servant and (4) the claimant is the holder of the privilege or a person authorized to claim the privilege for him.

(c) There is no privilege under this section as to any relevant communication between the patient and his physician (1) upon an issue of the patient's condition in an action to commit him or otherwise place him under the control of another or others because of alleged mental illness or incompetence, or in an action in which the patient seeks to establish his competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor, or (2) upon an issue as to the validity of a document as a will of the patient, or (3) upon an issue between parties claiming by testate or intestate succession from a deceased patient.

(d) There is no privilege under this section in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party.

(e) There is no privilege under this section as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.

(f) A person does not have a privilege under this section if the judge finds that sufficient evidence, aside from the communication has been introduced to warrant a finding that the services of the physician were sought or obtained to enable or aid anyone to commit or to plan to commit a crime or a tort, or to escape detection or apprehension after the commission of a crime or a tort.

(g) A privilege under this section as to a communication is terminated if the judge finds that any person while a holder of the privilege has caused the physician or any agent or servant of the physician to testify in any action to any matter of which the physician or his agent or servant gained knowledge through the communication.

§ 2856. Marital privilege; confidential communications

(a) General Rule. Subject to section 2864 of this title and except as otherwise provided in paragraphs (b) and (c) of this section, a spouse who transmitted to the other the information which constitutes the communication, has a privilege during the marital relationship which he may claim whether or not he is a party to the action, to refuse to disclose and to prevent the other from disclosing communications found by the judge to have been had or made in confidence between them while husband and wife. The other spouse or the guardian of an incompetent spouse may claim the privilege on behalf of the spouse having the privilege.

(b) Exceptions. Neither spouse may claim the privilege (1) in an action by one spouse against the other spouse, or (2) in a criminal action in which one of them is charged with a crime against the person or property of the other or of a child of either, or a crime against the

person or property of a third person committed in the course of committing a crime against the other, or bigamy or adultery, or desertion of the other or of a child of either, or (3) in a criminal action in which the accused offers evidence of a communication between him and his spouse, or (4) if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the communication was made, in whole or in part, to enable or aid anyone to commit or to plan to commit a crime or a tort.

(c) Termination. A spouse who would otherwise have a privilege under this section has no such privilege if the judge finds that he or the other spouse while the holder of the privilege testified or caused another to testify in any action to any communication between the spouses upon the same subject matter.

§ 2857. Priest-penitent privilege; definition; penitential communications

(a) As used in this section (1) "priest" means a priest, clergyman, minister of the gospel or other officer of a church or of a religious denomination or organization, who in the course of its discipline or practice is authorized or accustomed to hear, and has a duty to keep secret, penitential communications made by members of his church, denomination or organization; (2) "penitent" means a member of a church or religious denomination or organization who has made a penitential communication to a priest thereof; (3) "penitential communication" means a confession of culpable conduct made secretly and in confidence by a penitent to a priest in the course of discipline or practice of the church or religious denomination or organization of which the penitent is a member.

(b) A person, whether or not a party, has a privilege to refuse to disclose, and to prevent a witness from disclosing a communication if he claims the privilege and the judge finds that (1) the communication was a penitential communication and (2) the witness is the penitent or the priest, and (3) the claimant is the penitent, or the priest making the claim on behalf of an absent penitent.

§ 2858. Religious belief

A person has a privilege to refuse to disclose his theological opinion or religious belief unless his adherence or non-adherence to such an opinion or belief is material to an issue in the action other than that of his credibility as a witness.

§ 2859. Political vote

Every person has a privilege to refuse to disclose the tenor of his vote at a political election unless the judge finds that the vote was cast illegally.

§ 2860. Trade secret

The owner of a trade secret has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose the secret and to prevent other persons from disclosing it if the judge finds that the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.

§ 2861. Secret of state

(a) As used in this section, "secret of state" means information not open or theretofore officially disclosed to the public involving the public security or concerning the military or naval organization or plans of the United States, or a State, or concerning international relations.

(b) A witness has a privilege to refuse to disclose a matter on the ground that it is a secret of state, and evidence of the matter is inadmissible, unless the judge finds that (1) the matter is not a secret of state, or (2) the chief officer of the department of government administering the subject matter which the secret concerns has consented that it be disclosed in the action.

§ 2862. Official information

(a) As used in this section, "official information" means information not open or theretofore officially disclosed to the public relating to internal affairs of the Government of the Canal Zone or of any agency of the United States acquired by a public official of the Government of the Canal Zone or any agency of the United States in the course of his duty, or transmitted from one such official to another in the course of duty.

(b) A witness has a privilege to refuse to disclose a matter on the ground that it is official information, and evidence of the matter is inadmissible, if the judge finds that the matter is official information, and (1) disclosure is forbidden by an Act of the Congress of the United States, or (2) disclosure of the information in the action will be harmful to the interests of the government.

§ 2863. Identity of informer

A witness has a privilege to refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of a provision of the laws applicable in the Canal Zone or of any law of the United States to a representative of the Government of the Canal Zone or the United States or a governmental division thereof, charged with the duty of enforcing that provision, and evidence thereof is inadmissible, unless the judge finds that (1) the identity of the person furnishing the information has already been otherwise disclosed or (2) disclosure of his identity is essential to assure a fair determination of the issues.

§ 2864. Waiver of privilege by contract or previous disclosure

A person who would otherwise have a privilege to refuse to disclose or to prevent another from disclosing a specified matter has no such privilege with respect to that matter if the judge finds that he or any other person while the holder of the privilege has (1) contracted with anyone not to claim the privilege or, (2) without coercion and with knowledge of his privilege, made disclosure of any part of the matter or consented to such a disclosure made by anyone.

§ 2865. Admissibility of disclosure wrongfully compelled

Evidence of a statement or other disclosure is inadmissible against the holder of the privilege if the judge finds that he had and claimed a privilege to refuse to make the disclosure but was nevertheless required to make it.

§ 2866. Reference to exercise of privileges

If a privilege is exercised not to testify or to prevent another from testifying, either in the action or with respect to particular matters, or to refuse to disclose or to prevent another from disclosing any matter, the judge and counsel may not comment thereon, no presumption shall arise with respect to the exercise of the privilege, and the trier of fact may not draw any adverse inference therefrom. In those jury cases wherein the right to exercise a privilege, as herein provided, may be misunderstood and unfavorable inferences drawn by the trier of the fact, or be impaired in the particular case, the court, at the request of the party exercising the privilege, may instruct the jury in support of such privilege.

§ 2867. Effect of error in overruling claim of privilege

A party may predicate error on a ruling disallowing a claim of privilege only if he is the holder of the privilege.

Subchapter VI—Extrinsic Policies Affecting Admissibility

§ 2891. Evidence to test a verdict

Upon an inquiry as to the validity of a verdict no evidence shall be received to show the effect of any statement, conduct, event or condition upon the mind of a juror as influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined.

§ 2892. Testimony by the judge

Against the objection of a party, the judge presiding at the trial may not testify in that trial as a witness.

§ 2893. Testimony by a juror

A member of a jury sworn and empanelled in the trial of an action, may not testify in that trial as a witness.

§ 2894. Testimony of jurors not limited except by this chapter

This chapter does not exempt a juror from testifying as a witness, if the law of the Canal Zone permits, to conditions or occurrences either within or outside of the jury room having a material bearing on the validity of the verdict, except as expressly limited by section 2891 of this title.

§ 2895. Discretion of judge to exclude admissible evidence

Except as in this chapter otherwise provided, the judge may in his discretion exclude evidence if he finds that its probative value is substantially outweighed by the risk that its admission will (1) necessitate undue consumption of time, or (2) create substantial danger of undue prejudice or of confusing the issues or of misleading the jury, or (3) unfairly and harmfully surprise a party who has not had reasonable opportunity to anticipate that such evidence would be offered.

§ 2896. Character; manner of proof

When a person's character or a trait of his character is in issue, it may be proved by testimony in the form of opinion, evidence of reputation, or evidence of specific instances of the person's conduct, subject, however, to the limitations of sections 2897 and 2898 of this title.

§ 2897. Character trait as proof of conduct

Subject to section 2898 of this title, when a trait of a person's character is relevant as tending to prove his conduct on a specified occasion, such trait may be proved in the same manner as provided by section 2896 of this title, except that (1) evidence of specific instances of conduct other than evidence of conviction of a crime which tends to prove the trait to be bad shall be inadmissible, and (1) in a criminal action evidence of a trait of an accused's character as tending to prove his guilt or innocence of the offense charged, (A) may not be excluded by the judge under section 2895 of this title if offered by the accused to prove his innocence, and (B) if offered by the prosecution to prove his guilt, may be admitted only after the accused has introduced evidence of his good character.

§ 2898. Character trait for care or skill; inadmissible to prove quality of conduct

Evidence of a trait of a person's character with respect to care or skill is inadmissible as tending to prove the quality of his conduct on a specified occasion.

§ 2899. Habit or custom to prove specific behavior

Evidence of habit or custom is relevant to an issue of behavior on a specified occasion, but is admissible on that issue only as tending to prove that the behavior on such occasion conformed to the habit or custom.

§ 2900. Opinion and specific instances of behavior to prove habit or custom

Testimony in the form of opinion is admissible on the issue of habit or custom. Evidence of specific instances of behavior is admissible to prove habit or custom if the evidence is of a sufficient number of such instances to warrant a finding of such habit or custom.

§ 2901. Subsequent remedial conduct

When after the occurrence of an event remedial or precautionary measures are taken, which, if taken previously would have tended to make the event less likely to occur, evidence of such subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event.

§ 2902. Offer to compromise and the like, not evidence of liability

Evidence that a person has, in compromise or from humanitarian motives furnished or offered or promised to furnish money, or any other thing, act or service to another who has sustained or claims to have sustained loss or damage, is inadmissible to prove his liability for the loss or damage or any part of it. This section shall not affect the admissibility of evidence (1) of partial satisfaction of an asserted claim on demand without questioning its validity, as tending to prove the validity of the claim, or (2) of a debtor's payment or promise to pay all or a part of his pre-existing debt as tending to prove the creation of a new duty on his part, or a revival of his pre-existing duty.

§ 2903. Offer to discount claim, not evidence of invalidity

Evidence that a person has accepted or offered or promised to accept a sum of money or any other thing, act or service in satisfaction of a claim, is inadmissible to prove the invalidity of the claim or any part of it.

§ 2904. Liability insurance

Evidence that a person was, at the time a harm was suffered by another, insured wholly or partially against loss arising from liability for that harm is inadmissible as tending to prove negligence or other wrongdoing.

§ 2905. Other crimes or civil wrongs

Subject to section 2897 of this title, evidence that a person committed a crime or civil wrong on a specified occasion is inadmissible to prove his disposition to commit crime or civil wrong as the basis for an inference that he committed another crime or civil wrong on another specified occasion but, subject to sections 2895 and 2898 of this title, such evidence is admissible when relevant to prove another material fact including absence of mistake or accident, motive, opportunity, intent, preparation, plan, knowledge or identity.

Subchapter VII—Expert and Other Opinion Testimony

§ 2931. Testimony in form of opinion

(a) If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to such opinions or inferences as the judge finds (1) may be rationally based on the perception of the witness and (2) are helpful to a clear understanding of his testimony or to the determination of the fact in issue.

(b) If the witness is testifying as an expert, testimony of the witness in the form of opinions or inferences is limited to such opinions as the judge finds are (1) based on facts or data perceived by or personally known or made known to the witness at the hearing and (2) within the scope of the special knowledge, skill, experience or training possessed by the witness.

(c) Unless the judge excludes the testimony he shall be deemed to have made the finding requisite to its admission.

(d) Testimony in the form of opinions or inferences otherwise admissible under this chapter is not objectionable because it embraces the ultimate issue or issues to be decided by the trier of the fact.

§ 2932. Preliminary examination

The judge may require that a witness before testifying in terms of opinion or inference be first examined concerning the data upon which the opinion or inference is founded.

§ 2933. Hypothesis for expert opinion not necessary

Questions calling for the opinion of an expert witness need not be hypothetical in form unless the judge in his discretion so requires, but the witness may state his opinion and reasons therefor without first specifying data on which it is based as an hypothesis or otherwise; but upon cross-examination he may be required to specify such data.

§ 2934. Appointment of experts

(a) If the judge determines that the appointment of expert witnesses in an action may be desirable, he shall order the parties to show cause why expert witnesses should not be appointed, and after opportunity for hearing may request nominations and appoint one or more such witnesses. If the parties agree in the selection of an expert or experts, only those agreed upon shall be appointed. Otherwise the judge may make his own selection. An expert witness shall not be appointed unless he consents to act. The judge shall determine the duties of the witness and inform him thereof at a conference in which the parties shall have an opportunity to participate. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the judge or any party. He may be examined and cross-examined by each party. This section does not limit the parties in calling expert witnesses of their own selection and at their own expense.

(b) Rule 28 of the Federal Rules of Criminal Procedure does not apply in the Canal Zone.

§ 2935. Compensation of expert witnesses

Expert witnesses appointed by the judge shall be entitled to reasonable compensation in such sum only as the judge may allow. Except as may be otherwise provided by statute applicable to a specific situation, the compensation shall be paid (1) in a criminal action out of such funds as may be provided by law, and (2) in a civil action by the opposing parties in equal portions to the clerk of the court at such time as the judge shall direct, and charged as costs in the case. The amount of compensation paid to an expert witness not appointed by the judge shall be a proper subject of inquiry as relevant to his credibility and the weight of his testimony.

§ 2936. Credibility of appointed expert witness

The fact of the appointment of an expert witness by the judge may be revealed to the trier of the facts as relevant to the credibility of such witness and the weight of his testimony.

Subchapter VIII—Hearsay Evidence

§ 2961. Definitions

As used in section 2962 of this title and its exceptions and in the following sections of this chapter:

(1) "Statement" means not only an oral or written expression but also non-verbal conduct of a person intended by him as a substitute for words in expressing the matter stated.

(2) "Declarant" is a person who makes a statement.

(3) "Perceive" means acquire knowledge through one's own senses.

(4) "Public official" of a state of the United States includes an official of a political subdivision of such state and of a municipality.

(5) "State" includes the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(6) "A business" as used in exception (13) of section 2962 of this title includes every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

(7) "Unavailable as a witness" includes situations where the witness is (A) exempted on the ground of privilege from testifying concerning the matter to which his statement is relevant, or (B) disqualified from testifying to the matter, or (C) unable to be present or to testify at the hearing because of death or then existing physical or mental illness, or (D) not within the Canal Zone, or (E) absent from the place of hearing because the proponent of his statement does not know and with diligence has been unable to ascertain his whereabouts.

But a witness is not unavailable (A) if the judge finds that his exemption, disqualification, inability or absence is due to procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying, or to the culpable neglect of such party, or (B) if unavailability is claimed under clause (D) of the preceding paragraph and the judge finds that the deposition of the declarant could have been taken by the exercise of reasonable diligence and without undue hardship, and that the probable importance of the testimony is such as to justify the expense of taking the deposition.

§ 2962. Hearsay evidence excluded; exceptions

Evidence of a statement which is made other than by a witness while testifying at the hearing offered to prove the truth of the matter stated is heresay evidence and inadmissible except:

(1) Previous Statements of Persons Present and Subject to Cross-Examination. A statement previously made by a person who is present at the hearing and available for cross-examination with respect to the statement and its subject matter, provided the statement would be admissible if made by declarant while testifying as a witness;

(2) Affidavits. Affidavits to the extent admissible by the statutes or rules of court;

(3) Depositions and Prior Testimony. Subject to the same limitations and objections as though the declarant were testifying in person, (A) in civil actions, testimony in the form of a deposition taken in compliance with the law or rules of court, to the extent authorized by the law or rules under which the deposition was taken; or (B) in civil actions, if the judge finds that the declarant is unavailable as a witness at the hearing, testimony given as a witness in another action, or a prior hearing in the same action, when (i) the testimony is offered against a party who offered it in his own behalf on the former occasion, or against the successor in interest of such party, or (ii) the issue is such that the adverse party on the former occa-

sion had the right and opportunity for cross-examination with an interest and motive similar to that which the adverse party has in the action in which the testimony is offered; or (C) in criminal actions, depositions or prior testimony as provided by section 3507 of Title 6;

(4) Contemporaneous Statements and Statements Admissible on Ground of Necessity Generally. A statement (A) which the judge finds was made while the declarant was perceiving the event or condition which the statement narrates, describes or explains, or (B) which the judge finds was made while the declarant was under the stress of a nervous excitement caused by such perception;

(5) Dying Declarations. A statement by a person unavailable as a witness because of his death if the judge finds that it was made voluntarily and in good faith and while the declarant was conscious of his impending death and believed that there was no hope of his recovery;

(6) Confessions. In a criminal proceeding as against the accused, a previous statement by him relative to the offense charged if, and only if, the judge finds that the accused when making the statement was conscious and was capable of understanding what he said and did, and that he was not induced to make the statement (A) under compulsion or by infliction or threats of infliction of suffering upon him or another, or by prolonged interrogation under such circumstances as to render the statement involuntary, or (B) by threats or promises concerning action to be taken by a public official with reference to the crime, likely to cause the accused to make such a statement falsely, and made by a person whom the accused reasonably believed to have the power or authority to execute the same;

(7) Admissions by Parties. As against himself a statement by a person who is a party to the action in his individual or a representative capacity and if the latter, who was acting in such representative capacity in making the statement;

(8) Authorized and Adoptive Admissions. As against a party, a statement (A) by a person authorized by the party to make a statement or statements for him concerning the subject of the statement, or (B) of which the party with knowledge of the content thereof has, by words or other conduct, manifested his adoption or his belief in its truth;

(9) Vicarious Admissions. As against a party, a statement which would be admissible if made by the declarant at the hearing if (A) the statement concerned a matter within the scope of an agency or employment of the declarant for the party and was made before the termination of such relationship, or (B) the party and the declarant were participating in a plan to commit a crime or a civil wrong and the statement was relevant to the plan or its subject matter and was made while the plan was in existence and before its complete execution or other termination, or (C) one of the issues between the party and the proponent of the evidence of the statement is a legal liability of the declarant, and the statement tends to establish that liability;

(10) Declarations Against Interest. Subject to the limitations of exception (6), a statement which the judge finds was at the time of the assertion so far contrary to the declarant's pecuniary or proprietary interest or so far subjected him to civil or criminal liability or so far rendered invalid a claim by him against another or created such risk of making him an object of hatred, ridicule or social disapproval in the community that a reasonable man in his position would not have made the statement unless he believed it to be true;

(11) Voter's Statements. A statement by a voter concerning his qualifications to vote or the fact or content of his vote;

(12) Statements of Physical or Mental Condition of Declarant. Unless the judge finds it was made in bad faith, a statement of the declarant's (A) then existing state of mind, emotion or physical sensation, including statements of intent, plan, motive, design, mental feeling, pain and bodily health, but not including memory or belief to prove the fact remembered or believed, when such a mental or physical condition is in issue or is relevant to prove or explain acts or conduct of the declarant, or (B) previous symptoms, pain or physical sensation, made to a physician consulted for treatment or for diagnosis with a view to treatment, and relevant to an issue of declarant's bodily condition;

(13) Business Entries and the Like. Writings offered as memoranda or records of acts, conditions or events to prove the facts stated therein, if the judge finds that they were made in the regular course of a business at or about the time of the act, condition or event recorded, and that the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness;

(14) Absence of Entry in Business Records. Evidence of the absence of a memorandum or record from the memoranda or records of a business of an asserted act, event or condition, to prove the non-occurrence of the act or event, or the non-existence of the condition, if the judge finds that it was the regular course of that business to make such memoranda of all such acts, events or conditions at the time thereof or within a reasonable time thereafter, and to preserve them;

(15) Reports and Findings of Public Officials. Subject to section 2963 of this title, written reports or findings of fact made by a public official of the United States or any agency thereof or of a state of the United States, if the judge finds that the making thereof was within the scope of the duty of such official and that it was his duty (A) to perform the act reported, or (B) to observe the act, condition or event reported, or (C) to investigate the facts concerning the act, condition or event and to make findings or draw conclusions based on such investigation;

(16) Filed Reports, Made by Persons Exclusively Authorized. Subject to section 2963 of this title, writings made as a record, report or finding of fact, if the judge finds that (A) the maker was authorized by statute or regulation to perform, to the exclusion of persons not so authorized, the functions reflected in the writing, and was required by statute or regulation to file in a designated public office a written report of specified matters relating to the performance of such functions, and (B) the writing was made and filed as so required by the statute or regulation;

(17) Content of Official Record. Subject to section 2963 of this title, (A) if meeting the requirements of authentication under section 2992 of this title, to prove the content of the record, a writing purporting to be a copy of an official record or of an entry therein, (B) to prove the absence of a record in a specified office, a writing made by the official custodian of the official records of the office, reciting diligent search and failure to find such record;

(18) Certificate of Marriage. Subject to section 2963 of this title, certificates that the maker thereof performed a marriage ceremony, to prove the truth of the recitals thereof, if the judge finds that (A) the maker of the certificate at the time and place certified as the time and place of the marriage was authorized by law to perform marriage ceremonies, and (B) the certificate was issued at that time or within a reasonable time thereafter;

(19) Records of Documents Affecting an Interest in Property. Subject to section 2963 of this title, the official record of a document purporting to establish or affect an interest in property, to prove the

content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the judge finds that (A) the record is in fact a record of an office of a state or nation or of any governmental subdivision thereof, and (B) an applicable statute authorized such a document to be recorded in that office;

(20) Judgment of Previous Conviction. Evidence of a final judgment adjudging a person guilty of a felony, to prove any fact essential to sustain the judgment;

(21) Judgment Against Persons Entitled to Indemnity. To prove the wrong of the adverse party and the amount of damages sustained by the judgment creditor, evidence of a final judgment if offered by a judgment debtor in an action in which he seeks to recover partial or total indemnity or exoneration for money paid or liability incurred by him because of the judgment, provided the judge finds that the judgment was rendered for damages sustained by the judgment creditor as a result of the wrong of the adverse party to the present action;

(22) Judgment Determining Public Interest in Land. To prove any fact which was essential to the judgment, evidence of a final judgment determining the interest or lack of interest of the public or of a state or nation or governmental division thereof in land, if offered by a party in an action in which any such fact or such interest or lack of interest is a material matter;

(23) Statement Concerning One's Own Family History. A statement of a matter concerning a declarant's own birth, marriage, divorce, legitimacy, relationship by blood or marriage, race-ancestry or other similar fact of his family history, even though the declarant had no means of acquiring personal knowledge of the matter declared, if the judge finds that the declarant is unavailable;

(24) Statement Concerning Family History of Another. A statement concerning the birth, marriage, divorce, death, legitimacy, race-ancestry, relationship by blood or marriage or other similar fact of the family history of a person other than the declarant if the judge (A) finds that the declarant was related to the other by blood or marriage or finds that he was otherwise so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared, and made the statement as upon information received from the other or from a person related by blood or marriage to the other, or as upon repute in the other's family, and (B) finds that the declarant is unavailable as a witness;

(25) Statement Concerning Family History Based on Statement of Another Declarant. A statement of a declarant that a statement admissible under exceptions (23) or (24) of this section was made by another declarant, offered as tending to prove the truth of the matter declared by both declarants, if the judge finds that both declarants are unavailable as witnesses;

(26) Reputation in Family Concerning Family History. Evidence of reputation among members of a family, if the reputation concerns the birth, marriage, divorce, death, legitimacy, race-ancestry or other fact of the family history of a member of the family by blood or marriage;

(27) Reputation—Boundaries, General History, Family History. Evidence of reputation in a community as tending to prove the truth of the matter reputed, if (A) the reputation concerns boundaries of, or customs affecting, land in the community, and the judge finds that the reputation, if any, arose before controversy, or (B) the reputation concerns an event of general history of the community or of the state or nation of which the community is a part, and the judge finds that the event was of importance to the community, or (C) the reputation

concerns the birth, marriage, divorce, death, legitimacy, relationship by blood or marriage, or race-ancestry of a person resident in the community at the time of the reputation, or some other similar fact of his family history or of his personal status or condition which the judge finds likely to have been the subject of a reliable reputation in that community;

(28) Reputation as to Character. If a trait of a person's character at a specified time is material, evidence of his reputation with reference thereto at a relevant time in the community in which he then resided or in a group with which he then habitually associated, to prove the truth of the matter reputed;

(29) Recitals in Documents Affecting Property. Evidence of a statement relevant to a material matter, contained in a deed of conveyance or a will or other document purporting to affect an interest in property, offered as tending to prove the truth of the matter stated, if the judge finds that the matter stated would be relevant upon an issue as to an interest in the property, and that the dealings with the property since the statement was made have not been inconsistent with the truth of the statement;

(30) Commercial Lists and the Like. Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical, or other published compilation to prove the truth of any relevant matter so stated if the judge finds that the compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them;

(31) Learned Treatises. A published treatise, periodical or pamphlet on a subject of history, science or art to prove the truth of a matter stated therein if the judge takes judicial notice, or a witness expert in the subject testifies that the treatise, periodical or pamphlet is a reliable authority in the subject.

§ 2963. Discretion of judge under exceptions (15), (16), (17), (18) and (19) to exclude evidence

Any writing admissible pursuant to exceptions (15), (16), (17), (18), and (19) of section 2962 of this title shall be received only if the party offering such writing has delivered a copy of it or so much thereof as may relate to the controversy, to each adverse party a reasonable time before trial unless the judge finds that the adverse party has not been unfairly surprised by the failure to deliver the copy.

§ 2964. Credibility of declarant

Evidence of a statement or other conduct by a declarant inconsistent with a statement received in evidence under an exception to section 2962 of this title is admissible for the purpose of discrediting the declarant, though he had no opportunity to deny or explain such inconsistent statement. Any other evidence tending to impair or support the credibility of the declarant is admissible if it would have been admissible had the declarant been a witness.

§ 2965. Multiple hearsay

A statement within the scope of an exception to section 2962 of this title is not inadmissible on the ground that it includes a statement made by another declarant and is offered to prove the truth of the included statement if the included statement itself meets the requirements of an exception.

Subchapter IX—Authentication and Content of Writings

§ 2991. Authentication required; ancient documents

Authentication of a writing is required before it may be received in evidence. Authentication may be by evidence sufficient to sustain a finding of its authenticity or by any other means provided by law. If the judge finds that a writing (1) is at least thirty years old at the time it is offered, and (2) is in such condition as to create no suspicion concerning its authenticity, and (3) at the time of its discovery was in a place in which such a document, if authentic, would be likely to be found, it is sufficiently authenticated.

§ 2992. Authentication of copies of records

A writing purporting to be a copy of an official record or of an entry therein, meets the requirement of authentication if (1) the judge finds that the writing purports to be published by authority of the nation, state or subdivision thereof, in which the record is kept; or (b) evidence has been introduced sufficient to warrant a finding that the writing is a correct copy of the record or entry; or (3) the office in which the record is kept is within the Canal Zone and the writing is attested as a correct copy of the record or entry by a person purporting to be an officer, or a deputy of an officer, having the legal custody of the record; or (4) if the office is not within the Canal Zone, the writing is attested as required in clause (3) and is accompanied by a certificate that such officer has the custody of the record. If the office in which the record is kept is within the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

§ 2993. Certificate of lack of record

A writing admissible pursuant to exception (17) (B) of section 2962 of this title is authenticated in the same manner as is provided in clause (3) or (4) of section 2992 of this title.

§ 2994. Documentary originals as the best evidence

(a) As tending to prove the content of a writing, no evidence other than the writing itself is admissible, except as otherwise provided in this chapter, unless the judge finds (1) that the writing is lost or has been destroyed without fraudulent intent on the part of the proponent, or (2) that the writing is outside the reach of the court's process and not procurable by the proponent, or (3) that the opponent, at a time when the writing was under his control has been notified, expressly or by implication from the pleadings, that it would be needed at the hearing, and on request at the hearing has failed to produce it, or (4) that the writing is an official record, or is a writing affecting property authorized to be recorded and actually recorded in the public records as described in exception (19) of section 2962 of this title.

(b) If the judge makes one of the findings specified in the preceding paragraph, secondary evidence of the content of the writing is admissible. Evidence offered by the opponent tending to prove (1) that the asserted writing never existed, or (2) that a writing produced at the trial is the asserted writing, or (3) that the secondary evidence does not

correctly reflect the content of the asserted writings, is irrelevant and inadmissible upon the question of admissibility of the secondary evidence but is relevant and admissible upon the issues of the existence and content of the asserted writing to be determined by the trier of fact.

§ 2995. Proof of attested writings

When the execution of an attested writing is in issue, whether or not attestation is a statutory requisite of its effective execution, no attester is a necessary witness even though all attesters are available unless the statute requiring attestation specifically provides otherwise.

§ 2996. Photographic copies to prove content of business and public records

The content of an admissible writing made in the regular course of "a business" as defined by section 2961 of this title, or in the regular course of business or activity of department or agency of government, may be proved by a photostatic, microfilm, microcard, miniature photographic or other photographic copy or reproduction or by an enlargement thereof, when duly authenticated, if it was in the regular course of the business or official activity to make and preserve such copies or reproductions as a part of the records of the business or office. The introduction of the copy, reproduction or enlargement does not preclude admission of the original writing if it is still in existence.

CHAPTER 111—ADMISSIBILITY AND SUFFICIENCY OF EVIDENCE

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—WRITINGS GENERALLY

SUBCHAPTER III—PUBLIC WRITINGS

SUBCHAPTER IV—PRIVATE WRITINGS

SUBCHAPTER V—EFFECT OF JUDGMENTS

SUBCHAPTER VI—PRESUMPTIONS

SUBCHAPTER VII—PARTICULAR CASES; STATUTE OF FRAUDS

Subchapter I—General Provisions

§ 3051. Degree of certainty required to establish facts

The law does not require demonstration; that is, such a degree of proof as, excluding possibility of error, produces absolute certainty; because such proof is rarely possible. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

§ 3052. Number of witnesses to prove fact

Except as otherwise provided by law, the direct evidence of one witness who is entitled to full credit is sufficient for the proof of any fact.

§ 3053. Effect of declarations and acts of one person on rights of another

(a) The rights of a party may not be prejudiced by the declaration, act, or omission of another, except by virtue of a particular relation between them; therefore, proceedings against one may not affect another.

(b) Where one derives title to real property from another, the declaration, act, or omission of the latter, while holding the title, in relation to the property, is evidence against the former.

(c) Where the declaration, act, or omission forms part of a transaction, which is itself the fact in dispute, or evidence of that fact, the declaration, act, or omission is evidence, as part of the transaction.

(d) Where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against the third person is prima facie evidence between the parties.

(e) The declaration, act, or omission of a member of a family who is a decedent, or out of the jurisdiction, is admissible as evidence of common reputation, in cases where, on questions of pedigree, such reputation is admissible.

(f) The declaration, act, or omission of a decedent, having sufficient knowledge of the subject, against his pecuniary interest, is admissible as evidence to that extent against his successor in interest.

§ 3054. Part of transaction proved; admissibility of whole

When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other. When a letter is read, the answer may be given. When a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing, which is necessary to make it understood, may also be given in evidence.

§ 3055. Parol evidence rule; agreements reduced to writing

(a) When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives, or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

(1) where a mistake or imperfection of the writing is put in issue by the pleadings; or

(2) where the validity of the agreement is the fact in dispute.

(b) This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined by section 3059 of this title, or to explain an extrinsic ambiguity, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties.

§ 3056. Construction of writings; place of execution

The language of a writing is to be interpreted according to the meaning it bears in the place of its execution, unless the parties have reference to a different place.

§ 3057. Construction of statutes or instruments; duty of judge

In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted. Where there are several provisions or particulars, a construction which will give effect to all shall be adopted, if possible.

§ 3058. Same; intent; general and particular provisions

In the construction of a statute the intention of the legislature, and in the construction of an instrument the intention of the parties, is to be pursued, if possible. When a general and a particular provision are inconsistent, the latter is paramount to the former. A particular intent will control a general one that is inconsistent with it.

§ 3059. Construction of instruments; circumstances

For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument, and of the parties to it, may also be shown, so that the judge be placed in the position of those whose language he is to interpret.

§ 3060. Terms of writing; general acceptation; local or technical meaning

The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is nevertheless admissible that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement shall be construed accordingly.

§ 3061. Written words on printed form

When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter.

§ 3062. Expert testimony in interpretation of instruments

When the characters in which an instrument is written are difficult to be deciphered, or the language of the instrument is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language.

§ 3063. Preference between two constructions of agreement

When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is most favorable to the party in whose favor the provision was made.

§ 3064. Notice or writing construed according to ordinary acceptation; notice of protest of bill or note

A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus a notice to the drawers or indorsers of a bill of exchange or promissory note, that it has been protested for want of acceptance or payment, shall be held to import that the same has been duly presented for acceptance or payment and the same refused, and that the holder looks for payment to the person to whom the notice is given.

§ 3065. Construction of statutes or instruments in favor of natural right

When a statute or instrument is equally susceptible of two interpretations, one in favor of natural right, and the other against it, the former is to be adopted.

§ 3066. Usage, evidence as to

Evidence of usage may be given upon the trial to explain the true character of an act, contract, or instrument, where the true character is not otherwise plain; but usage is never admissible except as an instrument of interpretation.

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§ 3067. Burden of proof

The party holding the affirmative of the issue shall produce the evidence to prove it; therefore, the burden of proof lies on the party who would be defeated if no evidence were given on either side.

§ 3068. Proof of affirmative and negative allegations

A party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation, except when the negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded, nor even in such a case when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party.

§ 3069. Proof of material allegations; relevant evidence

(a) A material allegation in a pleading is one which is essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

(b) None but a material allegation need be proved.

(c) Evidence shall correspond with the substance of the material allegations and be relevant to the question in dispute. Collateral questions shall therefore be avoided. It is, however, within the discretion of the court to permit inquiry into collateral fact, when the fact is directly connected with the question in dispute, and is essential to its proper determination or when it affects the credibility of a witness.

§ 3070. Effect of evidence; instructions to jury

Where trial is by jury, the jury, subject to the control of the court, in the cases specified in this title, are the judges of the effect or value of evidence addressed to them, except when it is declared to be conclusive. They are, however, to be instructed by the court on all proper occasions:

(1) that their power of judging of the effect of evidence is not arbitrary, but to be exercised with legal discretion, and in subordination to the rules of evidence;

(2) that they are not bound to decide in conformity with the declarations of any number of witnesses, which do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

(3) that a witness false in one part of his testimony is to be distrusted in others;

(4) that the testimony of an accomplice ought to be viewed with distrust, and the evidence of the oral admissions of a party with caution;

(5) that in civil actions the affirmative of the issue must be proved, and when the evidence is contradictory the decision must be made according to the preponderance of evidence; that in criminal actions guilt must be established beyond reasonable doubt;

(6) that evidence is to be estimated, not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

(7) that if weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust; and

(8) that the jury are the exclusive judges of the credibility of a witness and that, in determining whether a witness speaks the truth, they may consider the manner in which he testifies; the character of his testimony; the evidence affecting his character for truth, honesty, or integrity, or his motives; and contradictory evidence.

§ 3071. Questions of fact and law

(a) All questions of fact, other than those mentioned in subsection (b) of this section, are to be decided by the jury, when the trial is by jury, and all evidence thereon is to be addressed to them, except when otherwise provided by this title.

(b) All questions of law, including the admissibility of testimony, the facts preliminary to its admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it.

(c) The provisions contained in this title respecting the evidence on a trial before a jury, are equally applicable on the trial of a question of fact before a court, referee, or other officer.

Subchapter II—Writings Generally

§ 3101. Kinds of writings

Writings are of two kinds:

(1) public; and
(2) private.

§ 3102. Public writings defined

Public writings are:

(1) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of the Canal Zone, of the United States, of a State of the United States, or of a foreign country; and

(2) public records, kept in the Canal Zone, of private writings.

§ 3103. Private writings defined

All writings other than those defined by section 3102 of this title are private.

§ 3104. Explanation of altered writings

The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, shall account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he does so, he may give the writing in evidence, but not otherwise.

Subchapter III—Public Writings

§ 3121. Classification of public writings

Public writings are divided into four classes:

(1) laws;
(2) judicial records;
(3) other official documents; and
(4) public records, kept in the Canal Zone, of private writings.

§ 3122. Written laws defined

A written law is that which is promulgated in writing, and of which a record is in existence.

§ 3123. Public and private statutes defined

Statutes are public or private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

§ 3124. Unwritten law defined

Unwritten law is the law not promulgated and recorded, provided by section 3122 of this title, but which is, nevertheless, observed and administered in the courts of the United States. It has no certain repository, but is collected from the reports of the decisions of the courts, and the treatises of learned men.

§ 3125. Public writing of state or country

A copy of a public writing of a State or country, attested by the certificate of the officer having charge of the original, under the public seal of the State or country is admissible as evidence of the writing.

§ 3126. Recitals in statutes as evidence

The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

§ 3127. Judicial record defined

A judicial record is the record or official entry of the proceedings in a court of justice, or of the official act of a judicial officer, in an action or special proceeding.

§ 3128. Authentication of judicial record

A judicial record of the Canal Zone, or of the United States, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having legal custody thereof. That of a State may be proved by the attestation of the clerk and the seal of the court annexed, if there is a clerk and seal, together with a certificate of the chief judge or presiding magistrate, that the attestation is in due form.

§ 3129. Judicial record of foreign country

A judicial record of a foreign country may be proved by the attestation of the clerk, with the seal of the court annexed, if there is a clerk and a seal, or of the legal keeper of the record with the seal of his office annexed, if there is a seal, together with a certificate of the chief judge, or presiding magistrate, that the person making the attestation is the clerk of the court or the legal keeper of the record, and, in either case, that the signature of the person is genuine, and that the attestation is in due form. The signature of the chief judge or presiding magistrate shall be authenticated by the certificate of the minister or ambassador, or a consul, vice consul, or consular agent of the United States in the foreign country.

§ 3130. Same; compared copy

A copy of the judicial record of a foreign country is also admissible in evidence, upon proof that:

(1) the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it;

(2) the original was in the custody of the clerk of the court or other legal keeper of the same; and

(3) the copy is duly attested by a seal which is proved to be the seal of the court where the record remains, if it is the record of a court; or if there is no such seal, or if it is not a record of a court, by the signature of the legal keeper of the original.

§ 3131. Proof of official documents

Other official documents may be proved, as follows:

(1) Acts of the executive of the Government of the Canal Zone, by the records of the office; and of the United States, by the records

of the state department of the United States, certified by the heads of those agencies, respectively. They may also be proved by public documents printed by order of the executive or Congress, or either house thereof.

(2) The proceedings of Congress, by the journals of that body, or either house thereof, or by published statutes or resolutions, or by copies certified by the clerk or printed by their order.

(3) The acts of the executive, or the proceedings of the legislature, of a State, in the same manner.

(4) The acts of the executive, or the proceedings of the legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in a public act of the executive of the United States.

(5) Documents of any other class in the Canal Zone, by the original, or by a copy, certified by the legal keeper thereof.

(6) Documents of any other class in a State, by the original, or by a copy, certified by the legal keeper thereof, together with the certificate of the secretary of state, judge of the supreme, superior, or county court, or mayor of a city of the State, that the copy is duly certified by the officer having the legal custody of the original.

(7) Documents of any other class in a foreign country, by the original, or by a copy, certified by the legal keeper thereof, with a certificate, under seal, of the country or sovereign, that the document is a valid and subsisting document of the country, and the copy is duly certified by the officer having the legal custody of the original.

(8) Documents in the departments or agencies of the United States Government, by the certificates of the legal custodian thereof.

§ 3132. Public record of private writing

A public record of a private writing may be proved by the original record, or by a copy thereof, certified by the legal keeper of the record.

§ 3133. Officer's deed as evidence of transfer

A deed of conveyance of real property, purporting to have been executed by a proper officer in pursuance of legal process of the district court, or the record of the deed, or a certified copy of the record is prima facie evidence that the property or interest therein described was thereby conveyed to the grantee named in the deed.

Subchapter IV—Private Writings

§ 3161. Private writings classified; seals

(a) Private writings are either:

(1) sealed; or

(2) unsealed.

(b) A scroll or other sign, made in a State or foreign country, and there recognized as a seal, shall be so regarded in the Canal Zone.

(c) There is no difference in the Canal Zone between sealed and unsealed writings. A writing under seal may therefore be changed or altogether discharged by a writing not under seal.

§ 3162. Execution of instrument defined

The execution of an instrument is the subscribing and delivering it, with or without affixing a seal.

§ 3163. Compromise of debt without seal

An agreement, in writing, without a seal, for the compromise or settlement of a debt, is as obligatory as if a seal were affixed.

§ 3164. Subscribing witness defined

A subscribing witness is one who sees a writing executed or hears it acknowledged, and at the request of the party thereupon signs his name as a witness.

§ 3165. Writings called for and inspected may be withheld

Where a writing is called for by one party and produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

§ 3166. Proof of private writings

Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided by chapter 27 of Title 4, and the certificate of acknowledgment or proof is prima facie evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

Subchapter V—Effect of Judgments

§ 3191. Effect of judgments generally

The effect of a judgment or final order in an action or special proceeding before a court or judge of the Canal Zone, is as follows:

(1) In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will, or administration, or the condition or relation of the person.

(2) In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, if they have notice, actual or constructive, of the pendency of the action or proceeding.

§ 3192. Effect of other judicial orders

Other judicial orders of a court or judge of the Canal Zone, create a disputable presumption, according to the matter directly determined, between the same parties and their representatives and successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity.

§ 3193. Parties; when deemed to be the same

The parties are deemed to be the same when those between whom the evidence is offered were on opposite sides in the former case, and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either.

§ 3194. Matters deemed adjudged in judgment

That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

§ 3195. Principal bound when surety bound

Whenever, pursuant to sections 3191–3194 of this title, a party is bound by a record, and the party stands in the relation of a surety for another, the latter is also bound from the time that he has notice of the action or proceeding, and an opportunity at the surety's request to join in the defense.

§ 3196. Judicial record of a State; enforcement; personal representatives

The effect of a judicial record of a State is the same in the Canal Zone as in the State where it was made, except that it can only be enforced here by an action or special proceeding, and except, also, that the authority of a guardian or committee, or of an executor or administrator, does not extend beyond the jurisdiction of the government under which he was invested with his authority.

§ 3197. Record of foreign admiralty court

The effect of the judicial record of a court of admiralty of a foreign country is the same as if it were the record of a court of admiralty of the United States.

§ 3198. Effect of foreign judgment

A final judgment of any other tribunal of a foreign country having jurisdiction, according to the laws of that country, to pronounce the judgment, has the same effect as in the country where rendered, and also the same effect as final judgments rendered in the Canal Zone.

§ 3199. Impeachment of judicial record

A judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings.

§ 3200. Jurisdiction necessary to sustain judgment

The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment.

Subchapter VI—Presumptions

§ 3221. Conclusive presumptions

The following presumptions, and no others, are deemed conclusive:

(1) a malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another;

(2) the truth of the facts recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title; but this rule does not apply to the recital of a consideration;

(3) whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true and to act upon that belief, he may not, in any litigation arising out of the declaration, act, or omission, be permitted to falsify it;

(4) a tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;

(5) the issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate;

(6) the judgment or order of a court, when declared by this title to be conclusive; but the judgment or order must be alleged in the pleadings if there is an opportunity to do so; if there is no such opportunity, the judgment or order may be used as evidence; and

(7) any other presumption which, by statute, is expressly made conclusive.

§ 3222. Disputable presumptions

All presumptions, other than those provided for by section 3221 of this title, are satisfactory, if uncontradicted. They are denominated disputable presumptions, and may be controverted by other evidence. The following are of that kind:

(1) that a person is innocent of crime or wrong;

(2) that an unlawful act was done with an unlawful intent;

(3) that a person intends the ordinary consequence of his voluntary act;

(4) that a person takes ordinary care of his own concerns;

(5) that evidence wilfully suppressed would be adverse if produced;

(6) that higher evidence would be adverse from inferior being produced;

(7) that money paid by one to another was due to the latter;

(8) that a thing delivered by one to another belonged to the latter;

(9) that an obligation delivered up to the debtor has been paid;

(10) that former rent or installments have been paid when a receipt for latter is produced;

(11) that things which a person possesses are owned by him;

(12) that a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership;

(13) that a person in possession of an order on himself for the payment of money, or the delivery of a thing, has paid the money or delivered the thing accordingly;

(14) that a person acting in a public office was regularly appointed to it;

(15) that official duty has been regularly performed;

(16) that a court or judge, acting as such, whether in the Canal Zone or a State or country, was acting in the lawful exercise of his jurisdiction;

(17) that a judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties;

(18) that all matters within an issue were laid before the jury and passed upon by them;

(19) that private transactions have been fair and regular;

(20) that the ordinary course of business has been followed;

(21) that a promissory note or bill of exchange was given or indorsed for a sufficient consideration;

(22) that an indorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill;

(23) that a writing is truly dated;

(24) that a letter duly directed and mailed was received in the regular course of the mail;

(25) identity of person from identity of name;

(26) that a person not heard from in seven years is dead;

(27) that acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact;

(28) that things have happened according to the ordinary course of nature and ordinary habits of life;

(29) that persons acting as copartners have entered into a contract of copartnership;

(30) that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage;

(31) that a child born in lawful wedlock is legitimate;

(32) that a thing once proved to exist continues as long as is usual with things of that nature;

(33) that the law has been obeyed;

(34) that a document or writing more than thirty years old is genuine, when the same has been since generally acted upon as genuine, by persons having an interest in the question, and its custody has been satisfactorily explained;

(35) that a printed and published book, purporting to be printed or published by public authority, was so printed or published;

(36) that a printed and published book, purporting to contain reports of cases adjudged in the tribunals of the State or country where the book is published, contains correct reports of those cases;

(37) that a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to him when that presumption is necessary to perfect the title of such person or his successor in interest; and

(38) that there was a good and sufficient consideration for a written contract.

Subchapter VII—Particular Cases; Statute of Frauds

§ 3251. Offer equivalent to tender

An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

§ 3252. Right to receipt for payment or delivery

Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

§ 3253. Objections to tender must be specified

The person to whom a tender is made shall, at the time, specify any objection he may have to the money, instrument, or property, or he is deemed to have waived it. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property, he shall specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards.

§ 3254. Compromise offer

An offer of compromise is not an admission that anything is due.

§ 3255. Statute of frauds; transfer of real property

An estate or interest in real property, other than for leases for a term not exceeding one year, or a trust or power over or concerning it, or in any manner relating thereto, may not be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

§ 3256. Same; wills, trusts, and specific performance

Section 3255 of this title does not affect the power of a testator in the disposition of his real property by a last will and testament, nor prevent a trust from arising or being extinguished by implication or operation of law, nor abridge the power of a court to compel the specific performance of an agreement, in case of part performance thereof.

§ 3257. Same; contracts

The following contracts are invalid, unless they, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent. Evidence, therefore, of the agreement, may not be received without the writing or secondary evidence of its contents:

(1) an agreement that by its terms is not to be performed within a year from the making thereof;

(2) a special promise to answer for the debt, default, or miscarriage of another, except in the case provided for by section 3714 of Title 4;

(3) an agreement made upon consideration of marriage;

(4) an agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

(5) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

(6) an agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath property, or to make provision for a person by will.

§ 3258. Same; representation of credit

Evidence is not admissible to charge a person upon a representation as to the credit of a third person, unless the representation, or a memorandum thereof, is in writing, and either subscribed by or in the handwriting of the party to be charged.

TITLE 6—CRIMES AND CRIMINAL PROCEDURE

PART 1—CRIMES

CHAPTER 1—GENERAL PROVISIONS

SUBCHAPTER I—RULES OF INTERPRETATION

SUBCHAPTER II—TYPES OF CRIMES OR OFFENSES

SUBCHAPTER III—PARTIES TO CRIMES

SUBCHAPTER IV—RESISTANCE TO COMMISSION OF CRIME

SUBCHAPTER V—SENTENCE AND PUNISHMENT

Article A—General Provisions

Article B—Subsequent Offenses; Habitual Criminals

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

Subchapter I—Rules of Interpretation

§ 1. Definitions

As used in this title, unless it is otherwise provided or the context requires a different meaning:

"bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote or opinion, in any public or official capacity;

"corruptly" means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person;

"knowingly" means a personal knowledge; but it does not require any knowledge of the unlawfulness of the act or omission;

"malice" and "maliciously" mean a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law;

"neglect", "negligence", "negligent", or "negligently" means a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns; and

"willful" or "willfully", when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to; and it does not require an intent to violate law, or to injure another, or to acquire any advantage.

§ 2. Scope of term "person" when used regarding protection of property

When property or an interest is intended to be protected by a provision of this title and the general term "person" or any other general term is used to designate the party whose property it is intended to protect, the provision of this title and the protection thereby given extend to the property of the United States of America, or of a State and any other domestic or foreign political entity. This section does not restrict the meaning of the term "person" as defined under any other provision of this title or under section 61 of Title 1.

Subchapter II—Types of Crimes or Offenses

§ 21. Definition of crime or public offense

A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it and, upon conviction, punishable by:

(1) death;
(2) imprisonment;
(3) fine;
(4) removal from office; or
(5) disqualification to hold and enjoy any office of honor, trust, or profit.

§ 22. Union of act and intent or negligence; manifestations and presumptions as to intent

In every crime or public offense there must exist a union or joint operation of an act and intent or criminal negligence. The intent is manifested by the circumstances connected with the offense and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots nor insane.

§ 23. Classification of offenses

(a) Offenses are either felonies or misdemeanors.

(b) As to all offenses included in this Code, a felony is an offense punishable by death or by imprisonment in the penitentiary. Every other offense is a misdemeanor. When an offense punishable by imprisonment in the penitentiary is also punishable by fine or imprisonment in jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the penitentiary.

(c) As to all offenses against the general laws of the United States applicable to the Canal Zone, a felony is an offense punishable by death or imprisonment for a term exceeding one year, and all other such offenses are misdemeanors.

Subchapter III—Parties to Crimes

§ 41. Principals; pleading

(a) Whoever commits an offense, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which, if directly performed by him or another person, would be an offense, is punishable as a principal.

(c) Persons within this section shall be prosecuted and tried as principals, and no fact need be alleged in the information against them other than is required in the information against the principal.

§ 42. Conviction on testimony of accomplice; accomplice defined

(a) A conviction can not be had on the testimony of an accomplice unless his testimony is corroborated by other evidence which in itself and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

(b) An accomplice is an individual who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

§ 43. Accessory after the fact; punishment

Whoever, knowing that an offense has been committed, receives, relieves, comforts, or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by law, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for the punishment of the person punishable as a principal, or both; or if the person punishable as a principal is punishable by imprisonment for life or by death, the accessory shall be imprisoned not more than 10 years.

An accessory after the fact may be prosecuted, tried and punished though the person punishable as a principal is neither prosecuted nor tried.

§ 44. Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by the district court, conceals and does not as soon as possible make known the same to the judge of the district court or some other person in civil or military authority under the United States or the Canal Zone Government, shall be fined not more than $500 or imprisoned in the penitentiary not more than three years, or both; and may be prosecuted, tried and punished though the person or persons who committed the felony concealed are neither prosecuted nor tried.

§ 45. Persons capable of committing crimes

(a) All persons are capable of committing crimes except:

(1) children under the age of seven years;

(2) children over the age of seven years but under the age of fourteen years, in the absence of clear proof that at the time of committing the act charged against them they knew its wrongfulness;

(3) idiots;

(4) insane persons; but a morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, is not a defense to a prosecution therefor;

(5) persons who committed the act or made the omission charged through ignorance or mistake of fact, which disproved criminal intent;

(6) persons who committed the act charged without being conscious thereof;

(7) persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence:

(8) if the act committed were intended to be against a person other than the one actually injured, the person committing the offense is answerable as though it were committed against the person intended;

(9) married women, except for felonies, acting under the threats, command, or coercion of their husbands; and

(10) unless the crime is punishable with death, persons who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to, and did believe their lives would be endangered if they refused.

(b) In cases of felonies, a wife is not excused from punishment by reason of her subjection to the power of her husband, unless the facts proved show a case of duress.

§ 46. Omission to perform act performed by another

A person is not punishable for an omission to perform an act where the act has been performed by another person acting in his behalf and competent by law to perform it.

§ 47. Intoxicated persons; consideration in determining intent

An act committed by a person while in a state of voluntary intoxication is not less criminal by reason of his having been in that condition; but whenever the actual existence of a particular purpose, motive, or intent is a necessary element to constitute a particular species or degree of crime, the court or jury may take into consideration the fact that the accused was intoxicated at the time in determining the purpose, motive, or intent with which he committed the act.

Subchapter IV—Resistance to Commission of Crime

§ 71. Resistance by party about to be injured

A person about to be injured may make resistance sufficient to prevent:

(1) an illegal attempt by force to take or injure property in his lawful possession; or

(2) an offense against his person or his family or a member thereof.

§ 72. Person aiding another about to be injured

A person, in aid or defense of a person about to be injured, may make resistance sufficient to prevent the offense.

§ 73. Extent of right of self-defense

The right of self-defense does not extend to the infliction of more harm than is necessary for the purpose of defense.

Subchapter V—Sentence and Punishment

Article A—General Provisions

§ 91. Persons subject to prosecution and punishment

(a) A person is liable to punishment under the laws of the Canal Zone, or under the laws of the United States applicable to the Canal Zone, for an offense committed by him within the Canal Zone.

(b) The following persons are liable to prosecution and punishment:

(1) persons who commit, in whole or in part, a crime within the jurisdiction of the courts;

(2) persons who commit an offense outside the Canal Zone which, if committed within the Canal Zone, would be larceny, robbery, or embezzlement under the laws of the Canal Zone, and bring the property stolen or embezzled, or any part of it, or are found with it, or any part of it, within the Canal Zone; and

(3) persons who, being beyond the jurisdiction of the courts, cause or aid, advise or encourage another person to commit a crime within the Canal Zone and are afterwards found therein.

§ 92. Penalties where penalties not otherwise prescribed

(a) Unless a different punishment is prescribed by law:

(1) a felony is punishable by a fine of not more than $5,000, or by imprisonment in the penitentiary for not more than five years, or by both; and

(2) a misdemeanor is punishable by a fine of not more than $100, or by imprisonment in jail for not more than 30 days, or by both.

(b) When an act or omission is declared by this Code or other law to be a public offense, and a penalty for the offense is not prescribed by this Code or other law, the act or omission is punishable as a misdemeanor.

§ 93. Offense made punishable in different ways; double jeopardy

An act or omission which is made punishable in different ways by different provisions of this title may be punished under either of the provisions but not under more than one; and an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other provision.

§ 94. Duty to determine and impose punishment

The sections of this title or any other title of this Code, or of any other law relating or applicable to the Canal Zone, which declare certain crimes to be punishable as therein provided, devolve a duty upon the court authorized to pass sentence to determine and impose the punishment prescribed.

§ 95. Punishment within limits prescribed

When, in this title or any other title of this Code, or in any other law relating or applicable to the Canal Zone, the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case shall be determined by the court authorized to pass sentence within the limits so prescribed.

§ 96. Punishment where only minimum term prescribed

When a person is declared punishable for a crime by imprisonment in the penitentiary for a term not less than a specified number of years, and a limit to the duration of the imprisonment is not declared, punishment of the offender shall be imprisonment for any number of years not less than that prescribed.

Article B—Subsequent Offenses; Habitual Criminals

§ 111. Punishment for offenses committed after conviction of prior penitentiary offense

Whoever, having been convicted of an offense punishable by imprisonment in the penitentiary, commits a crime after his conviction, is punishable therefor as follows:

(1) if the subsequent offense is such that, upon a first conviction, an offender would be punishable by imprisonment in the penitentiary for any term exceeding five years, he is punishable by imprisonment in the penitentiary for not less than ten years;

(2) if the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the penitentiary for five years, or any less term, he is punishable by imprisonment in the penitentiary for not more than ten years;

(3) if the subsequent conviction is for petit larceny, or an attempt to commit an offense which, if committed, would be punishable by imprisonment in the penitentiary for not more than five years, he is punishable by imprisonment in the penitentiary for not more than five years.

§ 112. Punishment for petit larceny or attempts to commit offenses, after prior conviction of petit larceny

(a) Whoever, having been convicted of petit larceny, is subsequently convicted of petit larceny, shall be imprisoned in the penitentiary not more than five years.

(b) Whoever, having been convicted of petit larceny, is subsequently convicted for an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the penitentiary for not more than five years, shall be imprisoned in the penitentiary not more than five years. If the subsequent offense, which he is convicted of attempting to commit, would be punishable, if perpetrated, by imprisonment in the penitentiary for more than five years, he shall be imprisoned in the penitentiary for a term not in excess of the maximum sentence he could receive upon conviction of the offense attempted.

§ 113. Punishment of habitual criminals

Whoever, after having been twice convicted of offenses under the laws of the Canal Zone, or of the United States, or of any other jurisdiction, both of which are felonies in the Canal Zone, commits a felony within the Canal Zone, other than a felony for which the punishment is death or life imprisonment, shall, upon proof of his prior convictions, and of the sentences and committals in connection therewith, be imprisoned in the penitentiary for a term of not less than 10 years, and the maximum thereof shall be the remainder of his natural life.

§ 114. Effect of pardon

If a person, liable to sentence as a habitual criminal pursuant to section 113 of this title, shows to the satisfaction of the court that he was released from imprisonment upon a former sentence upon a pardon granted on the grounds of innocence, that conviction, sentence and committal may not be considered against him.

Subchapter VI—Miscellaneous Provisions

§ 131. Arrest only for offenses declared in Code; exceptions

A person may not be arrested for an offense unless the offense is expressly declared in this Code, except for:

(1) offenses against laws of the United States applicable to the Canal Zone;

(2) offenses against laws hereafter enacted by the Congress of the United States for the Canal Zone; and

(3) violations of rules and regulations authorized by law to be promulgated and for the violation of which punishment is prescribed by law.

§ 132. Civil liability for offenses; effect of this title

The omission to specify or affirm in this title any liability to damages, penalty, forfeiture, or other remedy imposed by law, and allowed to be recovered or enforced in a civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce it.

§ 133. Forfeiture of property upon conviction

Except in a case in which a forfeiture is expressly imposed by law, a conviction of a person for an offense does not work a forfeiture of property.

§ 134. Forfeiture of public office upon conviction

The omission to specify or affirm in this title a ground of forfeiture of a public office, or other trust or special authority conferred by law, or a power conferred by law to impeach, remove, depose, or suspend a public officer or other person holding a trust, appointment or other special authority conferred by law, does not affect the forfeiture or power, or a proceeding authorized by law to carry into effect his impeachment, removal, deposition, or suspension.

§ 135. Evaluation of property in determining grade of offense

When in this title the character or grade of an offense or its punishment is made to depend upon the value of the property, the value shall be estimated exclusively in lawful money of the United States.

§ 136. Preservation of powers of courts-martial and others

This title does not affect any power which is conferred by law upon a court-martial, military authority or other officer, or upon a public body, tribunal, or officer, to impose or inflict punishment upon offenders.

§ 137. Offenses involving sending of letters

In the various cases in which the sending of a letter is made criminal by this title, the offense is deemed complete from the time when the letter is deposited in a post office or other place, or delivered to a person, with intent that it shall be forwarded or delivered.

CHAPTER 3—ABORTION AND CONTRACEPTION

Sec.

§ 171. Acts with intent to produce miscarriage

Whoever, with intent thereby to procure the miscarriage of a woman, unless the miscarriage is necessary to preserve the life of the woman:

(1) provides, supplies or administers to the woman, or procures her to take, any medicine, drug, or substance; or

(2) uses or employs an instrument or other means—

shall be imprisoned in the penitentiary not more than five years.

§ 172. Soliciting or submitting to use of abortifacient

A woman who, with intent thereby to procure a miscarriage, unless the miscarriage is necessary to preserve her life:

(1) solicits of a person any medicine, drug, or substance, and takes it; or

(2) submits to an operation, or to the use of any means whatever—

shall be imprisoned in the penitentiary not more than five years.

§ 173. Advertisements relating to abortion or contraception

Whoever:

(1) willfully writes, composes or publishes a notice or advertisement of a medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception; or

(2) offers his services by a notice, advertisement or otherwise to assist in the accomplishment of any such purpose—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 174. Corroboration of testimony of woman

Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, the defendant may not be convicted upon the testimony of the woman upon or with whom the offense was committed, unless her testimony is corroborated by other evidence.

CHAPTER 5—ADULTERY

Sec.

§ 201. Punishment for adultery

Whoever:

(1) being married, voluntarily has sexual intercourse with a person other than his or her spouse; or

(2) being unmarried, voluntarily has sexual intercourse with a married person—

shall be fined not more than $200 or imprisoned in jail not more than one year, or both.

§ 202. Corroboration of testimony of other person

A conviction pursuant to section 201 of this title can not be had on the uncorroborated testimony of the person with whom the offense is charged to have been committed.

CHAPTER 7—ANIMALS

Sec.

§ 231. Definitions

As used in this chapter, unless the context requires a different meaning:

"animal" includes every living creature except a human being; and

"cruelty" or "torture" includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering, or death is caused or permitted.

§ 232. Cruelty to animals generally; destruction of abandoned animals

(a) Whoever:

(1) overdrives, overloads, tortures, cruelly beats or unjustifiably injures, wounds, maims, mutilates, kills, or deprives of necessary food, drink, or shelter, or works when unfit for labor, a wild, tame, or domestic animal, whether belonging to himself or another person; or

(2) being the owner or possessor, or having charge or custody, of a maimed, diseased, disabled, or infirm animal, abandons it or leaves it to die in a street, road, or other place—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) A police officer may lawfully destroy or cause to be destroyed any animal found abandoned and not properly cared for, if it appears, in the judgment of two reputable persons called by him to view the animal in his presence, that the animal is injured or diseased beyond recovery for any useful purpose.

§ 233. Poisoning animals

Whoever willfully administers a poison to an animal, the property of another, or maliciously exposes a poisonous substance with the intent that it shall be taken or swallowed by the animal, shall be fined not more than $500 or imprisoned in the penitentiary not more than three years, or both.

§ 234. Instigating fights between animals

Whoever:

(1) sets on foot, instigates, promotes or carries on a fight between cocks or other birds, or a dog fight, bull fight, or fight between other animals; or

(2) does any act as assistant, umpire or principal in furtherance of a fight between any such animals—

shall be fined not more than $50 or imprisoned in jail not more than 30 days, or both.

§ 235. Enforcement by humane society agent

Any duly appointed agent of a regularly organized humane society in the Canal Zone, may be commissioned by the proper authorities of the Canal Zone as a special police officer for the enforcement of section 232 of this title and of any other law, regulation or order in force in the Canal Zone for the prevention of cruelty to animals, and when so commissioned shall be vested for that purpose with all the authority of a member of the police force.

§ 236. Killing of person by vicious animal

Whoever, being the owner of a ferocious, vicious or mischievous animal and knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large, or while not kept with ordinary care, kills a human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 237. Injury to person by vicious animal

Whoever, being the owner of a ferocious, vicious or mischievous animal and knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large, or while not kept with ordinary care, attacks, bites or maims a human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, shall be fined not more than $500 or imprisoned in jail not more than one year, or both.

§ 238. Offenses regarding diseased animals generally

Whoever, being the owner or having the custody of any cattle, horses, mules or asses infected with a contagious disease:

(1) fails to report the same immediately to the health authorities;

(2) conceals or attempts to conceal the existence of the disease;

(3) willfully obstructs or resists the health authorities in the discharge of their duty as provided by law; or

(4) sells, gives away or uses the meat or milk, or removes the skin or any part of the animal—

shall be fined not more than $300 or imprisoned in jail not more than one year, or both.

§ 239. Sale, use, exposure, or refusal to destroy diseased animal

Whoever:

(1) knowingly sells, offers for sale, uses, or exposes, or causes or procures to be sold, offered for sale, used, or exposed, a horse, mule, or other animal having the disease known as glanders, or other infectious or contagious disease; or

(2) being the owner or having charge of such a diseased animal, omits or refuses, upon discovery or knowledge of its condition, to deprive it of its life—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 240. Bringing in animals and violating quarantine

Whoever, having brought into the Canal Zone cattle, horses, mules, or asses after the Governor has made proclamation holding such animals in quarantine for the purpose of inspection for infectious or contagious diseases:

(1) allows any of them to leave the place of their first arrival in the Canal Zone before they have been examined by the health department and a certificate has been obtained therefrom that the animals are free from disease; or

(2) permits any of them to run at large, to be removed, or to escape, before the certificate has been received—

shall be fined not more than $500.

§ 241. Receiving or transporting animal in violation of quarantine

Whoever, after the publication of a proclamation as provided by section 240 of this title, knowingly receives or transports within the limits of the Canal Zone an animal mentioned in that section before the certificate mentioned therein has been given, shall be fined not more than $2,000.

CHAPTER 9—ARRESTS, SEARCHES, AND SEIZURES

§ 271. Malicious procurement of warrants

Whoever, maliciously and without probable cause, procures a search warrant or warrant of arrest to be issued and executed, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 272. Arrest, seizure, levy, or dispossession without authority

Whoever, being a public officer, and under pretense or color of process or other legal authority:

(1) arrests a person or detains him against his will;

(2) seizes or levies upon any property; or

(3) dispossesses a person of any lands or property—

without a regular process or other lawful authority therefor, shall be punished by a fine of not more than $1,000, or by imprisonment in jail for not more than one year or in the penitentiary for not more than three years, or by both such fine and imprisonment.

§ 273. Refusal by officer to make arrest

Whoever, being a marshal, deputy marshal, constable, policeman or other peace officer, willfully refuses to execute a duly issued warrant for the arrest of a person charged with a criminal offense, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than three years, or both.

§ 274. Refusal to aid in arrest or in preventing offenses

Whoever, being a male person over 18 years of age, neglects or refuses to aid and assist in:

(1) taking or arresting a person against whom any process is issued;

(2) retaking a person who, after being arrested or confined, may have escaped from the arrest or imprisonment; or

(3) preventing a breach of the peace or the commission of a criminal offense—

after having been thereto lawfully required by a marshal, policeman, or other officer concerned in the administration of justice, shall be fined not more than $1,000.

§ 275. Delay in taking arrested person before magistrate

Whoever, having arrested a person upon a criminal charge, willfully delays to take the person before a magistrate or other officer having jurisdiction to take his examination, shall be fined not more than $100 or imprisoned not more than 30 days, or both.

§ 276. Searches without warrant

(a) Whoever, being an officer, agent, or employee of the United States or a department or agency thereof, engaged in the enforcement of any provision of this Code or of any law of the United States relating to or applicable to or within the Canal Zone:

(1) searches a private dwelling, used and occupied as a private dwelling, without a warrant directing the search; or

(2) maliciously and without reasonable cause, searches any other building or property without a search warrant—

shall, for a first offense, be fined not more than $1,000; and, for a subsequent offense, be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

(b) Subsection (a) of this section does not apply to an officer or person:

(1) authorized by law to search without a warrant; or

(2) serving a warrant of arrest; or

(3) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed, or is suspected on reasonable grounds of having committed, a felony; or

(4) making a search at the request or invitation, or with the consent, of the occupant of the premises.

CHAPTER 11—ARSON

Sec.

§ 301. Definitions

As used in this chapter, unless the context requires a different meaning:

"arson" means the willful and malicious burning of a building with intent to destroy it;

"building" includes any house, edifice, structure, vehicle, vessel or other erection capable of affording shelter for human beings or appurtenant to or connected with an erection so adapted;

"burns" or "burning" means the application of fire so as to take effect upon any part of the substance of the building, and does not necessarily mean that the building set on fire shall have been destroyed;

"inhabited building" means a building which has usually been occupied by any person lodging therein at night; and

"nighttime" means the period between sunset and sunrise.

§ 302. Arson in the first degree

Whoever maliciously burns in the nighttime an inhabited building in which there is at the time a human being is guilty of arson in the first degree and shall be imprisoned in the penitentiary not less than 10 years.

§ 303. Arson in the second degree

Whoever maliciously burns a building of another with intent to destroy it, under circumstances not amounting to arson in the first degree, is guilty of arson in the second degree, and shall be imprisoned in the penitentiary not more than 10 years.

CHAPTER 13—ASSAULT AND BATTERY

Sec.

§ 331. Definition of assault; punishment

(a) An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

(b) Whoever commits an assault shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 332. Definition of battery; punishment

(a) A battery is any willful and unlawful use of force or violence upon the person of another.

(b) Whoever commits a battery shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 333. Assault with caustic chemical

Whoever willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another any vitriol, corrosive acid or caustic chemical of any nature with the intent to injure the flesh or disfigure the body of the person shall be imprisoned in the penitentiary not more than 14 years.

§ 334. Assault with deadly weapon

Whoever commits an assault upon the person of another with a deadly weapon or instrument, or by any means of force likely to produce great bodily injury, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years, or both.

§ 335. Assault with intent to murder

Whoever assaults another with intent to commit murder shall be imprisoned in the penitentiary not more than 20 years.

§ 336. Administering poison

Whoever, with intent to kill, administers or causes or procures to be administered to another, any poison or other noxious or destructive substance or liquid, but by which death is not caused, shall be imprisoned in the penitentiary not more than 20 years.

§ 337. Assaults with intent to commit certain felonies

Whoever assaults another with intent to commit rape, sodomy, mayhem, robbery or grand larceny, shall be imprisoned in the penitentiary not more than 14 years.

§ 338. Assaults with intent to commit other felonies

Whoever assaults another with intent to commit a felony, other than murder and the felonies enumerated in section 337 of this title, shall be fined not more than $500 or imprisoned in the penitentiary not more than one year, or both.

§ 339. Administering stupefying agent to assist in commission of felony

Whoever administers to another any chloroform, ether, laudanum or other narcotic anesthetic or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

CHAPTER 15—ATTEMPTS TO COMMIT OFFENSES GENERALLY

Sec.

§ 371. Penalties for attempts to commit offenses

(a) Whoever attempts to commit an offense, but fails or is prevented or intercepted in the perpetration thereof, if another provision is not made by law for the punishment of the attempt, is punishable as follows:

(1) if the offense so attempted is one for which a maximum sentence is not fixed by law or for which the law provides for maximum sentence of life imprisonment or sentence of death, the

person guilty of the attempt shall be imprisoned in the penitentiary not more than 20 years;

(2) if the offense so attempted is punishable by imprisonment in the penitentiary for five years, or more, or by imprisonment in jail, the person guilty of the attempt shall, except as provided in paragraph (1) of this section, be imprisoned in the penitentiary, or in jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so committed;

(3) if the offense so attempted is punishable by imprisonment for any term less than five years, the person guilty of the attempt is punishable by imprisonment in jail for not more than one year;

(4) if the offense so attempted is punishable by a fine, the offender convicted of the attempt is punishable by a fine of not more than one-half the largest fine which may be imposed upon a conviction of the offense so attempted;

(5) if the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of the attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

(b) Attempts included in sections 335–339 of this title, are not included in subsection (a) of this section.

§ 372. Prosecution for attempt although offense completed

A person may be tried and convicted of an attempt to commit an offense, although it appears at the trial that the offense was actually committed as intended or attempted, unless the court in its discretion dismisses the charges and directs the person to be tried for the offense itself.

§ 373. Commission of offense in unsuccessful attempt to commit another

Notwithstanding sections 371 and 372 of this title, whoever, attempting unsuccessfully to commit an offense, accomplishes the commission of another and different offense, whether greater or lesser in guilt, shall be punished as prescribed by law for the offense committed.

CHAPTER 17—ATTORNEYS

§ 401. Misconduct of attorneys generally

Whoever, being an attorney or counselor, and while acting either as attorney or as counselor—

(1) is guilty of a deceit or collusion, or consents to a deceit or collusion, with intent to deceive the court or any party;

(2) willfully delays his client's suit with a view to his own gain; or

(3) willfully receives any money or allowance for or on account of money which he has not laid out or become answerable for—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 402. Buying claim

Whoever, being an attorney, either directly or indirectly buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 403. Practice of law by unauthorized person

(a) Whoever, not being a member of the bar in good standing, practices law, or advertises or represents himself as practicing or entitled to practice law, in any court of the Canal Zone, other than for himself, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) Subsection (a) of this section does not apply to nonresident attorneys who are specially admitted to participate in particular cases.

CHAPTER 19—BIGAMY

Sec.

§ 431. Bigamy defined and punished; proof

(a) Whoever, having a husband or wife living, marries another person, commits bigamy, and shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

(b) Upon a trial for bigamy it is not necessary to prove either of the marriages by the register, certificate or other record evidence thereof, but either may be proved by such evidence as is admissible to prove a marriage; nor when and where the second marriage took place, proof of the fact, accompanied with proof of cohabitation thereafter in the Canal Zone, being sufficient to sustain the charge.

§ 432. Exceptions

Section 431 of this title does not extend to:

(1) a person by reason of a former marriage whose husband or wife by the former marriage has been absent for five successive years without being known to that person within that time to be living; or

(2) a person by reason of a former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court.

§ 433. Marrying spouse of another

Whoever knowingly and willfully marries the husband or wife of another person, in a case in which the husband or wife would be punishable under the provisions of this chapter, shall be fined not more than $3,000 or imprisoned in the penitentiary not more than three years, or both.

CHAPTER 21—BRIBERY AND GRAFT

Sec.

§ 461. Offer to procure appointive public office

Section 214 of Title 18, United States Code, applies in the Canal Zone; and, for the purposes of this section, the term "United States", as used in section 214 of Title 18, United States Code, includes the Canal Zone Government, the Panama Canal Company, and any other agency or instrumentality of the United States operating in the Canal Zone.

The district court has jurisdiction of offenses under section 214 of Title 18, United States Code, and, in imposing any sentence of imprisonment under that section, shall provide, as part of the sentence, that the term of imprisonment be served in jail.

§ 462. Acceptance or solicitation to obtain appointive public office

Section 215 of Title 18, United States Code, applies in the Canal Zone; and, for the purposes of this section, the terms "United States" and "agency", as used in section 215 of Title 18, United States Code, includes the Canal Zone Government, the Panama Canal Company, and any other agency or instrumentality of the United States operating in the Canal Zone.

In imposing any sentence of imprisonment under section 215 of Title 18, United States Code, the district court shall provide, as part of the sentence, that the term of imprisonment be served in jail.

§ 463. Giving or offering bribe to judicial officer, juror, etc.

Whoever gives or offers to give a bribe to a judicial officer, juror, master, referee, arbitrator, or umpire, or to a person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is brought before him for a decision, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years, or both.

§ 464. Solicitation or acceptance of bribe by judicial officer, juror, etc.

Whoever, being a judicial officer, juror, master, referee, arbitrator or umpire, or person authorized by law to hear or determine a question or controversy, asks for, receives or agrees to receive, a bribe upon an agreement or understanding that his vote, opinion or decision upon a matter or question which is or may be brought before him for decision shall be influenced thereby, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years, or both.

§ 465. Solicitation or acceptance of reward, etc., by judicial officer

Whoever, being a judicial officer, asks for or receives any emolument, gratuity or reward, or promise thereof, except such as may be authorized by law, for doing an official act, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 466. Solicitation or acceptance, by judicial officer, of fees of stenographer or reporter

Whoever, being a judicial officer, asks for or receives the whole or a part of the fees allowed by law to a stenographer or reporter appointed by him or any other person to record the proceedings of a court or investigation held by him, shall be fined not more than $100 or imprisoned in jail not more than 30 days or both; and shall forfeit his office, and shall be forever disqualified from holding any office under the United States.

§ 467. Stenographer or reporter offering or paying fees for appointment

Whoever, being a stenographer or reporter appointed by a judicial officer, pays or offers to pay the whole or a part of the fees allowed him by law, for his appointment or retention in office, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both; and shall forfeit his office, and shall be forever disqualified from holding any office under the United States.

§ 468. Offering or giving bribe to witness

Whoever:

(1) gives, offers, or promises to give, to a witness or person about to be called as a witness, a bribe, upon an understanding or agreement that the testimony of the witness shall be thereby influenced; or

(2) attempts by any other means fraudulently to induce a person to give false or withhold true testimony—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 469. Solicitation or acceptance of bribe by witness

Whoever, being a witness, or being about to become a witness, receives or offers to receive a bribe, upon an understanding or agreement that:

(1) his testimony shall be influenced thereby; or

(2) he will absent himself from the trial, proceeding, hearing, or inquiry upon which his testimony is required—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

CHAPTER 23—BURGLARY

Sec.

§ 501. Definition of nighttime

As used in this chapter, "nighttime" means the period between sunset and sunrise.

§ 502. Burglary generally

Whoever, with intent to commit grand or petit larceny, or a felony, enters a house, room, apartment, tenement, shop, warehouse, store, barn, stable, outhouse, or other building, tent, vessel, railroad car, aircraft, or vehicle when the doors of the vehicle are locked, is guilty of burglary.

§ 503. Burglary in the first degree

(a) Whoever:

(1) commits a burglary in the nighttime; or

(2) whether in the daytime or nighttime:

(A) commits a burglary while armed with a dangerous weapon; or

(B) while committing a burglary, arms himself with a dangerous weapon or assaults a person—

is guilty of burglary in the first degree, and shall be imprisoned in the penitentiary not more than 15 years.

(b) Subsection (a) of this section does not apply to burglary with explosives as defined by section 505 of this title.

§ 504. Burglary in the second degree

Whoever commits a burglary in the daytime in circumstances not amounting to burglary in the first degree or to burglary with explosives, is guilty of burglary in the second degree, and shall be imprisoned in the penitentiary not more than five years.

§ 505. Burglary with explosives

Whoever, with intent to commit an offense, enters, whether in the daytime or nighttime, an inhabited or uninhabited house or building, or any part thereof, and opens or attempts to open a vault, safe, or other secure place by the use of acetylene torch or electric arc, or nitroglycerine, dynamite, gunpowder, or any other explosive, is guilty of burglary with explosives, and shall be imprisoned in the penitentiary not more than 25 years.

§ 506. Unlawful entry

Whoever, in circumstances or in a manner not amounting to a burglary, enters a house or building, or a part thereof, with intent to commit an offense, shall be imprisoned in jail not more than one year.

§ 507. Possessing or making burglarious or other instruments

(a) Whoever:

(1) has upon him or in his possession a picklock, crow, key, bit or other instrument or tool with intent feloniously to break or enter into any building;

(2) knowingly makes or alters a key or other instrument above named, so that the same will fit or open the lock of a building, without being requested so to do by a person having the right to open the same; or

(3) makes, alters or repairs any instrument or thing, knowing or having reason to believe that it is intended to be used in committing an offense—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) Any structure referred to by section 502 of this title is a building within the meaning of subsection (a) of this section.

CHAPTER 25—CHILDREN

Sec.

§ 541. Abuse or abandonment of child

Whoever:

(1) tortures, cruelly beats, abuses, willfully maltreats or unnecessarily deprives of liberty a child under the age of 18 years; or

(2) having custody or possession of a child under the age of 14 years, exposes it in any place with intent to abandon it—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 542. Permitting children to beg or engage in wandering business

Whoever:

(1) being a parent, relative, guardian, employer or otherwise and having in his care, custody or control a child under the age of 12 years, sells, apprentices, gives away, lets out, or otherwise disposes of the child to a person, under any name, title or pretense, for the vocation, use, occupation, calling or service of begging or peddling in a public street or highway, or in any mendicant or wandering business whatsoever; or

(2) takes, receives, hires, employs, uses, or has in custody a child for any of such purposes—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 543. Carnal abuse of children

Whoever willfully commits a lewd or lascivious act including any of the acts constituting other offenses for which punishment is provided for in this title upon or with the body, or any part or member thereof, of a child under the age of 13 years, with the intent or arousing, appealing to, or gratifying, the lust, passions, or sexual desires of himself or the child, shall be imprisoned in the penitentiary not more than 10 years.

CHAPTER 27—CIVIL RIGHTS

Sec.

571. Refusal of innkeepers and carriers to receive guests and passengers.

§ 571. Refusal of innkeepers and carriers to receive guests and passengers

Whoever, in carrying on business as an innkeeper or as a common carrier, or, in acting as an agent or officer of a corporation carrying on such a business, refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 29—COMPOUNDING CRIME

Sec.

601. Punishment for compounding crime.

§ 601. Punishment for compounding crime

Whoever, having knowledge of the commission of a crime, takes money or property of another person, or a gratuity or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal the crime or to abstain from a prosecution thereof, or to withhold any evidence thereof, except in a case where, as provided by law, a crime may be compromised by leave of court, shall:

(1) if the agreement or understanding relates to a crime punishable by death, be imprisoned in the penitentiary not more than five years;

(2) if the agreement or understanding relates to any other felony, be imprisoned in the penitentiary not more than three years; or

(3) if the agreement or understanding relates to a misdemeanor, be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 31—CONSPIRACY

Sec.

631. Acts constituting conspiracy; punishment.
632. Necessity for overt act; exceptions; pleading and proof.

§ 631. Acts constituting conspiracy; punishment

If two or more persons conspire:

(1) to commit a crime;

(2) falsely and maliciously to present another for a crime, or to procure another to be charged or arrested for a crime;

(3) falsely to move or maintain a suit, action, or proceeding;

(4) to cheat and defraud a person of property by means which are in themselves criminal, or to obtain money or property by false pretenses; or

(5) to commit an act injurious to the public health, the public morals, or to pervert or obstruct justice or due administration of the laws—

each of them shall, except as otherwise provided in this section, be punished by a fine of not more than $5,000, or by imprisonment in jail for not more than one year or in the penitentiary for not more than three years, or by both such fine and imprisonment.

If the conspiracy is to commit a felony for which the maximum penalty of imprisonment in the penitentiary is greater than three years, each conspirator shall be punished in the same manner and to the same extent as is provided for punishment of the felony. If the felony is one for which different punishments are prescribed for different degrees, the jury or court shall determine the degree of the felony which the defendants conspired to commit. If the degree is not so determined, the punishment for conspiracy to commit the felony shall be that prescribed for the lesser degree. If the conspiracy is to commit two or more felonies which have different punishments, the punishment for the conspiracy shall be that prescribed for the felony which has the greater maximum term.

§ 632. Necessity for overt act; exceptions; pleading and proof

(a) An agreement, except to commit a felony upon the person of another or to commit arson or burglary, does not amount to conspiracy unless an act beside the agreement is done to effect the object thereof by one or more of the parties to the agreement.

(b) Upon a trial for conspiracy, where an overt act is necessary to constitute the offense, the defendant may not be convicted unless one or more overt acts are expressly alleged in the information, nor unless one of the acts alleged is proved; but other overt acts not alleged, but connected with the offense charged, may be given in evidence.

CHAPTER 33—CONTEMPTS

Sec.

§ 661. Power of courts to punish for contempt

Each court may punish, by fine or imprisonment in jail or in the penitentiary, at its discretion, such contempt of its authority as:

(1) misbehavior of a person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

§ 662. Contempts constituting crimes; limitations

(a) Whoever willfully disobeys a lawful writ, process, order, rule, decree, or command of a court of the Canal Zone by doing an act therein, or thereby forbidden, if the act or thing done be of such character as to constitute also a criminal offense under a statute of the United States, or under this Code, shall be punished by fine or imprisonment in jail, or both.

(b) A fine imposed pursuant to subsection (a) of this section shall be paid into court and disposed of in the same manner as other fines are disposed of, or shall be paid to the complainant or other party injured by the act constituting the contempt, or may, where more than one is damaged, be divided or apportioned among them, as the court directs.

(c) If the accused is a natural person, and if the fine imposed upon him by the district court is not to be paid to the complainant or other party injured by the act constituting the contempt, the fine may not exceed the sum of $1,000; and the imprisonment imposed by the district court under this section may not exceed the term of 180 days.

(d) A magistrate's court may not impose a fine in excess of $100, or impose a term of imprisonment in excess of 30 days in any case under subsections (a) and (b) of this section.

(e) Subsections (a), (b) and (c) of this section do not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of a lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States or the Government of the Canal Zone, but the same, and all other cases of contempt not specifically embraced by this section may be punished in conformity with the prevailing usages at law.

(f) A proceeding for contempt within this section may not be instituted against a person, corporation or association unless it is begun within one year from the date of the act complained of; nor is such a proceeding a bar to a criminal prosecution for the same act.

§ 663. Jury trial of contempts charged under section 662

Whenever a contempt is charged under section 662 of this title, and the criminal offense referred to by subsection (a) of that section is one in the trial of which the accused would be entitled by existing law to a trial by jury, and the contempt is prosecuted in the district court, the accused, upon demand therefor, is entitled to trial by jury, which shall conform as near as may be with the practice in other criminal cases.

CHAPTER 35—CONTRACTS

Sec.
691. Interested persons acting as Government agents.

§ 691. Interested persons acting as Government agents

Whoever, being an officer, agent or member of, or directly or indirectly interested in the pecuniary profits or contracts of, a corporation, joint stock company, association, firm or partnership, or other business entity, is employed or acts as an officer or agent of the United States, or an agency or instrumentality thereof, for the transaction of business with such business entity, shall be fined not more than $2,000 or imprisoned in the penitentiary not more than two years, or both.

CHAPTER 37—CONVICTS

Sec.
721. Importation of foreign convicts.

§ 721. Importation of foreign convicts

Whoever, being a captain or master of a vessel, or other person, willfully imports, brings, or sends into the Canal Zone, a person who is:

(1) a foreign convict of a crime which, if committed within the Canal Zone, would be a felony; or

(2) sent to him from a prison or place of confinement in any place out of the Canal Zone—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both; and every person so landing shall be punished in like manner.

CHAPTER 39—CORPORATIONS AND ASSOCIATIONS

Sec.
751. Definition.
752. Fictitious or fraudulent subscriptions.
753. Exhibiting false records to public officer or examining board.
754. Unauthorized use of name in prospectus or advertisement.
755. Issuance of unauthorized shares.
756. Fraudulent dividend or distribution of assets.
757. Acceptance of deposits when bank insolvent.
758. Frauds in books, papers or securities.
759. False reports or statements; refusal to keep books or post notices.
760. Refusal to permit inspection of books by stockholders.
761. Presumption of director's knowledge as to illegality of act.
762. Status as foreign corporation as a defense.

§ 751. Definition

As used in this chapter, "director" embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name they are described in its charter or bylaws.

§ 752. Fictitious or fraudulent subscriptions

Whoever:

(1) signs the name of a fictitious person to a subscription for, or agreement to take, stock in a corporation existing or proposed; or

(2) signs to a subscription or agreement the name of a person, knowing that that person has not means or does not intend in good faith to comply with all the terms thereof, or under an understanding or agreement that the terms of the subscription or agreement are not to be complied with or enforced—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 753. Exhibiting false records to public officer or examining board

Whoever, being an officer, agent or clerk of:

(1) a corporation; or

(2) any persons proposing to organize a corporation or to increase the capital stock of a corporation—

knowingly exhibits a false, forged or altered book, paper, voucher, security or other instrument of evidence to a public officer or board authorized by law to examine the organization of the corporation, to investigate its affairs or to allow an increase of its capital, with intent to deceive the officer or board with respect thereto, shall be imprisoned in the penitentiary not more than 10 years.

§ 754. Unauthorized use of name in prospectus or advertisement

Whoever, without being authorized so to do, subscribes the name of another person to, or inserts the name of another person in, a prospectus, circular or other advertisement or announcement of a corporation or joint stock association existing or intended to be formed, with intent to permit the document to be published and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of the corporation or association, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 755. Issuance of unauthorized shares

Whoever, being a director of a stock corporation, knowingly concurs in a vote or act of the directors of the corporation to issue shares of stock beyond the amount authorized by its articles, shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 756. Fraudulent dividend or distribution of assets

Whoever, being a director of a stock corporation, concurs in a vote or act of the directors of the corporation or any of them, knowingly and with dishonest or fraudulent purpose, to make any dividend or distribution of assets, except in the cases and in the manner allowed by law, either with the design of defrauding creditors or shareholders or of giving a false appearance to the value of the stock and thereby defrauding subscribers or purchasers, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

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§ 757. Acceptance of deposits when bank insolvent

Whoever, being an officer, agent, or employee of a bank, or an individual banker or agent or employee thereof, receives a deposit, knowing that the bank, association, or banker is insolvent, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 758. Frauds in books, papers or securities

Whoever:

(1) being a director, officer, or agent of a corporation or joint stock association, knowingly receives or possesses himself of any property of the corporation or association otherwise than in payment of a just demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of the corporation or association; or

(2) being a director, officer, agent, or shareholder of a corporation or joint stock association, with intent to defraud:

(A) destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to the corporation or association; or

(B) makes, or concurs in making, false entries, or omits, or concurs in omitting, to make a material entry, in a book of accounts or other record or document kept by the corporation or association—

shall be fined not more than $500 or imprisoned in the penitentiary not more than 10 years, or both.

§ 759. False reports or statements; refusal to keep books or post notices

Whoever, being a director, officer or agent of a corporation or joint stock association, knowingly concurs in making, publishing or posting a written report, exhibit or statement of its affairs or pecuniary condition, or book or notice containing a material statement which is false, or refuses to make an entry in a book or post a notice required by law, other than such as are mentioned in this chapter, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 760. Refusal to permit inspection of books by stockholders

Whoever, being an officer or agent of a corporation and having or keeping an office within the Canal Zone, has in his custody or control a book, paper or document of the corporation, and refuses, upon lawful demand, during office hours, of a stockholder or member of the corporation to inspect or take a copy of the book, paper or document, to give him a reasonable opportunity to do so, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 761. Presumption of director's knowledge as to illegality of act

Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of the corporation as to enable him to determine whether an act, proceeding or omission of the directors is a violation of this chapter.

§ 762. Status as foreign corporation as a defense

It is not a defense to a prosecution for a violation of this chapter that the corporation was one created by the laws of a State, government or country, if it was one carrying on business or keeping an office therefor within the Canal Zone.

CHAPTER 41—DISORDERLY CONDUCT

Sec.
791. Drawing or exhibiting deadly weapon.
792. Disturbing the peace; fighting.
793. Disturbing religious or other meetings.
794. Forcibly entering upon or detaining real property.
795. Registration of guests in hotel, boardinghouse, or lodginghouse; penalties.

§ 791. Drawing or exhibiting deadly weapon

Whoever, not in necessary self-defense, in the presence of another person, draws or exhibits a deadly weapon in a rude, angry, or threatening manner, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 792. Disturbing the peace; fighting

Whoever:

(1) maliciously and willfully disturbs the peace or quiet of a neighborhood or person by:

(A) loud or unusual noise;

(B) tumultuous or offensive conduct; or

(C) threatening, traducing, quarreling, challenging to fight, or fighting;

or

(2) upon the public streets or highways, fires a gun or pistol, or, in a loud and boisterous manner, uses vulgar, profane, or indecent language within the presence or hearing of other persons—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 793. Disturbing religious or other meetings

Whoever:

(1) willfully disturbs or disquiets an assemblage of people met for religious worship or other purpose not unlawful in character, by profane discourse, rude or indecent behavior, or by unnecessary noise, either within the place where the meeting is held or so near as to disturb the order and solemnity of the meeting; or

(2) without authority of law, willfully disturbs or breaks up an assembly or meeting not unlawful in its character—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 794. Forcibly entering upon or detaining real property

Whoever uses, procures, encourages, or assists another person to use force or violence in entering upon or detaining lands or other real property, public or private, except in the cases and in the manner allowed by law, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 795. Registration of guests in hotel, boardinghouse, or lodginghouse; penalties

(a) The proprietor or manager of a hotel, boardinghouse, or lodginghouse shall keep a register of all guests, which shall clearly show the name, nationality and date of arrival of each guest, the place from whence he came, and the date of his departure and destination.

(b) Whoever:

(1) being the proprietor or manager of a hotel, boardinghouse, or lodginghouse, fails to keep the register required by subsection (a) of this section; or

(2) being a guest of a hotel, boardinghouse, or lodginghouse, fails or refuses to give true information for entry in the register—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 43—DUELS AND CHALLENGES

Sec.

§ 821. Definitions

As used in this chapter:

"challenge" means a word, spoken or written, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand, to fight a duel, or to meet for the purpose of fighting a duel; and

"duel" means a combat with deadly weapons, fought between two or more persons by previous agreement or upon a previous quarrel.

§ 822. Fighting duel or sending or accepting challenge

Whoever fights a duel, or sends or accepts a challenge to fight a duel, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 823. Posting another for not fighting duel

Whoever posts or publishes another person for not fighting a duel or for not sending or accepting a challenge to fight a duel, or uses reproachful or contemptuous language, verbal, written or printed, to or concerning another person, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 824. Failure of officers to prevent duels

Whoever, being a judge or other officer bound to preserve the public peace, has knowledge of the intention on the part of a person to fight a duel, and does not exert his official authority to arrest him and prevent the duel, shall be fined not more than $1,000.

§ 825. Leaving Canal Zone with intent to evade laws against dueling

Whoever leaves the Canal Zone with intent to evade any of the provisions of this chapter, and to commit an act beyond the jurisdiction of the courts which is prohibited by this chapter, and does an act, although out of the Canal Zone, which would be punishable by the provisions of this chapter if committed within the Canal Zone, is punishable in the same manner as he would have been if the act had been committed within the Canal Zone.

§ 826. Duty of witnesses to testify; exemption from prosecution

A person may not be excused from testifying or answering a question upon an investigation or trial for a violation of any of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But evidence given upon an examination of a person so testifying may not be received against him in any criminal prosecution or proceeding, except in a criminal prosecution for perjury committed when so testifying.

CHAPTER 45—ESCAPE AND RESCUE

Sec.

§ 851. Prisoners in custody of institution or officer

Whoever escapes or attempts to escape from an institution in which he is confined or detained pursuant to lawful process, order, or judgment, or from custody under or by virtue of process issued under the laws of the United States or the Canal Zone by a court, judge, or magistrate, or from the custody of an officer or employee of the United States or the Canal Zone pursuant to lawful arrest, shall:

(1) if the confinement, detention, or custody is by virtue of an arrest on a charge of felony, or conviction of an offense, be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both; or

(2) if the confinement, detention, or custody is for extradition or by virtue of an arrest or charge of, or for, a misdemeanor, and prior to conviction, be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 852. Permitting prisoners to escape

Whoever, being a keeper of a jail, prison, penitentiary, or other place of detention, assistant jailer, or person employed as a guard or otherwise, fraudulently contrives, procures, aids, connives at or voluntarily permits the escape of a prisoner in custody, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years, or both.

§ 853. Assisting prisoners, or persons whose paroles have been revoked, to escape

Whoever willfully:

(1) assists a prisoner confined in a jail, prison, penitentiary, or other place of detention, or in the lawful custody of an officer or person, to escape, or in an attempt to escape, from the place of confinement or custody; or

(2) assists a paroled prisoner whose parole has been revoked to escape, or in an attempt to escape—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years, or both.

§ 854. Carrying into place of confinement or detention things useful in escape

Whoever carries or sends into a jail, prison, penitentiary, or other place of detention, any thing useful to aid a prisoner in making his escape, with intent thereby to facilitate the escape of a prisoner confined therein, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years, or both.

§ 855. Assisting escape of person legally confined in hospital

Whoever willfully assists a person legally confined in a hospital of the Government of the Canal Zone to escape, or to attempt to escape therefrom or to resist being returned thereto, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 856. Rescuing prisoners

Whoever rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue, a prisoner from a jail, prison, penitentiary, or other place of detention, or from an officer or person having him in lawful custody, shall:

(1) if the prisoner was in custody upon a conviction of felony punishable by death, be imprisoned in the penitentiary not more than 14 years;

(2) if the prisoner was in custody upon a conviction of a felony other than a felony punishable by death, be imprisoned in the penitentiary not more than 5 years;

(3) if the prisoner was in custody upon a charge of felony, be fined not more than $1,000 or imprisoned in the penitentiary not more than 2 years, or both; or

(4) if the prisoner was in custody otherwise than upon a conviction or charge of felony, be fined not more than $500 or imprisoned in jail not more than 180 days, or both.

CHAPTER 47—EXTORTION, OPPRESSION, AND THREATS

Sec.
881. Definition of extortion.
882. Threats inducing fear such as will constitute extortion.
883. Punishment of extortion generally.
884. Punishment of extortion committed under color of official right.
885. Obtaining signature by threats.
886. Attempt to commit extortion.
887. Oppression.
888. Blackmail.
889. Threatening letters.

§ 881. Definition of extortion

Extortion is the obtaining of:

(1) property from another with his consent; or

(2) an official act of a public officer—

induced by a wrongful use of force or fear, or under color of official right.

§ 882. Threats inducing fear such as will constitute extortion

Fear such as will constitute extortion may be induced by an oral or written threat, either to:

(1) do an unlawful injury to the person or property of the individual threatened or of a third person;

(2) accuse the individual threatened or a relative of his or member of his family of a crime;

(3) expose or impute to him or them a deformity, disgrace, or crime; or

(4) expose a secret affecting him or them.

§ 883. Punishment of extortion generally

Whoever is guilty of extortion shall be imprisoned in the penitentiary not more than five years.

§ 884. Punishment of extortion committed under color of official right

Whoever commits an extortion under color of official right, in cases for which a different punishment is not prescribed in this title, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 885. Obtaining signature by threats

Whoever, by extortionate means, obtains from another person his signature to a paper or instrument, which signature, if freely given, would have transferred property, or created a debt, demand, charge, or right of action, shall be punished in the same manner as if the actual delivery of property of the value or amount of the debt, demand, charge or right of action were obtained.

§ 886. Attempt to commit extortion

Whoever attempts, by means of a threat such as is specified by section 882 of this title, to:

(1) extort money or other property from another person; or

(2) obtain an official act of a public officer—

shall be punished by a fine of not more than $2,500, or by imprisonment in jail not more than one year or in the penitentiary not more than two and one-half years, or by both such fine and imprisonment.

§ 887. Oppression

Whoever, being a public officer, under color of authority and without lawful necessity, assaults, wrongs, oppresses, or beats a person, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 888. Blackmail

Whoever, with intent to extort money or other property from another person, sends or delivers to a person a letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, a threat such as is specified by section 882 of this title, is punishable in the same manner as if the money or property were actually obtained by means of the threat.

§ 889. Threatening letters

Whoever knowingly and willfully sends or delivers to a person a letter or writing, whether subscribed or not, threatening to accuse him or another person of a crime, or to expose or publish any of his failings or infirmities, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 49—FALSE IMPRISONMENT

§ 921. Punishment for false imprisonment

Whoever unlawfully violates the personal liberty of another person is guilty of false imprisonment, and shall be fined not more than $5,000 or imprisoned in the penitentiary not more than one year, or both.

CHAPTER 51—FALSE PERSONATION

§ 951. Personation of law enforcement officer

Whoever, not being a law enforcement officer, directly or indirectly represents himself as such an officer, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 952. Impersonating an officer or employee of the United States

Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or a department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, documents, or thing of value, shall be fined not more than $1,000 or imprisoned in the penitentiary not more than three years, or both.

§ 953. Impersonator making arrest, search, or seizure, or dispossessing a person

Whoever falsely represents himself to be an officer, agent, or employee of the United States or a department or agency thereof, and in such assumed character:

(1) arrests or detains a person;

(2) searches the person, buildings, or other property of a person;

(3) seizes or levies upon property; or

(4) dispossesses a person of lands or property—

shall be fined not more than $1,000 or imprisoned in the penitentiary not more than three years, or both.

§ 954. Personating another and incurring liability

Whoever falsely personates another person and in such assumed character:

(1) becomes bail or surety for a party in a proceeding before a court or officer authorized to take the bail or surety;

(2) verifies, publishes, acknowledges, or proves, in the name of another person, a written instrument, with intent that the instrument may be recorded, delivered, or used as true;

(3) does any other act whereby, if it were done by the person falsely personated, he might in any event become liable to:

(A) a suit or prosecution;

(B) pay a sum of money; or

(C) incur a charge, forfeiture, or penalty;

or

(4) does any act whereby a benefit might accrue to the party personating, or to another person—

shall be punished by a fine of not more than $5,000, or by imprisonment in jail for not more than one year or in the penitentiary for not more than two years, or by both such fine and imprisonment.

§ 955. Marrying under false personation

Whoever falsely personates another person, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another person, with or without the connivance of the latter, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 956. Receiving money or property in false character

Whoever falsely personates another person, and in such assumed character receives money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of property so received.

CHAPTER 53—FORGERY AND COUNTERFEITING

§ 981. Forging, altering or counterfeiting instrument or record; uttering false instrument

Whoever:

(1) with intent to defraud, signs the name of another person, or of a fictitious person, knowing that he has no authority to do so, to, or falsely makes, alters, forges or counterfeits, any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or certificate for any share, right or interest in the stock of a corporation or association, or warrant or order for the payment of money at the treasury, treasurer's order or warrant; or a request for the payment of money or for the delivery of personal property of any kind or of an instrument in writing, acquittance, release or discharge for a debt, account, suit, action, demand or other thing, real or personal; or a transfer or assurance of money, stock certificate, personal property or other property whatever; or a letter of attorney or other power to receive money or to receive or transfer stock certificates or annuities or to let, lease, dispose of, alien or convey any real or personal property; or an acceptance or indorsement of any bill of exchange, promissory note, draft, order or assignment of any bonds, writing obligatory, or promissory note or other contract for money or other property; or

(2) with intent to defraud, counterfeits or forges the seal or handwriting of another; or

(3) utters, publishes, passes or attempts to pass, as true and genuine, any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person; or

(4) with intent to defraud, alters, corrupts or falsifies a record of a will, codicil, conveyance or other instrument, the record of which is by law evidence, or a record of a judgment of a court, or the return of an officer to process of a court—

is guilty of forgery, and shall be imprisoned in the penitentiary not more than 14 years.

§ 982. False entries in records or returns

Whoever, with intent to defraud, makes, forges or alters an entry in a book of records, or an instrument purporting to be a record or return specified by section 981 of this title, is guilty of forgery, and shall be imprisoned in the penitentiary not more than 14 years.

§ 983. Forgery of public or corporate seals

Whoever, with intent to defraud:

(1) forges or counterfeits the seal of the Canal Zone Government, the seal of a public officer authorized by law, the seal of a court of record, or the seal of a corporation, or any other public seal authorized or recognized by the laws of the Canal Zone, or of a State, government or country;

(2) falsely makes, forges or counterfeits an impression purporting to be an impression of any such a seal; or

(3) has in his possession and willfully conceals such a counterfeited seal, or impression thereof, knowing it to be counterfeited—

is guilty of forgery, and shall be imprisoned in the pentitentiary not more than 14 years.

§ 984. Sending or delivering forged or false messages with fraudulent intent

Whoever, with the intent to deceive, injure, or defraud:

(1) sends by telegraph, telephone, cable, or radio to a person a forged or false message purporting to be from a telegraph, telephone, cable, or radio office or from any other person;

(2) delivers to a person such a message falsely purporting to have been received by telegraph, telephone, cable, or radio; or

(3) furnishes or conspires to furnish to an agent, operator, or employee, to be sent by telegraph, telephone, cable, or radio, or to be delivered, such a message, knowing the message to be forged or false, with the intent to deceive, injure, or defraud—

shall be punished by a fine of not more than $5,000, or by imprisonment in jail for not more than one year or in the penitentiary for not more than five years, or by both such fine and imprisonment.

§ 985. Possessing or receiving forged or blank bills or notes

Whoever:

(1) has in his possession or receives from another person a forged promissory note or bank bill, or bill for payment of money or property, with the intention to pass it or to permit, cause or procure it to be uttered or passed, with the intention to defraud any person, knowing it to be forged or counterfeited; or

(2) has or keeps in his possession a blank or unfinished note or bill made in the form or similitude of a promissory note or bill for payment of money or property, made to be issued by an incorporated bank or banking company, with intention to fill up and complete the blank and unfinished note or bill, or to permit or cause or procure it to be filled up and completed, in order to utter or pass it, or to permit or cause or procure it to be uttered or passed, for the purpose of defrauding a person—

shall be fined not more than $1,000 or imprisoned in the penitentiary not more than 14 years, or both.

§ 986. Forging or counterfeiting State or municipal securities or obligations

Whoever, with intent to defraud, falsely makes, alters, forges, or counterfeits a:

(1) bond, certificate, obligation or other security, purporting to be, or in imitation of, a bond, certificate, obligation or other security of the Government of a State or municipality, issued or put forth under the authority of the State or municipality; or

(2) treasury note, bill, or promise to pay, lawfully issued by the Government of a State or municipality and intended to circulate as money—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 15 years, or both.

§ 987. Uttering forged or counterfeit State or municipal securities or obligations

Whoever, knowingly and with intent to defraud, utters, passes, or puts off, in payment or negotiation, within the Canal Zone, a false, forged, or counterfeit bond, certificate, obligation, security, treasury note, bill, or promise to pay, referred to by section 986 of this title, whether it was made, altered, forged or counterfeited within the Canal Zone or not, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 15 years, or both.

§ 988. Counterfeiting ticket of common carrier

Whoever:

(1) counterfeits, forges or alters a ticket, check, order, coupon, receipt for fare, or pass, issued by a common carrier or by a lessee or manager thereof, designed to entitled the holder to ride in the cars, vehicles, vessels, or aircraft of the carrier; or

(2) with intent to defraud the common carrier or a lessee thereof, or any other person, utters, publishes, or puts into circulation any such counterfeit or altered ticket, check, order, coupon, receipt for fare, or pass—

shall be fined not more than $1,000 or imprisoned in jail or in the penitentiary not more than one year, or both.

§ 989. Restoring cancelled railroad ticket

Whoever:

(1) for the purpose of restoring to its original appearance and nominal value, in whole or in part, removes, conceals, fills up or obliterates the cuts, marks, punch holes or other evidence of cancellation, from a ticket, check, order, coupon, receipt for fare, or pass, issued by a common carrier or by a lessee or manager thereof, cancelled in whole or in part, with intent to dispose of it by gift, or to circulate it, or with intent to defraud the common carrier or lessee thereof, or any other person; or

(2) with like intent to defraud, offers for sale or in payment of fare on the railroad or vessels, or in the vehicles or aircraft, of the carrier, such a ticket, check, order, coupon, or pass, knowing it to have been restored in whole or in part—

shall be fined not more than $1,000 or imprisoned in jail not more than 180 days, or both.

§ 990. Altering service center, commissary, retail store, sales store, post exchange, or restaurant check or coupon

Whoever, with intent to defraud, alters a service center, commissary, retail store, sales store, post exchange, or restaurant check, ticket, coupon, or other evidence of a transaction with a service center, commissary, retail store, sales store, post exchange, or restaurant, shall be fined not more than $1,000 or imprisoned in jail not more than 180 days, or both.

§ 991. Issuing instruments to circulate as money

Whoever makes, issues or puts in circulation a bill, check, ticket, certificate, promissory note, or the paper of a bank, to circulate as money, except as authorized by the laws of the United States or the Canal Zone, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 992. Procuring or offering forged instrument to be filed or recorded

Whoever knowingly procures or offers a forged or false instrument to be filed, registered or recorded in a public office within the Canal Zone, which instrument if genuine might be filed, registered or recorded under the laws of the Canal Zone or the laws of the United States applicable to the Canal Zone, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

CHAPTER 55—FRAUD AND FALSE STATEMENTS

Sec.

§ 1021. Proof of intent to defraud

When, by a provision of this Code, an intent to defraud is required to constitute an offense, it is sufficient if an intent appears to defraud a person, as defined by section 61 of Title 1, or any body politic.

§ 1022. Removal, conveyance, or concealment of property in fraud of creditors or others

Whoever:

(1) fraudulently removes his property or effects beyond the jurisdiction of the courts, or fraudulently sells, conveys, assigns or conceals his property, with intent to defraud, hinder, or delay his creditors of their rights, claims, or demands; or

(2) having an action pending against him or a judgment for the recovery of personal property rendered against him, fraudulently conceals, sells, or disposes of that property with intent to hinder, delay, or defraud the person bringing the action or recovering the judgment, or, with that intent, removes the property beyond the jurisdiction of the courts in which it may be at the time of the commencement of the action or the rendering of the judgment—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than one year, or both.

§ 1023. Participating in frauds on creditors

Whoever:

(1) is a party to a fraudulent conveyance of property, real or personal, or a right or interest issuing out of the property, or to a bond, suit, judgment or execution, contract or conveyance, had, made or contrived with intent to deceive and defraud others or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or

(2) being a party as aforesaid, at any time knowingly and willfully puts in, uses, avows, maintains, justifies or defends the same or any of them as true and done, had or made in good faith or upon good consideration, or aliens, assigns or sells any of the property, real or personal, or other things before mentioned, conveyed to him or them as aforesaid, or any part thereof—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1024. Obtaining money, labor, or property by false pretense; proof

(a) Whoever:

(1) knowingly and designedly by false or fraudulent representation or pretense defrauds another person of money, labor, or property; or

(2) causes or procures others to report falsely of his wealth or mercantile character and by thus imposing upon another person obtains credit and thereby fraudulently obtains possession of money or property, or obtains the labor or service of another—

is punishable in the same manner and to the same extent as for larceny of the money or property so obtained.

(b) Upon a trial for having, with an intent to cheat or defraud another designedly, by false pretense, obtained the signature of a person to a written instrument, or having obtained from a person money, labor, personal property or valuable thing, the defendant may not be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or a note or memorandum thereof, is in writing, subscribed by, or in the handwriting of the defendant or unless the pretense is proved by the testimony of two witnesses, or that of one witness and corroborating circumstances. This subsection does not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying or receiving money or property.

§ 1025. Making, possessing, or uttering fictitious bill, note, or check

Whoever, with intent to defraud, makes, passes, utters or publishes, or attempts to pass, utter or publish, or has in his possession, with like intent to utter, pass or publish, a fictitious bill, note or check, purporting to be the bill, note, check or other instrument in writing for the payment of money or property of a bank, corporation, copartnership or individual, when in fact there is no such bank, corporation, copartnership or individual in existence, knowing the bill, note, check or instrument in writing to be fictitious, shall be imprisoned in the penitentiary not more than 14 years.

§ 1026. Drawing or uttering check, draft, or order without sufficient funds; presumption

(a) Whoever, for himself, or as agent or representative of another person, or as an officer of a corporation, willfully, with intent to defraud, makes, draws, utters, or delivers a check, draft, or order on a bank, banker, or depositary for the payment of money, knowing at the time he commits the act that he or his principal or the corporation of which he is an officer does not have sufficient funds in, or credit with, the bank, banker, or depositary to meet the check, draft, or order in full upon its presentation, shall be imprisoned in jail not more than 1 year or in the penitentiary not more than 14 years.

(b) If the check, draft, or order referred to by subsection (a) of this section is protested on the ground of insufficiency of funds or credit, the notice of protest thereof is admissible as proof of presentation, nonpayment and protest, and is presumptive evidence of knowledge of insufficiency of funds or credit with the bank, banker, or depositary on which or whom the check, draft, or order is drawn.

(c) As used in this section, "credit" means an arrangement or understanding with the bank, banker, or depositary for the payment of the check, draft, or order referred to by subsection (a) of this section.

§ 1027. Reselling sold property

Whoever, after once selling, bartering, or disposing of any property, or an interest therein, or after executing a bond or agreement for the

sale thereof, again willfully and with intent to defraud previous or subsequent purchasers—

(1) sells, barters, or disposes of the same property, or a part thereof or an interest therein; or

(2) executes a bond or agreement to sell, barter, or dispose of the same property, or a part thereof or an interest therein—

to another person for a valuable consideration, shall be imprisoned in the penitentiary not more than 10 years.

§ 1028. False representation by married person when selling or mortgaging lands

Whoever, being a married person, falsely represents himself or herself as competent to sell or mortgage real estate, to the validity of which sale or mortgage the assent or concurrence of his or her spouse is necessary, and under such representations willfully conveys or mortgages the real estate, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1029. False or fraudulent sale of property; mock auctions

Whoever obtains money or property from another, or obtains the signature of another to a written instrument, the false making of which would be forgery, by means of a false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions, shall be fined not more than $1,000 or imprisoned in the penitentiary not more than three years, or both.

§ 1030. Fraudulent devices to affect market price of property

Whoever willfully makes or publishes a false statement, spreads a false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1031. Defrauding or prejudicing insurer of property

Whoever willfully burns or in any other manner injures or destroys, or secretes, abandons, or in any manner disposes of, any property in his possession or in the possession of another person, which at the time is insured against loss or damage by fire, theft, or embezzlement, or other casualty, with intent to defraud or prejudice the insurer, shall be imprisoned in the penitentiary not more than 10 years.

§ 1032. Fraud in affairs of partnership

Whoever, being a member of a partnership, commits a fraud upon the other members in the affairs of the partnership, shall be imprisoned in the penitentiary not more than one year.

§ 1033. False statements by commission merchants or factors

Whoever, being a commission merchant, broker, agent, factor or consignee, willfully and corruptly makes to his principal or consignor a false statement concerning the price obtained for, or the quality or quantity of, property consigned or intrusted to him for sale, shall be fined not more than $500 or imprisoned in jail not more than 180 days, or both.

§ 1034. Defrauding hotels, guesthouses, lodginghouses, or restaurants

Whoever:

(1) obtains food or accommodation at a hotel, inn, guesthouse, lodginghouse, boardinghouse, or restaurant without paying therefor, with intent to defraud the proprietor or manager thereof;

(2) by the use of a false pretense, obtains credit at a hotel, inn, guesthouse, lodginghouse, boardinghouse, or restaurant; or

(3) after obtaining credit at a hotel, inn, guesthouse, lodging-house, boardinghouse, or restaurant, absconds or surreptitiously removes his baggage therefrom without paying for his food or accommodation—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1035. Misrepresentation of newspaper circulation

Whoever, being the proprietor or publisher of a newspaper or periodical, willfully and knowingly misrepresents the circulation thereof for the purpose of securing advertising or other patronage, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1036. Failure to give proper tax or license receipts

Whoever:

(1) uses or gives any receipt, except that prescribed by law, as evidence of payment of any tax or license of any kind;

(2) receives payment of such a tax or license without delivering the receipt prescribed by law; or

(3) inserts the name of more than one licensee therein—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1037. Possession of improper blank licenses or tax receipts

Whoever has in his possession, with intent to circulate or sell, blank licenses or tax receipts other than those furnished by the proper authority, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years.

§ 1038. Fraudulent production of infant with intent to intercept inheritance

Whoever fraudulently produces an infant, falsely pretending it to have been born of a parent whose child would be entitled to inherit, with intent to intercept the inheritance, shall be imprisoned in the penitentiary not more than 10 years.

§ 1039. Substitution of one child for another

Whoever, to whom an infant has been confided for nursing, education or any other purpose, with intent to deceive a parent or guardian of the child, substitutes or produces to the parent or guardian another child in place of the one so confided, shall be imprisoned in the penitentiary not more than seven years.

CHAPTER 57—HABEAS CORPUS OFFENSES

Sec.

§ 1071. Failure to obey writ of habeas corpus

Whoever, being an officer or other person to whom a writ of habeas corpus is directed, after service thereof, neglects or refuses to obey the command of the writ, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1072. Imprisonment of person discharged upon writ

Whoever, either solely or as a member of a court, knowingly and unlawfully recommits, imprisons or restrains of his liberty, for the same cause, a person who has been discharged upon a writ of habeas corpus, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1073. Eluding service of writ

Whoever, having in his custody, or under his restraint or power, a person for whose relief a writ of habeas corpus has been issued, with intent to elude the service of the writ, or to avoid the effect thereof, transfers the person to the custody of another, or places him under the power or control of another, or conceals or changes the place of confinement or restraint, or removes him without the jurisdiction of the court or judge issuing the writ, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

CHAPTER 59—HEALTH AND SAFETY

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—FOOD AND DRUGS

Article A—General Provisions

Article B—Marihuana

Subchapter I—General Provisions

§ 1101. Failure to perform duties under health laws

Whoever, being charged with the performance of a duty under the laws relating to the preservation of the public health, willfully neglects or refuses to perform the same, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1102. Exposure of diseased person in public place

Whoever willfully exposes himself or another afflicted with a quarantinable disease in a public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1103. Exhibiting deformities of persons

Whoever:

(1) exhibits the deformities of another person, or his own deformities, for hire; or

(2) by artificial means, gives to a person the appearance of a deformity and exhibits him for hire—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1104. Spitting in public places

Whoever spits or discharges mucus from the nose or mouth upon a sidewalk or public street or highway, or upon or within any part of a public building, railroad train, boat, vessel, or other vehicle used for the transportation of the public, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1105. Keeping or transporting explosives without permit

Whoever makes or keeps in the Canal Zone or transports in or across the Canal Zone more than five pounds of gunpowder, nitroglycerine or other highly explosive substance without a permit from the Governor so to do, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1106. Malicious use of explosives endangering life

Whoever maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down or injures the whole or part of a building, by means of which the life or safety of a human being is endangered, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1107. Places of public assemblage; use or preparation of injurious, nauseous, or offensive substances

(a) Whoever:

(1) throws, drops, pours, deposits, releases, discharges, or exposes, or attempts to throw, drop, pour, deposit, release, discharge, or expose, in, upon or about a hotel, guesthouse, lodginghouse, theater, restaurant, place of business, place of amusement, or any place of public assemblage, any liquid, gaseous or solid substance or matter of any kind, which is injurious to person or property or is nauseous, sickening, irritating, or offensive to any of the senses; or

(2) manufactures, prepares, or possesses any of the substances or matter referred to by paragraph (1) of this subsection with intent to commit any of the acts described by that paragraph—

shall, except as provided by section 1108 of this title, be fined not more than $500 or imprisoned in jail not more than one year, or both.

(b) Subsection (a) of this section does not apply to law enforcement officials who, while in the performance of their official duties, use tear gas, or follow other standard or generally accepted procedures, in quelling riots or in dispersing or controlling unlawful assemblies or persons assembled for the purpose of committing unlawful acts.

§ 1108. Same; use of substances which may produce serious illness or permanent injury; tear gas, mustard gas, acid or explosives

Whoever, in violating section 1107(a)(1) of this title, willfully employs or uses a—

(1) liquid, gaseous or solid substance which may produce serious illness or permanent injury through being vaporized or otherwise disbursed in the air;

(2) tear gas, mustard gas or any of the other combinations or compounds thereof; or

(3) acid or explosives—

shall be imprisoned in the penitentiary not more than five years.

§ 1109. Act by intoxicated physician or surgeon endangering life

Whoever, being a physician or surgeon, and, in a state of intoxication, and as a physician or surgeon, does an act to another person by which the life of the person is endangered, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1110. Poisoning food, medicine, or water

Whoever willfully:

(1) mingles poison with any food, drink, or medicine, with intent that it shall be taken or consumed by a human being, to his injury; or

(2) poisons a spring, well, or reservoir of water—

shall be imprisoned in the penitentiary not more than 20 years.

§ 1111. Placing filth or animal carcasses in or near waters or highways; pollution generally

Whoever:

(1) puts the carcass of a dead animal, or the offal or filth from a slaughterhouse, pen or butcher shop, into a river, creek, pond, reservoir, stream, alley, public highway or road in common use;

(2) puts the carcass of a dead animal or offal or filth of any kind in or upon the borders of a stream, pond, lake or reservoir from which water is drawn for the supply of the inhabitants of a city or village, so that the drainage from the carcass, offal or filth may be taken up by or in the stream, lake or reservoir; or

(3) by any other means, fouls or pollutes the waters of a stream, pond, lake or reservoir—

shall be fined not more than $1,000 or imprisoned in the penitentiary not more than one year, or both.

§ 1112. Causing boiler explosion endangering life

Whoever, having charge of a steam boiler, steam engine or other apparatus for generating or employing steam used in a factory, railway or other works, willfully, or from ignorance or gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident whereby human life is endangered, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1113. Causing boiler of steamboat to explode, endangering life

Whoever, being a captain or other person having charge of a steamboat used for the conveyance of passengers, or of the boilers and engines thereof, from ignorance or gross neglect or for the purpose of excelling another boat in speed, creates or allows to be created, such an undue quantity of steam as to burst the boiler, or any apparatus or machinery connected therewith, whereby human life is endangered, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1114. Causing boiler explosion resulting in death

Whoever, having charge of a steam boiler, steam engine, or other apparatus for generating or employing steam used in a factory, or on a railroad, or in a vessel, or in any kind of mechanical work, willfully or from ignorance or neglect, creates or allows to be created,

such an undue quantity of steam as to burst the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced, shall be imprisoned in the penitentiary not more than 10 years.

§ 1115. Setting on fire grass or shrubbery

Whoever willfully or negligently sets on fire, or causes or procures to be set on fire, grass or shrubbery on any lands, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1116. Resistance to fireman extingishing fire

Whoever, at the burning of a building:

(1) disobeys the lawful orders of a public officer or fireman;

(2) offers resistance to, or interference with, the lawful efforts of a fireman or company of firemen to extinguish the fire;

(3) engages in disorderly conduct calculated to prevent the fire from being extinguished; or

(4) forbids, prevents, or dissuades other persons from assisting to extinguish the fire—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

Subchapter II—Food and Drugs

Article A—General Provisions

§ 1131. Adulterating or selling adulterated food or drugs

Whoever:

(1) adulterates or dilutes any food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them, with a fraudulent intent to offer it, or cause or permit it to be offered, for sale as unadulterated or undiluted; or

(2) fraudulently sells, or keeps or offers for sale, as unadulterated or undiluted, any article or component thereof referred to by paragraph (1) of this section which has been adulterated or diluted—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1132. Wrongful preparation or labeling of drugs or medicines by druggist

Whoever, being an apothecary, or a druggist, or a person carrying on business as a dealer in drugs or medicines, or an employee thereof, in putting up drugs or medicines, or making up a prescription, or filling an order for drugs or medicines:

(1) willfully, negligently, or without consideration of those facts which by use of ordinary care and skill he should have known, omits to label a drug or medicine;

(2) puts an untrue label, stamp, or other designation of contents upon a box, bottle, or other package containing drugs or medicines;

(3) substitutes a different article for an article prescribed or ordered;

(4) puts up a greater or less quality of an article than that prescribed or ordered; or

(5) otherwise deviates from the terms of the prescription or order which he undertakes to follow—

in consequence of which human life or health is endangered, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both; or if death ensues, is guilty of manslaughter, and shall be punished accordingly.

§ 1133. Adulterating or selling adulterated candy

Whoever:

(1) adulterates candy by using in its manufacture terra alba or any other deleterious substance; or

(2) sells or keeps for sale candy adulterated with terra alba or any other deleterious substance, knowing the candy to be adulterated—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1134. Selling or offering unwholesome food or drugs

Whoever knowingly sells, or keeps or offers for sale, or otherwise disposes of an article of food, drink, drug, or medicine, knowing that it has become tainted, decayed, spoiled or otherwise unwholesome or unfit to be eaten or drunk, with intent to permit it to be eaten or drunk, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

Article B—Marihuana

§ 1151. Definitions

As used in this article:

"marihuana" has the meaning now or hereafter ascribed to it in the United States Internal Revenue Code of 1954, or any successor thereto; and

"produce" means to:

(1) plant, cultivate, or in any way facilitate the natural growth of marihuana; or

(2) harvest and transfer or make use of marihuana.

§ 1152. Illegal acts with respect to marihuana

Whoever, except under license as provided by section 1153 of this title:

(1) produces, manufactures, compounds, possesses, sells, gives away, deals in, dispenses, administers, or transports marihuana; or

(2) imports marihuana into, or exports it from, the Canal Zone—

shall, for the first offense, be fined not more than $100 or imprisoned in jail not more than 30 days, or both; and, for each subsequent offense, be fined not more than $500 or imprisoned in jail not more than 180 days, or both.

Any marihuana involved in a violation of this section may be seized, and the court may order its confiscation and destruction.

§ 1153. Licenses

The Governor may issue any licenses necessary pursuant to section 1152 of this title to permit such uses of marihuana as are related to its administration to patients by physicians, dentists, veterinary surgeons, and other practitioners, or to research, instruction, or analysis.

§ 1154. Marihuana on vessels or other carriers or discharged for transshipment

This article does not apply to:

(1) marihuana aboard vessels which enter and depart from Canal Zone waters without discharging any of the marihuana; or

(2) shipments of marihuana by common carrier in transit through the Canal Zone, even though the marihuana be discharged at a port of the Canal Zone for transshipment.

§ 1155. Construction with other laws

This article does not affect any provision of the United States Internal Revenue Code of 1954, or any successor thereto, relative to the sending, carriage, transportation, or delivery of marihuana from the Canal Zone into a State, territory, the District of Columbia, or insular possession of the United States.

CHAPTER 61—HOMICIDE

Sec.

§ 1181. Murder defined

Murder is the unlawful killing of a human being with malice aforethought.

§ 1182. Malice defined

Malice, as referred to by section 1181 of this title, may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned or malignant heart.

§ 1183. Degrees of murder

(a) Murder which is:

(1) perpetrated by means of poison, lying in wait, torture, or by other willful, deliberate, or premeditated act; or

(2) committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, mayhem, or any act punishable pursuant to section 543 of this title—

is murder of the first degree.

(b) All other kinds of murder are of the second degree.

§ 1184. Injury to or obstruction of Canal or locks causing death

Whoever, in violating section 1591 of this title, commits an act that causes the death of a person within a year and day thereafter, is guilty of murder, and shall be punished accordingly.

§ 1185. Punishment for murder

Whoever is guilty of murder in the first degree shall suffer death, or, if there be extenuating circumstances, confinement in the penitentiary for life; and whoever is guilty of murder in the second degree shall be imprisoned in the penitentiary not less than 10 years.

§ 1186. Manslaughter defined and classified

Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

(1) voluntary: upon a sudden quarrel or heat of passion; and

(2) involuntary: in the commission of an unlawful act not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner or without due caution and circumspection.

§ 1187. Punishment for manslaughter

(a) Whoever is guilty of voluntary manslaughter shall be imprisoned in the penitentiary not more than 10 years.

(b) Whoever is guilty of involuntary manslaughter shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both; or, in the discretion of the court, shall be imprisoned in the penitentiary not more than 10 years.

§ 1188. Time of death as element; computation

To establish a killing as either murder or manslaughter, it is requisite that the injured party die within a year and a day after the injury is received or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

§ 1189. Proof of corpus delicti

A person may not be convicted of murder or manslaughter unless the death of the person alleged to have been killed, and the fact of the killing by the defendant as alleged, are established as independent facts; the former by direct proof and the latter beyond a reasonable doubt.

§ 1190. Excusable homicide

Homicide is excusable when committed by accident and misfortune or in doing a lawful act by lawful means with usual and ordinary caution and without unlawful intent.

§ 1191. Justifiable homicide

(a) Homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either:

(1) in obedience to a judgment of a competent court;

(2) when necessarily committed in overcoming actual resistance to the execution of legal process or in the discharge of any other legal duty; or

(3) when necessarily committed in retaking felons who have been rescued or have escaped, or in arresting persons charged with felony, and who are fleeing from justice or resisting the arrest.

(b) Homicide is also justifiable if committed by any person when:

(1) resisting an attempt to murder a person or to commit a felony or to do great bodily injury upon a person;

(2) committed in defense of habitation, property or person, against one who manifestly intends or endeavors by violence or surprise to commit a felony, or against one who manifestly intends and endeavors in a violent, riotous or tumultuous manner to enter the habitation of another for the purpose of offering violence to a person therein;

(3) committed in the lawful defense of such a person, or of a wife or husband, parent, child, master, mistress or servant of the person, when there is reasonable ground to apprehend a design to commit a felony or to do great bodily injury and imminent danger of such a design being accomplished; or

(4) necessarily committed in attempting by lawful ways and means to apprehend a person for a felony committed or in lawfully suppressing a riot, or in lawfully keeping and preserving the peace.

(c) In order to justify a homicide under paragraph (3) of subsection (b) of this section, the slayer, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to avoid or escape any further struggle before the homicide was committed.

(d) A bare fear of the commission of any of the offenses mentioned in paragraphs (2) and (3) of subsection (b) of this section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. The circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of those fears alone.

§ 1192. Acquittal on showing of justification or excuse

Where a homicide appears to be justifiable or excusable, the person charged shall, upon his trial, be acquitted and discharged.

§ 1193. Burden of establishing mitigation or justification upon trial for murder

Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter or that the act of the defendant, of which complaint is made, was justifiable or excusable.

CHAPTER 63—INCEST

§ 1221. Incest defined; punishment

(a) Marriages between parents and children, between ancestors and descendants of every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, whether the relationship is legitimate or illegitimate, are incestuous.

(b) Persons being within the degrees of consanguinity within which marriages are declared by subsection (a) of this section to be incestuous, who intermarry, or who commit fornication or adultery with each other, shall be imprisoned in the penitentiary not more than 10 years.

CHAPTER 65—INCOMPETENT PERSONS

§ 1251. Cruelty toward incompetents

Whoever is guilty of harsh, cruel or unkind treatment of, or neglect of duty toward, an idiot, imbecile or insane person, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

CHAPTER 67—INDECENT OR IMMORAL CONDUCT

§ 1281. Indecent or immoral conduct generally; rules and regulations; punishment

(a) It is unlawful to engage in or permit any indecent or immoral conduct.

(b) For the purpose of enforcing subsection (a) of this section, the President may prescribe, and from time to time amend, rules and regulations to assert and exercise the police power in the Canal Zone, or for any portion or division thereof.

(c) Whoever violates a regulation issued pursuant to subsection (b) of this section shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1282. Indecent exposures, exhibitions and pictures

(a) Whoever willfully and lewdly:

(1) exposes the private parts of his person in a public place or a place where there is present another person to be offended or annoyed thereby;

(2) procures, counsels or assists a person so to expose himself, or to take part in a model artist exhibition, or to make any other exhibition of himself to public view or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to lewd or vicious thoughts or acts;

(3) writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale or exhibits an obscene or indecent writing, paper, publication, picture, film, print, figure, or book; or designs, copies, draws, engraves, paints or otherwise prepares an obscene or indecent picture, film, or print; or molds, casts or otherwise makes an obscene or indecent figure;

(4) produces, prepares, manufactures, sells, distributes, keeps for sale, exhibits, buys, rents, operates, uses, keeps or maintains recordings, transcriptions, or mechanical, chemical or electrical reproductions, or any other articles, equipment, machines or materials, used or intended to be used in producing or reproducing lewd or obscene song, ballad, or other words, whether spoken or sung;

(5) writes, composes or publishes a notice of advertisement of any item, article, equipment, machine, or material mentioned in paragraphs (3) and (4) of this subsection; or

(6) sings or speaks a lewd or obscene song, ballad or other words in a public place, or in a place where there are persons present to be annoyed thereby—

shall, except as provided by subsection (b) of this section, be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) Upon a second and each subsequent conviction of violating paragraph (1) of subsection (a) of this section, or upon a first conviction of violating that paragraph after a previous conviction of violating section 543 of this title, the offender shall be imprisoned in the penitentiary not more than five years.

§ 1283. Seizure and destruction of indecent articles

Every person authorized or enjoined to arrest a person for a violation of paragraph (3), (4) or (5) of subsection (a) of section 1282 of this title shall seize any or all items, articles, equipment, machines, or materials, referred to in those paragraphs, found in the possession or under the control of the person arrested.

Upon a conviction of the accused, and after the expiration of the time for appeal, any items, articles, equipment, machines, or materials, in respect whereof the accused stands convicted, shall be destroyed.

CHAPTER 69—KIDNAPING AND SIMILAR OFFENSES

Sec.

§ 1311. Acts constituting kidnaping; punishment

(a) Whoever, without lawful authority:

(1) forcibly steals, takes, or arrests a person and moves, carries, or takes him from one place to another within the Canal Zone or into any other jurisdiction;

(2) forcibly takes or arrests a person with a design to take him out of the Canal Zone without having established a claim according to the laws of the Canal Zone or of the United States applicable in the Canal Zone; or

(3) by false promises, misrepresentations, or the like, hires, persuades, entices, decoys, or seduces a person to go out of the Canal Zone or to be taken or removed therefrom with the intent to sell the person into slavery or involuntary servitude or otherwise to employ the person for his own use or for the use of another, without the free will and consent of the persuaded person, or unlawfully to deprive the person of his liberty—

is guilty of kidnaping, and, except as otherwise provided in this chapter, shall be imprisoned in the penitentiary not more than 25 years.

(b) Paragraphs (1) and (2) of subsection (a) of this section do not apply to a person who commits an act described therein upon his own minor child.

§ 1312. Kidnaping for ransom, extortion, or robbery; bodily harm; conspiracy

(a) Whoever:

(1) steals, seizes, takes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps, moves or carries away a person, by any means whatsoever, with intent to hold or detain him, or holds or detains him, for ransom or reward or for the purpose of committing extortion or of exacting money or other valuable thing from his relatives, friends or any other person; or

(2) kidnaps or carries away a person for the purpose of committing robbery—

shall be punished by death if the kidnaped person has not been liberated unharmed, and if the jury so recommends, or by imprisonment in the penitentiary for any term of years or for life, if the death penalty is not imposed.

(b) If two or more persons conspire to violate subsection (a) of this section, and one or more of them do any overt act to effect the object of the conspiracy, each of the conspirators shall be punished as provided in subsection (a) of this section.

§ 1313. Extortion by posing as kidnaper or by claiming ability to obtain release of victim

(a) Whoever, for the purpose of obtaining a ransom or reward, or with the intent to extort or exact from a person any money or thing of value, poses as, or in any manner represents himself to be, a person:

(1) who has stolen, seized, taken, confined, inveigled, enticed, decoyed, abducted, concealed, kidnaped, moved or carried away another person, or who holds or detains him, or who has aided or abetted in any such act; or

(2) who has the influence, power, or ability to obtain the release of a person who has been stolen, seized, taken, confined, inveigled, enticed, decoyed, abducted, concealed, kidnaped, moved or carried away—

shall be imprisoned in the penitentiary for any term of years or for life.

(b) Subsection (a) of this section does not prohibit a person who, in good faith, believes that he can rescue a person upon whom an act specified by section 1312(a)(1) of this title has been committed, and who has had no part in, or connection with, the commission thereof, from offering to rescue or obtain the release of the victim for a monetary consideration or other thing of value.

§ 1314. Child stealing

Whoever maliciously, forcibly or fraudulently takes or entices away a child under the age of 12 years, with intent to detain and conceal the child from its parent, guardian or other person having the lawful charge of the child, shall be imprisoned in the penitentiary not more than 20 years.

CHAPTER 71—LARCENY AND EMBEZZLEMENT

SUBCHAPTER I—LARCENY AND RELATED OFFENSES

SUBCHAPTER II—EMBEZZLEMENT

Subchapter I—Larceny and Related Offenses

§ 1341. Larceny defined and classified

(a) Larceny is the stealing, or the unlawful taking, carrying, leading or driving away of the personal property of another.

(b) Larceny is of two degrees, the first of which is grand larceny; the second, petit larceny.

§ 1342. Grand larceny

Whoever, in committing the offense of larceny, takes property:

(1) which is of the value of $100 or more; or

(2) from the person of another—

is guilty of grand larceny, and shall be imprisoned in the penitentiary not more than 10 years.

§ 1343. Petit larceny

Whoever commits larceny under circumstances other than any of those constituting grand larceny is guilty of petit larceny, and shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1344. Value of written instruments stolen

If the thing stolen consists of any evidence of debt or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.

§ 1345. Value of passage tickets

If the thing stolen is a ticket, paper, or other writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon a railroad, vessel, or other public conveyance, the price at which a ticket entitling a person to a like passage is usually sold by the proprietor of the conveyance is the value of the ticket, paper, or writing.

§ 1346. Written instruments completed but not delivered

This subchapter applies where the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed or ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner, or having other interests therein.

§ 1347. Larceny with respect to mortgaged or pledged personal property

Whoever, after mortgaging personal property, or after pledging personal property as security for a loan or other security, during the existence of the mortgage or pledge, and with intent to defraud the mortgagee or pledgee, as the case may be, or the representatives or assigns of either:

(1) takes, drives or carries away, or otherwise removes, or permits the taking, driving or carrying away, or other removal of, the mortgaged or pledged property, or any part thereof, from the Canal Zone, without the written consent of the mortgagee or pledgee;

(2) sells, transfers, or in any manner further incumbers the mortgaged property, or any part thereof, unless, at or before the time of making the sale, transfer, or incumbrance, he informs the:

(A) person to whom the sale, transfer, or incumbrance is made of the existence of the prior mortgage; and

(B) prior mortgagee of the intended sale, transfer, or incumbrance, in writing, by giving the name and place of residence of the person to whom the sale, transfer, or incumbrance is to be made;

(3) sells, or transfers the pledged property, or any part thereof, without the written consent of the pledgee; or

(4) otherwise disposes of the mortgaged or pledged property, or any part thereof, without the written consent of the mortgagee or pledgee, as the case may be—

is guilty of larceny, and shall be punished accordingly.

§ 1348. Severing and removing parts of realty

Where the thing taken is a fixture or part of the realty and is severed at the time of taking, this subchapter applies in the same manner as if the thing had been severed by another person at a previous time.

§ 1349. Removal of improvements from mortgaged real property

Whoever, after mortgaging real property, during the existence of the mortgage, or after the mortgaged property has been sold under an order and decree of foreclosure, with the intent to defraud or injure

the mortgagee or his representatives, successors, or assigns, or the purchaser of the mortgaged premises at the foreclosure sale or his representatives or assigns, and without his or their written consent as the case may be:

(1) destroys or damages the mortgaged premises; or

(2) takes, removes, or carries away, from the mortgaged premises, or otherwise disposes of, a house, barn, or other property affixed thereto as an improvement thereon, or permits any of those acts—

is guilty of larceny, and shall be punished accordingly.

§ 1350. Larceny of lost property

Whoever finds lost property under circumstances which give him knowledge of, or means of inquiry as to, the true owner, and appropriates the property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and restore the property to him, is guilty of larceny, and shall be punished accordingly.

§ 1351. Neglect to notify owner of property saved from fire

Whoever saves from fire, or from a building endangered by fire, any property, and for two days thereafter corruptly neglects to notify the owner thereof, or the Chief, Fire Division, Canal Zone Government, shall be imprisoned in the penitentiary not more than 10 years.

§ 1352. Stealing gas or electricity

Whoever, with intent to injure or defraud, connects a pipe, tube, wire or other instrument with a main, service pipe or other pipe, wire or connection used for supplying illuminating gas or electricity in such a manner as to supply illuminating gas or electricity to a connection by or at which illuminating gas or electricity is consumed, around or without passing through a meter provided for measuring and registering the quantity consumed, or in any other manner so as to evade the payment therefor, or, with like intent, obstructs its action, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1353. Stealing water

Whoever, with intent to injure or defraud:

(1) opens or draws water from a stopcock or faucet by which the flow of water is controlled, after having been notified that it has been closed or shut for specific cause, by order of competent authority; or

(2) connects a pipe, tube or other instrument, with a main, service or other pipe, conduit or flume, for conducting water, for the purpose of taking water from the main, service pipe, conduit or flume, without the knowledge of the owner thereof, and with intent to evade payment therefor—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1354. Taking vehicle for temporary use

Whoever takes a vehicle without the permission of the owner or custodian thereof, for the purpose of temporarily using or operating the vehicle, shall, for the first offense, be fined not more than $100 or imprisoned in jail not more than 30 days, or both; and, for each subsequent offense, be fined not more than $500 or imprisoned in jail not more than 180 days, or both.

§ 1355. Unauthorized use of vehicle by custodian

Whoever, having the care, custody or possession of a vehicle, takes, hires, runs, drives or uses the vehicle, or takes or removes therefrom

any part thereof, without the owner's consent, shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1356. Changing or defacing marks or brands on domestic animals

Whoever marks or brands, or alters or defaces the mark or brand of a horse, mare, colt, jack, mule, ox, steer, cow, calf, sheep, goat, hog, shoat or pig belonging to another with intent thereby to steal it, or to prevent identification thereof by the true owner, shall be imprisoned in the penitentiary not more than five years.

§ 1357. Bringing in property stolen or received elsewhere

Whoever, in a foreign country or State of the United States, steals the property of another, or receives such property, knowing it to have been stolen, and brings the property into the Canal Zone, may be tried, convicted and punished in the same manner as if the larceny or receiving had been committed in the Canal Zone.

§ 1358. Proof upon trial for larceny of money or securities

Upon a trial for larceny of money, bank notes, certificates or shares of stock, or valuable securities, the allegation of the complaint or information, as far as regards the description of the property, is sustained if the offender is proved to have stolen any money, bank notes, certificates or shares of stock, or valuable security, although the particular species of coin or other money, or the number, denomination, or kind of bank notes, certificates or shares of stock, or valuable security is not proved.

Subchapter II—Embezzlement

§ 1381. Embezzlement defined

Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.

§ 1382. Officers or persons generally

Whoever, being an officer of the United States or a department or agency thereof, or a deputy, clerk or servant of such an officer, or an officer, director, trustee, clerk, servant, attorney or agent of an association, society or corporation, public or private, or any other person, and having, by virtue of his trust, any property in his possession or under his control:

(1) fraudulently appropriates the property; or

(2) secretes the property with a fraudulent intent to appropriate it—

to a use or purpose not in the due and lawful execution of his trust, is guilty of embezzlement, and shall be punished accordingly.

§ 1383. Various classes of fiduciaries

Whoever, being a trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, collector, or person otherwise intrusted with, or having in his control, property for the use of another person,

(1) fraudulently appropriates the property; or

(2) secretes the property with a fraudulent intent to appropriate it—

to a use or purpose not in the due and lawful execution of his trust, is guilty of embezzlement, and shall be punished accordingly.

§ 1384. Carrier or individual transporting property for hire

Whoever, being a carrier or other person having under his control personal property for the purpose of transportation for hire, fraudulently appropriates it to a use or purpose inconsistent with the safe-

keeping of the property and its transportation according to his trust, whether or not he has broken the package in which the property is contained or has otherwise separated the items thereof, is guilty of embezzlement and shall be punished accordingly.

§ 1385. Bailee, tenant, lodger, or attorney in fact

Whoever, being a person entrusted with property as bailee, tenant or lodger, or with a power of attorney for the sale or transfer thereof, fraudulently converts the property or the proceeds from the sale or transfer thereof to his own use or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement and shall be punished accordingly.

§ 1386. Clerk, agent or servant

Whoever, being a clerk, agent, or servant of another person, fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, property of another person which has come into his control or care by virtue of his employment as such a clerk, agent or servant, is guilty of embezzlement and shall be punished accordingly.

§ 1387. Evidence of debt as subject of embezzlement

Any evidence of debt, negotiable by delivery only, and actually executed, is a subject of embezzlement, whether it has been delivered or issued as a valid instrument or not. Where the property embezzled is an evidence of debt or right of action, the sum due upon it or evidenced to be paid by it shall be taken as its true value.

§ 1388. Bringing in property embezzled or received elsewhere

Whoever, in a foreign country or State of the United States, embezzles the property of another, or receives such property, knowing it to have been embezzled, and brings it into the Canal Zone, may be tried, convicted and punished in the same manner as if the embezzlement or receiving had been committed in the Canal Zone.

§ 1389. Punishment for embezzlement

Whoever is guilty of embezzlement shall be punished in the manner prescribed for stealing property of the value of that embezzled.

§ 1390. Claim of title as defense

Upon a prosecution for embezzlement, it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though the claim is untenable. This section does not excuse the unlawful retention of the property of another to offset or pay demands held against him.

§ 1391. Intent to restore property as defense

The fact that the accused intended to restore the property embezzled is not a ground of defense or of mitigation of punishment, if it has not been restored before a complaint is laid before a magistrate or an information is filed in the district court charging the commission of the offense.

§ 1392. Actual restoration as ground for mitigation of punishment

If, prior to a complaint laid before a magistrate or an information filed in the district court, charging the commission of embezzlement, the accused person voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, the fact of restoration or tender is not a ground of defense, but it authorizes the court to mitigate punishment, in its discretion.

§ 1393. Proof upon trial for embezzlement of money or securities

Upon a trial for embezzlement of money, bank notes, certificates or shares of stock, or valuable securities, the allegation of the complaint or information, as far as regards the description of the property, is sustained if the offender is proved to have embezzled:

(1) any money, bank notes, certificates or shares of stock, or valuable security, although the particular species of coin or other money, or the number, denomination, or kind of bank notes, certificates or shares of stock, or valuable security is not proved; or

(2) a piece of coin or other money, a bank note, certificate or share of stock, or valuable security, although it may have been delivered to him in order that a part of the value thereof should be returned to the party delivering it, and the part has been returned accordingly.

CHAPTER 73—LETTERS AND MESSAGES

Sec.

§ 1421. Opening, reading, or publishing sealed letter

Whoever willfully and without being authorized to do so either by the writer of the letter or the person to whom it is addressed:

(1) opens or reads, or causes to be read, a sealed letter not addressed to himself; or

(2) publishes any of the contents of the letter, knowing the same to have been unlawfully opened—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1422. Refusal or neglect to send or deliver message

(a) Whoever, being an agent, operator or employee of a telegraph, cable or telephone office, willfully:

(1) refuses or neglects to send a message received at the office for transmission; or

(2) postpones the message out of its order; or

(3) refuses or neglects to deliver a message received by telegraph, cable or telephone—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) Subsection (a) of this section does not require:

(1) a message to be received, transmitted or delivered unless the charges thereon have been paid or tendered; or

(2) the sending, receiving or delivery of a message:

(A) counseling, aiding, abetting or encouraging treason or other resistance to lawful authority; or

(B) calculated to:

(i) further a fraudulent plan or purpose; or

(ii) instigate or encourage the perpetration of an unlawful act; or

(iii) facilitate the escape of a criminal or person accused of crime;

or;

(C) containing abusive, blasphemous or indecent language.

§ 1423. Use of information derived from private messages

Whoever, being an agent, operator or employee of a telegraph, cable or telephone office:

(1) in any way uses or appropriates information derived by him from a private message passing through his hands addressed to another person, or in any other manner acquired by him by reason of his trust as such agent, operator or employee; or

(2) trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn the information to his own account, profit or advantage—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1424. Fraudulently obtaining or using contents of message

Whoever:

(1) in any manner, willfully and fraudulently reads, or attempts to read, a message, or to learn the contents thereof, while the message is being sent over a telegraph line; or

(2) willfully and fraudulently learns, or attempts to learn, the contents or meaning of a message while the message is in a telegraph or cable office, or is being received thereat or sent therefrom; or

(3) uses or attempts to use, or communicates to others, any information so obtained—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1425. Bribing agent to disclose message; use of information

Whoever:

(1) by the payment or promise of a bribe, inducement or reward, procures, or attempts to procure, a telegraph, cable or telephone agent, operator or employee to disclose a private message, or the contents, purport, substance, or meaning thereof; or

(2) offers to pay a telegraph, cable or telephone agent, operator or employee a bribe, compensation or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator or employee; or

(3) uses, or attempts to use, any information so obtained—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1426. Disclosure of telegraphic, cable or telephonic message

Whoever willfully discloses the contents of a telegraphic, cable or telephonic message, or a part thereof, addressed to another person, without the permission of that person, unless directed so to do by the lawful order of a court, shall be punished by a fine of not more than $5,000, or by imprisonment in jail for not more than one year or in the penitentiary for not more than five years, or by both such fine and imprisonment.

§ 1427. Altering telegraphic, cable or telephonic message

Whoever willfully alters the purport, effect or meaning of a telegraphic, cable, or telephonic message to the injury of another, shall be punished by a fine of not more than $5,000, or by imprisonment in jail for not more than one year or in the penitentiary for not more than five years, or by both such fine and imprisonment.

§ 1428. Opening or fraudulently obtaining telegraphic, cable or telephonic message of another

Whoever, not being connected with a telegraph, cable or telephone office:

(1) willfully opens a sealed envelope enclosing a telegraphic, cable or telephonic message and addressed to another person, without the authority or consent of the person to whom it is directed, and with the purpose of learning the contents of the message; or

(2) fraudulently represents another person and thereby procures to be delivered to himself a telegraphic, cable or telephonic message addressed to the other person, with the intent to use, destroy or detain it from the person entitled to receive it—

shall be punished by a fine of not more than $5,000, or by imprisonment in jail for not more than one year or in the penitentiary for not more than five years, or by both such fine and imprisonment.

CHAPTER 75—LIBEL

§ 1461. Libel defined

A libel is a malicious defamation, expressed either by writing, printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or to publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

§ 1462. Punishment for libel

Whoever willfully and with a malicious intent to injure another person publishes or procures to be published a libel shall be fined not more than $5,000 or imprisoned in the penitentiary not more than one year, or both.

§ 1463. Malice presumed

An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

§ 1464. Truth and good motives as a defense

In criminal prosecutions for libel the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends the defendant shall be acquitted.

§ 1465. Publication defined

To sustain a charge of publishing a libel, it is not required that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by any other person than himself.

§ 1466. Liability of editors, proprietors and authors

(a) Every author, editor or proprietor of a book, newspaper or serial publication and every manager of a partnership or incorporated association by which a book, newspaper or serial publication

is issued, is chargeable with the publication of any matter contained therein. But in a prosecution for libel the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes, by another who had no authority from him to make the publication and whose act was disavowed by him as soon as known.

(b) The author of a libel in all cases is equally guilty and is subject to the same punishment as the publisher, owner or proprietor of the newspaper or other printed publication in which the libelous article appears. The punishment prescribed in section 1462 of this title is applicable to this section.

§ 1467. True reports of public and official proceedings

(a) A prosecution for libel may not be maintained against a person, firm, or corporation, for the publication of a fair and true report of a judicial, legislative or other public and official proceedings, or for any heading of the report which is a fair and true headnote of the statement published.

(b) Subsection (a) of this section does not apply to a libel contained in any other matter added by a person concerned in the publication; or in the report of anything said or done at the time and place of the public and official proceedings which was not a part thereof.

§ 1468. Other privileged communications

A communication made to a person interested in the communication by one who was also interested, or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious and is a privileged communication.

§ 1469. Threatening to publish libel

Whoever threatens another to publish a libel concerning him, or a parent, husband, wife or child of the person, or member of his family, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1470. Offer to prevent publication, with intent to extort

Whoever offers to prevent the publication of a libel upon another person, with intent to extort money or other valuable consideration from any person, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

CHAPTER 77—LOTTERIES AND GAMBLING

SUBCHAPTER I—LOTTERIES

SUBCHAPTER II—GAMBLING

Subchapter I—Lotteries

§ 1501. "Lottery" and "lottery ticket" defined

As used in this chapter:

"lottery" includes a lottery, policy-lottery, gift concert or similar enterprise of any description by whatever name, style or title it may be designated or known; and

"lottery ticket" includes a lottery ticket, order or device of any kind, for or representing any number of shares or an interest in a lottery or scheme of chance.

§ 1502. Establishment or promotion of lottery

Whoever:

(1) establishes, sets on foot, maintains, carries on, makes, or draws a lottery, whether publicly or privately; or

(2) by such means, exposes, sets aside, or offers for sale real or personal property, a certificate of claim, or anything of value or token thereof—

shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1503. Selling tickets or being concerned in lottery as owner or agent

Whoever:

(1) vends, sells, barters, or disposes of a lottery ticket; or

(2) is concerned in any manner in a lottery or scheme of chance by acting as owner or agent for or on behalf of a lottery or scheme of chance to be drawn, paid, or carried on, either outside or within the Canal Zone—

shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1504. Publishing account of lottery

Whoever, by printing, writing, or in any other way, publishes an account of a lottery or scheme of chance to be carried on, held, or drawn either outside or within the Canal Zone—

(1) stating when or where a lottery or scheme of chance is to be drawn for the prizes therein or any of them;

(2) stating any information in relation to the drawing or prizes or any of them, the price of the ticket, show or chances therein, or where a ticket may be obtained;

(3) in any way aiding or assisting in the lottery or scheme of chance; or

(4) in any way giving publicity to the lottery or scheme of chance—

shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1505. Causing tickets or advertisements to be brought in for distribution

Whoever:

(1) causes any papers, certificates or instruments purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery or other enterprise offering prizes dependent upon lot or chance, to be brought into the Canal Zone from abroad for the purpose of depositing them in the Canal Zone or of disposing of them or having them disposed of therein; or

(2) causes an advertisement of a lottery or other enterprise offering prizes dependent upon lot or chance to be brought into the Canal Zone or deposited or circulated therein—

shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1506. Raffles or gift enterprises for charitable purposes

The Governor may issue a permit for conducting a raffle or gift enterprise whenever it appears to him after proper investigation that the gross proceeds of the enterprise are to be used for charitable purposes. When the permit has been issued by the Governor, sections 1501–1506 of this title do not apply to the raffle or gift enterprise it authorizes to be conducted.

§ 1507. Proof upon trial for violation of lottery laws

Upon a trial for the violation of a provision of this subchapter, or other law for the suppression of lotteries, it is not necessary to prove:

(1) the existence of a lottery in which a lottery ticket purports to have been issued;

(2) the actual signing of a lottery ticket or share of a pretended lottery; or

(3) that a lottery ticket, share or interest was signed or issued by the authority of a manager or person assuming to have authority as manager.

Proof of the sale, furnishing, bartering or procuring of a ticket, share or interest therein, or of an instrument purporting to be a ticket, or part or share of any such ticket, is evidence that the share or interest was signed and issued according to the purport thereof.

Subchapter II—Gambling

§ 1531. Conducting gambling game for percentage

Whoever, either as owner, agent or employee, conducts or carries on, whether for gain or a chance for gain by deducting a percentage either of the profits or of the stake being hazarded, any game for money, checks, credit or other representative of value, shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1532. Possessing or permitting maintenance of gambling device or game

Whoever has in his possession or under his control, or permits to be placed, maintained or kept in a room, space, inclosure or building owned, leased or occupied by him, or under his control or management, a device or game on which money or other valuable thing is staked or hazarded and as a result the money or valuable thing may be won or lost, shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1533. Possessing or permitting maintenance of slot or other gambling machine

Whoever has in his possession or under his control, either as owner, agent, employee or otherwise, or permits to be placed, maintained or kept in any room, space, inclosure or building owned, leased or occupied by him, or under his management or control, a slot or card machine, contrivance, appliance or mechanical device, upon the result of action of which money or other valuable thing is staked or hazarded, and which is operated or played by placing or depositing therein coins, checks, slugs or other articles or device, or in any other manner, and by means whereof, or as a result of the operation of which, any merchandise, money, check, token or other representative or article of value, redeemable in or exchangeable for money or any other thing of value, is won or lost, shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

CHAPTER 79—MALICIOUS OR OTHER INJURY TO PROPERTY

SUBCHAPTER I—MALICIOUS MISCHIEF GENERALLY

SUBCHAPTER II—INJURIES TO CANAL PROPERTY OR OTHER PUBLIC OR SEMI-PUBLIC PROPERTY

Subchapter I—Malicious Mischief Generally

§ 1561. Malicious injury to property generally

Whoever maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this title, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both. The specification of the acts enumerated in the other sections of this subchapter and in sections 232, 233, 1106 and 1421 of this title does not restrict or qualify the interpretation of this section.

§ 1562. Willful injury to real property

Whoever willfully commits a trespass by either:

(1) cutting down, destroying or injuring any kind of wood or timber standing or growing upon the lands of another, or upon public lands;

(2) carrying away any kind of wood or timber lying on such lands;

(3) maliciously injuring or destroying standing crops, fruits, or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this title;

(4) digging, taking or carrying away from any lot without the license of the owner or legal occupant thereof, earth, soil or stone;

(5) digging, taking or carrying away from any land recognized or established as a street, alley, avenue or park, without the license of the proper authorities, earth, soil or stone; or

(6) putting up, affixing, fastening, printing or painting upon the property of any person, without license from the owner, a notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or a picture, sign or device intended to call attention thereto—

shall be fined not more than $100 or imprisoned in jail for not more than 30 days, or both.

§ 1563. Incendiarism

Whoever maliciously burns a building, structure, vessel, boat, craft, or vehicle, not the subject of arson, or any growing or standing crop, grass or tree, or any grass, forest, woods, timber, brush-covered land, or slashing, cut over land, or a bridge, tent, fence, railroad car, lumber, or railroad tie, not his property, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years, or both.

§ 1564. Opening or injuring fence

Whoever willfully or maliciously opens and leaves open, or injures or destroys, a fence on the enclosed land of another, to make passage through the enclosure, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1565. Injuring or tampering with vehicle, motorboat, launch or aircraft

(a) Whoever, without the consent of the owner of a vehicle:

(1) willfully injures or tampers with the vehicle or the contents thereof;

(2) breaks or removes any part of or from the vehicle;

(3) climbs into or upon the vehicle whether it is in motion or at rest, with intent to commit malicious mischief, or injury or other crimes; or

(4) manipulates or attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of the vehicle while it is at rest and unattended—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) As used in subsection (a) of this section, "vehicle" has the meaning given to it by section 61 of Title 1, and also includes a motorboat, launch, or aircraft.

§ 1566. Destruction of written instrument belonging to another

Whoever maliciously mutilates, tears, defaces, obliterates or destroys a written instrument, the property of another, the false making of which would be forgery, shall be imprisoned in the penitentiary not more than five years.

Subchapter II—Injuries to Canal Property or Other Public or Semi-Public Property

§ 1591. Injury to or obstruction of Canal, locks, or dams

Whoever, by any means or in any way, injures or obstructs or attempts to injure or obstruct any part of the Panama Canal or the locks or dams thereof or the approaches thereto, shall be fined not more than $10,000 or imprisoned in the penitentiary not more than 20 years, or both.

§ 1592. Injuring or obstructing communication, power, lighting, control, or signal lines, stations, or systems; hindering transmission

Whoever willfully or maliciously:

(1) injures or destroys any of the works, property, or material of a radio, telegraph, telephone, cable, or television line, station, or system, or other means of communication, or of a power or lighting line, station, or system, or other means of power or lighting transmission or distribution, or of a control or signal line, station, or system, whether any such line, station, or system be constructed or in process of construction;

(2) interferes in any way with the working or use of any such line, station, or system; or

(3) obstructs, hinders, or delays the transmission or distribution of power or lighting by means of any such line, station, or system—

shall be fined not more than $10,000 or imprisoned in the penitentiary not more than ten years, or both.

§ 1593. Destroying boundary or subaqueous cable markers

Whoever willfully or maliciously:

(1) removes a monument erected for the purpose of designating a point in the boundary of a lot or tract of land, or a place where a subaqueous telegraph cable lies;

(2) defaces or alters the marks upon a monument erected for the purpose mentioned in paragraph (1) of this section; or

(3) cuts down or removes a tree upon which marks have been made for the purpose mentioned in paragraph (1) of this section, with intent to destroy the marks—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1594. Injury to or removal of boundary or survey monuments

Whoever willfully injures, defaces or removes a signal, monument, building or appurtenance thereto, placed, erected or used by persons engaged in the United States Coast and Geodetic Surveys, surveys of the United States Army, Navy, or Air Force, or other Government surveys, or the Panama Canal Company, or a public service company, knowing it to be a boundary or survey monument, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1595. Injury to monuments, works of art, or trees

Whoever, not the owner thereof, willfully injures, disfigures or destroys a monument, work of art, or useful or ornamental improvement, or a shade tree or ornamental plant growing therein, whether situated upon private grounds or on a street, sidewalk or public park, or place, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1596. Breaking or obstructing gas or water pipes

Whoever willfully breaks, digs up, obstructs or injures a pipe or main for conducting gas or water, or works erected for supplying buildings with gas or water, or an appurtenance or appendage connected therewith, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1597. Injuring water system or fire protection apparatus, etc.; misusing or wasting water

Whoever:

(1) without authority, removes, obstructs, injures, molests, or tampers with any tool, fixture, apparatus, equipment, machinery or building of any kind whatsoever connected with or necessary to the proper and efficient operation of the water systems or for fire protection within the Canal Zone; or

(2) willfully misuses or wastes, or causes to be misused or wasted, water supplied from the water mains owned or operated by any agency of the United States—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1598. Taking water from or disturbing irrigation or other canals, etc.

Whoever, without authority of the owner or managing agent:

(1) takes water from a canal, ditch, flume or reservoir used for the purpose of holding or conveying water for manufacturing, agriculture, irrigation, generation of power, or domestic uses, with intent to defraud;

(2) raises, lowers, or otherwise disturbs a gate or other apparatus thereof used for the control or measurement of water; or

(3) empties or places into a canal, ditch, flume or reservoir, used for any of the purposes mentioned in paragraph (1) of this section, rubbish, filth or obstruction to the free flow of the water—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1599. Injury to structures erected to create power or conduct or store water

Whoever willfully or maliciously:

(1) cuts, breaks, injures or destroys a bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir or other structure erected to create hydraulic power, or to drain or reclaim a swamp or overflowed tide or marsh land, or to store or conduct water for agricultural or other purposes, or for the supply of the inhabitants of a city or town, or an embankment necessary to it, or either of them;

(2) makes an aperture in a dam, canal, flume, aqueduct, reservoir, embankment, levee or structure erected for any of the purposes mentioned in paragraph (1) of this section, with intent to injure or destroy it; or

(3) draws up, cuts or injures a pile fixed in the ground for the purpose of securing a sea bank or sea wall, or a dock, quay, jetty, lock or sea wall—

shall be fined not more than $1,000 or imprisoned in the penitentiary not more than two years, or both.

§ 1600. Destroying or injuring places of confinement

Whoever willfully destroys or injures a public jail or other place of confinement, shall be fined not more than $10,000 or imprisoned in the penitentiary not more than five years, or both; but if the damage or injury to the jail or other place of confinement is determined to be $200 or less, he shall be fined not more than $500 or imprisoned in jail not more than 180 days, or both.

§ 1601. Regulations governing placement of signs on lands or structures in Canal Zone; penalties for violation

(a) The Governor may prescribe, and from time to time amend, regulations governing the construction or placing of signs, bills, posters, or other advertising devices on lands, buildings, or other structures in the Canal Zone.

(b) Whoever violates a regulation issued under subsection (a) of this section shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both. Every day that an advertising device remains upon land or a structure, in violation of a regulation issued under subsection (a) of this section, constitutes a separate offense.

§ 1602. Trespassing upon posted Government reservations; destruction or removal of signs

(a) The Governor may cause any reservation or other place belonging to or under the control of the United States or an agency thereof to be posted by printed or painted signs, conspicuously placed at or near the reservation or place from which the public is to be ex-

cluded, which shall, in plain and simple words, warn all persons against trespassing upon the reservation or place.

(b) Whoever goes into or upon a reservation or place that has been posted as prescribed in subsection (a) of this section, without the permission of the person in charge thereof, is guilty of trespassing, and shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(c) Whoever, without proper authority, willfully injures, destroys, or removes a sign placed or erected under the provisions of subsection (a) of this section, shall be fined not more than $100 or imprisoned in jail not more than 90 days, or both.

CHAPTER 81—MARRIAGES

Sec.

§ 1631. Forcible marriage; defilement

Whoever takes a woman unlawfully, against her will, and by force, menace or duress, compels her to:

(1) marry him;
(2) marry another person; or
(3) be defiled—

shall be imprisoned in the penitentiary not more than 14 years.

§ 1632. False return of, or falsely recording, marriage

Whoever:

(1) being authorized to solemnize marriages, willfully makes a false return of a marriage or pretended marriage to the court; or

(2) makes a false record of a marriage return—

shall be fined not more than $200 or imprisoned in jail not more than one year, or both.

CHAPTER 83—MAYHEM

Sec.

§ 1661. Acts constituting mayhem; punishment

Whoever unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear or lip, is guilty of mayhem, and shall be imprisoned in the penitentiary not more than 15 years.

CHAPTER 85—MOTOR AND OTHER VEHICLES

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

SUBCHAPTER II—CHEMICAL TEST FOR INTOXICATION

Subchapter I—General Provisions

§ 1691. Duty of drivers of vehicles in collision; punishment for violation

(a) When a vehicle strikes a person, or collides with a vehicle containing a person, the driver of, and all persons in, the vehicle doing the striking or colliding, who have or assume authority over the driver, shall:

(1) immediately cause the vehicle to stop;

(2) render to the person struck, or to the occupants of the vehicle collided with, all necessary assistance including the carrying of the person or occupant to a physician or surgeon for medical or surgical treatment if treatment is required or if the carrying to a physician or surgeon is requested by the person struck or the occupant of the vehicle struck; and

(3) either remain at the scene of the accident until the arrival of the police authorities or communicate a full report of the accident to the nearest police authorities without delay.

(b) Whoever violates subsection (a) of this section shall be punished by a fine of not more than $5,000, or by imprisonment in the penitentiary for not more than five years or in jail for not more than one year, or by both such fine and imprisonment.

§ 1692. Reckless driving or operation of a vehicle

Whoever drives or operates a vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving, and shall be fined not more than $250 or imprisoned in jail not more than 60 days, or both; but if the reckless driving proximately causes bodily injury to a person, the person so driving the vehicle shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

§ 1693. Driving vehicle while intoxicated

Whoever, while driving or operating a vehicle, is intoxicated or becomes intoxicated, shall be fined not more than $500 or imprisoned in jail not more than 90 days, or both.

§ 1694. Same; causing death or bodily injury

Whoever, while driving or operating a vehicle, is intoxicated or becomes intoxicated, and, by reason of his intoxication, does an act, or neglects a duty imposed by law, which causes bodily injury to, or the death of, another person, shall be punished by a fine of not more than $5,000, or by imprisonment in jail for not more than one year or in the penitentiary for not more than 10 years, or by both such fine and imprisonment.

Subchapter II—Chemical Test for Intoxication

§ 1711. Implied consent of driver to submit to test to determine alcoholic content of blood

Whoever operates or drives an automobile, motorcycle, or other motor vehicle shall be deemed to have given consent to a chemical test or tests of his blood, breath, saliva, or urine for the purpose of determining the alcoholic content of his blood. The test or tests shall be administered at the direction of a police officer having reasonable grounds to believe the person to have been operating or driving the vehicle while intoxicated.

§ 1712. Persons qualified to administer tests; additional tests; release of information

Only a physician, or a qualified technician, chemist, nurse or other qualified person acting at the request of a police officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of breath, saliva, or urine specimen. The person tested may have a physician, or a qualified technician, chemist, nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a police officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests taken at the direction of a police officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the police officer shall be made available to him.

§ 1713. Consent of person incapable of refusal not withdrawn

A person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by section 1711 of this title, and the test or tests may be given.

§ 1714. Revocation of driving privilege upon refusal to submit to test; regulations; temporary suspension pending hearing

(a) If a person under arrest refuses to submit to chemical testing, none shall be given, but his license, permit to drive, or nonresident operating privilege shall be revoked for a period of one year pursuant to such regulations as shall be prescribed by the President or his designee pursuant to section 1001 of Title 2.

(b) The regulations provided for by subsection (a) of this section shall grant the person an opportunity to be heard within a reasonable time on the issues of whether the arresting officer had reasonable grounds to believe that the person had been operating or driving an automobile, motorcycle or other motor vehicle while intoxicated, whether the person was placed under arrest and whether he refused to submit to the test or tests. Whether the person was informed that his privilege to drive would be revoked or denied if he refused to submit to the test or tests shall not be an issue.

(c) The regulations provided for by subsection (a) of this section may provide that a license, permit or nonresident operating privilege may, upon the basis of a sworn report of the police officer that he had reasonable grounds to believe the arrested person to have been driving in an intoxicated condition and that he had refused to submit to chemical testing, be temporarily suspended without notice pending the determination upon the hearing.

§ 1715. Interpretation of chemical tests

Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating or driving an automobile, motorcycle or other motor vehicle while intoxicated, evidence of the amount of alcohol in the person's blood at the time of the act alleged, or within two hours of the time of the arrest, as shown by a chemical analysis of his blood, breath, saliva or urine is admissible. For the purpose of this section:

(1) evidence that there was, at such time, five-hundredths of one per cent or less by weight of alcohol in his blood is prima facie evidence that the person was not intoxicated;

(2) evidence that there was, at such time, more than five-hundredths of one per cent and less than fifteen-hundredths of one per cent by weight of alcohol in the person's blood is relevant evi-

dence, but it is not to be given prima facie effect in indicating whether the person was intoxicated;

(3) evidence that there was, at such time, fifteen-hundredths of one per cent or more by weight of alcohol in his blood, shall be admitted as prima facie evidence that the person was intoxicated; and

(4) per cent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred milligrams of blood.

§ 1716. Effect of evidence of chemical tests

This subchapter does not limit the introduction of any other competent evidence bearing on the question of whether the person was intoxicated.

CHAPTER 87—NAVIGATION

Sec.

§ 1751. Masking, altering, removing, or exhibiting lights or signals

Whoever, with intent to bring a vessel into danger:

(1) unlawfully masks, alters, or removes a light or signal; or

(2) willfully exhibits a light or signal—

shall be imprisoned in the penitentiary not more than 20 years.

§ 1752. Obstructing navigable waters

Whoever unlawfully obstructs the navigation of a navigable stream or waters, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 89—NUISANCES

Sec.

§ 1781. Public nuisance defined; punishment for committing or maintaining

(a) Anything is a public nuisance which:

(1) is injurious to health;

(2) is indecent or offensive to the senses;

(3) is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by a considerable number of persons; or

(4) unlawfully obstructs the free passage or use, in the customary manner, of a navigable lake or river, bay, stream, canal, or basin, or a public square, street, or highway.

(b) An act which affects an entire community or neighborhood, or a considerable number of persons, as specified in subsection (a) of this section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(c) Whoever:

(1) commits or maintains a public nuisance, the punishment for which is not otherwise prescribed by law; or

(2) willfully omits to perform a legal duty relating to the removal of a public nuisance—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 91—OBSTRUCTION OF JUSTICE

Sec.

§ 1811. Corrupt attempt to influence judicial officer, juror, arbitrator, or master

Whoever corruptly attempts to influence a judicial officer, juror, or a person drawn or summoned as a juror or chosen as an arbitrator or umpire or appointed as a master or referee, with respect to his verdict in or decision of a cause or proceeding pending or about to be brought before him, by means of:

(1) a communication, oral or written, had with him, except in the regular course of proceedings;

(2) a book, paper, or instrument exhibited otherwise than in the regular course of proceedings;

(3) a threat, intimidation, persuasion, or entreaty; or

(4) a promise or assurance of any pecuniary or other advantage—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1812. Corrupt acts by judicial officer, juror, arbitrator, or master

Whoever, being a judicial officer, juror, or a person drawn or summoned as a juror or chosen as an arbitrator or umpire or appointed as a master or referee:

(1) makes a promise or agreement to give a verdict or decision for or against a party; or

(2) willfully and corruptly permits a communication to be made to him, or receives a book, paper, or instrument, or any information, relating to a cause or matter pending before him, except according to the regular course of proceedings—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1813. Adding or altering names on jury list or destroying jury box

Whoever, except in cases allowed by law:

(1) adds a name to the list of persons selected to serve as jurors, either by placing the name in the jury box or otherwise;

(2) extracts a name therefrom;

(3) destroys the jury box or any of the pieces of paper containing the names of jurors;

(4) mutilates or defaces the names so that they can not be read; or

(5) changes the names on the pieces of paper—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1814. Falsifying jury lists

Whoever, being an officer or person required by law to:

(1) certify to the list of persons selected as jurors, maliciously, corruptly or willfully certifies to a false or incorrect list, or a list containing other names than those selected; or

(2) write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the jury box the same names that are on the certified list and no more and no less than are on that list—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1815. Preventing or dissuading witness from attending

Whoever willfully prevents or dissuades a person who is or may become a witness from attending upon a trial, proceeding or inquiry, authorized by law, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1816. Deceiving witness to affect testimony

Whoever practices any fraud or deceit, or knowingly makes or exhibits a false statement, representation, token or writing, to a witness or person about to be called as a witness upon a trial, proceeding, inquiry or investigation authorized by law, with intent to affect the testimony of the witness, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1817. Preparing false evidence

Whoever prepares a false or antedated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced, for a fraudulent or deceitful purpose, as genuine or true, upon a trial, proceeding or inquiry, authorized by law, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1818. Offering false documents in evidence

Whoever, upon a trial, proceeding, inquiry or investigation authorized or permitted by law, offers in evidence as genuine or true, a book, paper, document, record or other instrument in writing, knowing it to have been forged or fraudulently altered or antedated, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1819. Destruction or concealment of evidence

Whoever, knowing that a book, paper, record, instrument in writing or other matter or thing, is about to be produced in evidence upon a trial, inquiry or investigation authorized by law, willfully destroys or conceals it, with intent thereby to prevent it from being produced, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1820. Disclosure of making of affidavit, complaint or information for felony

Whoever, being a judge, United States attorney, assistant United States attorney, or clerk, or an employee in the office of any such official, willfully discloses, except in the issuance or execution, or in the furtherance of execution, of a warrant of arrest, the fact of an affidavit of complaint or information having been made for a felony, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1821. Injuring, destroying or taking personal property from custody of officer

Whoever willfully injures or destroys, or takes or attempts to take, or assists a person in taking or attempting to take, from the custody of an officer or person, personal property which the office or person has in charge under any process of law, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 1822. Magistrate, constable or policeman purchasing judgment

Whoever, being a magistrate, constable or employee of the magistrate's court, or a policeman within the jurisdiction in which the magistrate acts, purchases or is interested in the purchase of a judgment or part thereof on the docket of, or on the docket in possession of, the magistrate, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1823. Retaking lands after lawful removal therefrom

Whoever, having been removed from any lands by process of law, or having removed from any lands pursuant to the lawful adjudication or direction of a court, tribunal or officer, thereafter unlawfully returns to settle, reside upon or take possession of the lands, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 1824. False report of secretion of explosive

Whoever reports to:

(1) a peace officer;

(2) the United States attorney or an assistant United States attorney;

(3) an agency of the United States;

(4) a newspaper, radio station, television station, airline, airport, railroad, busline, or telephone company;

(5) a person employed by or serving with a facility mentioned in paragraph (3) of this section;

(6) a news reporter in the employ of a newspaper, radio or television station; or

(7) an occupant of a building—

that a bomb or other explosive has been secreted in a public or private place, knowing that the report is false, shall be imprisoned in jail not more than one year, or in the penitentiary not more than three years.

§ 1825. False report of criminal offense

Whoever reports to:

(1) a peace officer; or

(2) the United States attorney or an assistant United States attorney—

that a felony or misdemeanor has been committed, knowing the report to be false, shall be fined not more than $500 or imprisoned in jail not more than 180 days, or both.

CHAPTER 93—PERJURY

Sec.

§ 1861. Definition of oath

As used in this chapter, "oath" includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated.

§ 1862. Perjury generally

Whoever, having taken an oath that he will testify, declare, depose or certify truly before a competent tribunal, officer or person in any of the cases in which such an oath may by law be administered, willfully and contrary to that oath, states as true a material matter which he knows to be false, is guilty of perjury, and shall be imprisoned in the penitentiary not more than 10 years.

§ 1863. False affidavit as to affiant's testimony; subsequent contrary testimony

(a) Whoever, in an affidavit taken before a person authorized to administer oaths, swears, affirms, declares, deposes or certifies that he will testify, declare, depose or certify before a competent tribunal, officer or person, in a case then pending or thereafter to be instituted, in a particular manner or to a particular fact, and in the affidavit willfully and contrary to that oath states as true a material matter which he knows to be false, is guilty of perjury, and shall be imprisoned in the penitentiary not more than 10 years.

(b) In a prosecution pursuant to subsection (a) of this section, the subsequent testimony of the person, in an action involving the matters contained in the affidavit, which is contrary to any of the matters contained in the affidavit, shall be prima facie evidence that the matters in the affidavit were false.

§ 1864. Unqualified statement of that not known to be true

An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

§ 1865. Irregularity of oath

It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

§ 1866. Ignorance of materiality of false statement

It is not a defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material and might have been used to affect the proceeding.

§ 1867. Incompetency of witness

It is not a defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he did give the testimony or make the deposition or certificate.

§ 1868. When deposition, affidavit, or certificate is complete

The making of a deposition, affidavit, or certificate is complete within the provisions of this chapter, from the time it is delivered by the accused to any other person with the intent that it be used, uttered or published as true.

§ 1869. Subornation of perjury

Whoever willfully procures another person to commit perjury is guilty of subornation of perjury and shall be imprisoned in the penitentiary not more than 10 years.

§ 1870. Proof of perjury generally

Perjury must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

§ 1871. Testimony of witness provable against him

The sections of this Code, which declare that evidence obtained upon the examination of a person as a witness may not be received against him in a criminal proceeding, do not forbid the evidence being proved against him upon any proceedings founded upon a charge of perjury committed in the examination.

CHAPTER 95—POSTAL SERVICE

Sec.
2001. Application of criminal laws; definitions.

§ 2001. Application of criminal laws; definitions

(a) The postal laws and regulations of the United States, not locally inapplicable, which define crimes, are applicable to the Canal Zone and are enforceable in the courts of the Canal Zone in the manner and form prescribed for other criminal actions.

(b) For the purpose of the application, to the Canal Zone, of the laws made so applicable by subsection (a) of this section, "postal laws", as used in that subsection, means all of chapter 83 of Title 18, United States Code, and the following sections of that title: 288, 440, 441, 500, 501, 502, 503, 504, 876, 877, 1302, 1303, 1341, 1342, 1461, 1463, 2114, 2116, 3239, 3497.

(c) For the additional purpose of the application, to the Canal Zone, of the laws made so applicable by this section, references in such laws to the Postal Service, Post Office Department, and Post Office Department of the United States, and to officers and other personnel thereof, shall be deemed to include references to the Canal Zone Postal Service and to the comparable officers and other personnel thereof; and the following definitions are given to certain terms, as used in some of those laws:

"defendant indicted" includes a person against whom an information is filed;

"district" includes the Canal Zone;

"foreign government" includes any government, faction, or body of insurgents within a country with which the United States is at peace, irrespective of recognition by the United States;

"indictment" includes an information;

"States" includes the Canal Zone; and

"United States", as used in a territorial sense, includes the Canal Zone.

CHAPTER 97—PRISONERS' MISTREATMENT

Sec.
2031. Prisoners under protection of law.
2032. Oppression of prisoners.

§ 2031. Prisoners under protection of law

The person of a convict sentenced to imprisonment is under the protection of the law and any injury to his person not authorized by law is punishable in the same manner as if he were not convicted or sentenced.

§ 2032. Oppression of prisoners

Whoever is guilty of willful inhumanity or oppression toward a prisoner under his care or in his custody, shall be fined not more than $2,000 or imprisoned in jail not more than one year, or both, and shall be removed from office.

CHAPTER 99—PRIZE FIGHTING AND SPARRING

§ 2061. Punishment for engaging in prize fighting; regulations governing exhibitions

(a) Whoever:

(1) engages in, instigates, aids, encourages, or does any act to further, a fight commonly called a ring or prize fight;

(2) engages in a public or private sparring exhibition, with or without gloves, within the Canal Zone;

(3) sends or publishes a challenge or acceptance of a challenge for a prize fight, or an exhibition as described in paragraph (2) of this subsection; or

(4) trains or assists a person in training or preparing for a prize fight, or for an exhibition as described in paragraph (2) of this subsection—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than three years, or both.

(b) The Governor may prescribe, and from time to time amend, regulations permitting and governing the conduct of voluntary boxing or sparring exhibitions in the Canal Zone. Subsection (a) of this section does not apply to exhibitions permitted and conducted under the regulations.

§ 2062. Spectators at prize fights or exhibitions

Whoever is willfully present as a spectator at a prize fight or exhibition prohibited by section 2061 of this title shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 101—PROSTITUTION AND RELATED OFFENSES

§ 2091. Enticement for purposes of prostitution; corroboration of female's testimony

(a) Whoever:

(1) inveigles or entices an unmarried female, of previous good reputation for chastity, under the age of 21 years, into a house of ill fame or of assignation, or elsewhere, for any purpose of prostitution, or to have illicit carnal connection with a man; or

(2) by false pretenses, false representation or other fraudulent means, procures a female to have illicit carnal connection with a man—

shall be fined not more than $1,000 or imprisoned in the penitentiary not more than five years, or both.

(b) Upon a trial for violating paragraph (1) of subsection (a) of this section, the defendant may not be convicted upon the testimony of the female upon or with whom the offense was committed, unless her testimony is corroborated by other evidence.

§ 2092. Keeping or residing in house of ill fame; evidence

(a) Whoever keeps a house of ill fame, resorted to for the purposes of prostitution or lewdness, or willfully resides in such a house, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) In a prosecution for keeping or resorting to a house as described in subsection (a) of this section, common repute may be received as evidence of the character of the house, the purpose for which it is kept or used, and the character of the female persons inhabiting or resorting to it.

§ 2093. Keeping disorderly house

Whoever:

(1) keeps a disorderly house, or a house for the purpose of assignation or prostitution, or a house of public resort, by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed;

(2) keeps an inn in a disorderly manner; or

(3) lets an apartment or tenement knowing that it is to be used for the purpose of assignation or prostitution—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2094. Prevailing upon person to visit house of prostitution

Whoever, through invitation or device, prevails upon a person to visit a place kept for the purpose of prostitution, shall be fined not more than $500 or imprisoned in jail not more than 180 days, or both.

CHAPTER 103—PUBLIC OFFICES, OFFICERS, AND EMPLOYEES

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—CRIMES AGAINST THE REVENUE

Subchapter I—General Provisions

§ 2121. Failure to perform, or violation of law relating to, official duties

Whoever, holding a public office:

(1) willfully refuses or neglects to perform the duties thereof; or

(2) violates any provision of law relating to his duties or the duties of his office—

shall, unless some other punishment is prescribed by law, be fined not more than $5,000 or imprisoned in jail not more than one year, or both.

§ 2122. Omission to perform duty enjoined by law

Whoever, being a public officer or person holding a public trust or employment, willfully omits to perform a duty enjoined upon him by law, shall, where no special provision has been made for the punishment of the delinquency, be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2123. Mutilation, destruction, or removal of records; withholding records or property from successor

Every officer whose office is abolished by law or under authority of law, or who, after the expiration of the time for which he may be appointed, or after he has resigned or been legally removed from office, willfully and unlawfully:

(1) mutilates, destroys, or takes away the records, papers, documents or other writings appertaining or belonging to his office; or

(2) withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writings appertaining or belonging to his office, or any money or property in his official custody—

shall be imprisoned in the penitentiary not more than 10 years.

§ 2124. False certificates by officers

Whoever, being a public officer authorized by law to make or give any certificate or other writing, makes and delivers as true any such certificate or writing containing statements which he knows to be false, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 2125. Exercising function of public office without having qualified

(a) Whoever exercises a function of a public office without taking the oath of office or giving bond, if required by law, shall be fined not more than $500 or imprisoned in jail not more than 180 days, or both.

(b) Subsection (a) of this section does not affect the validity of acts done by a person exercising the functions of a public office in fact, where persons other than himself are interested in maintaining the validity of those acts.

§ 2126. Intrusion into office; exercising functions after expiration of term

Whoever:

(1) willfully and knowingly intrudes himself into a public office to which he has not been selected or appointed; or

(2) having been an executive officer, willfully exercises any of the functions of his office after his term has expired and a successor has been selected or appointed and has qualified—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2127. Attempting to deter, or resisting, executive officer

Whoever:

(1) attempts, by means of a threat or violence, to deter or prevent an executive officer from performing a duty imposed upon him by law; or

(2) knowingly resists, by the use of force or violence, an executive officer in the performance of his duty—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 2128. Resisting public officer in discharge of his duty

Whoever willfully resists, delays, or obstructs a public officer in the discharge, or attempt to discharge, a duty of his office, shall, if no other punishment is prescribed by law, be fined not more than $1,000 or imprisoned in jail not more than one year, or both.

Subchapter II—Crimes Against The Revenue

§ 2151. "Public moneys" defined

As used in this subchapter, "public moneys" includes all moneys, bonds and evidences of indebtedness:

(1) belonging to the United States or a department or agency thereof; and

(2) received or held by officers or employees of the United States or a department or agency thereof in their official capacity.

§ 2152. Embezzlement or misuse of public moneys; falsification of accounts

Whoever, being an officer of the United States or a department or agency thereof, or a person charged with the receipt, safekeeping, transfer or disbursement of public moneys:

(1) without authority of law, appropriates public moneys to his own use or to the use of another person;

(2) lends public moneys, or makes a profit out of, or uses, public moneys for a purpose not authorized by law;

(3) fails to keep public moneys in his possession until disbursed or paid out by authority of law;

(4) unlawfully deposits public moneys in a bank or with a banker or other person;

(5) knowingly keeps a false account, or makes a false entry or erasure in an account of or relating to public moneys;

(6) fraudulently alters, falsifies, conceals, destroys, or obliterates an account, or documents relating thereto;

(7) willfully refuses or omits to pay over, on demand, public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon the moneys by competent authority;

(8) willfully omits to transfer public moneys when the transfer is required by law; or

(9) willfully omits or refuses to pay over, to an officer or person authorized by law to receive public moneys, money received by him under a duty imposed by law so to pay over the money—

shall be removed from office, and shall be fined not more than $10,000 or imprisoned in the penitentiary not more than 10 years, or both; and is disqualified from holding any office under the United States.

§ 2153. Other offenses by officers or employees who collect or receive public moneys

(a) Whoever, being an officer or employee of the United States, or any department or agency thereof, who collects or receives public moneys:

(1) fails fully and promptly to account for all public funds, fines, internal revenue stamps, licenses, receipts, books, documents, records, papers, or any other form of public property;

(2) is guilty of extortion or willful oppression under color of law;

(3) knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation or reward except as herein provided for the performance of a duty;

(4) willfully neglects to perform a duty enjoined upon him by law;

(5) conspires or colludes with, makes opportunities for, or does or omits to do any act with intent to enable, another person to defraud the public revenues;

(6) negligently or designedly permits a violation of the law by a person;

(7) makes or signs a false entry in a book, or makes or signs a false certificate or return, in a case where he is required by law to make an entry, certificate or return;

(8) having knowledge or information of the violation of a provision of the law respecting public revenues by a person, or of fraud committed by a person against the public revenues, fails to report the violation or fraud in writing to the designated authority;

(9) demands, accepts, or attempts to collect, directly or indirectly, as payment, gift, or otherwise, a sum of money or other thing of value for the compromise, adjustment, or settlement of a charge or complaint for a violation or alleged violation of the law respecting public revenues; or

(10) divulges or makes known to a person, in any manner not provided by law, the accounts, condition of business affairs or manner of conducting them, of a person whose books, accounts and business operations have been investigated in the discharge of his duties—

shall be removed from office, and shall be fined not more than $10,000 or imprisoned in the penitentiary not more than 10 years, or both; and is disqualified from holding any office under the United States.

(b) For the purpose of subsection (a) of this section, all funds, moneys and properties of the United States or a department or agency thereof are public funds.

§ 2154. Court officers failing to pay over fines or forfeitures received

Whoever, being a clerk, magistrate, marshal, constable, or other court officer or employee, receives, by virtue of his official relation, position or employment, any fine or forfeiture or other money, and refuses or neglects to pay it over according to law, shall be fined not more than $500 or imprisoned in jail not more than 180 days, or both.

CHAPTER 105—RAILROADS AND OTHER CARRIERS

Sec.

§ 2181. Attempt to wreck train

Whoever:

(1) unlawfully throws out a switch, removes a rail, or places an obstruction on a railroad, tramway, or electric railway, with the intent to derail a passenger, freight or other train, car, or engine;

(2) unlawfully places dynamite or other explosive material, or an obstruction, on or near the track of a railroad, tramway, or electric railway, with the intent to blow up or derail a passenger, freight or other train, car, or engine; or

(3) unlawfully sets fire to a railroad, tramway, or electric railway, or a bridge or trestle, over which a passenger, freight or other train, car, or engine, must pass, with the intent to wreck the train, car or engine—

shall be imprisoned in the penitentiary not more than 40 years.

§ 2182. Causing collision resulting in death

Whoever, being a conductor, engineer, brakeman, switchman or other person having charge, wholly or in part, of a railroad car, locomotive or train, willfully or negligently suffers or causes the car, locomotive or train to collide with another car, locomotive or train, or with any other object or thing whereby the death of a human being is produced, shall be imprisoned in the penitentiary not more than 10 years.

§ 2183. Failure to operate signal at crossings

Whoever, having charge of a locomotive-engine, omits, before crossing a traveled public way, to cause a bell, whistle, horn or other warning device to sound, at the distance of at least 500 feet from the crossing, and up to it, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2184. Intoxication while on duty

Whoever, being employed by or upon a railroad as engineer, conductor, baggage-master, brakeman, switchman, fireman, bridgetender, flagman, or signalman, or as train dispatcher or telegraph operator in connection with the receipt or transmission of dispatches in relation to the movement of trains, or being any other person having charge of the regulation or running of trains upon a railroad in any manner whatever, becomes or is intoxicated while in the discharge of his duties, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both; but if he does an act or neglects a duty, by reason of the intoxication, which causes the death of, or bodily injury to, a person, he shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 2185. Injuries to railroads and railroad bridges

Whoever maliciously:

(1) removes, displaces, injures or destroys any part of a railroad, or a track of a railroad, or a branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with a railroad; or

(2) places an obstruction upon the rails or track of a railroad, or of a switch, branch, branchway or turnout connected with a railroad—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years, or both.

§ 2186. Taking packing or waste from railroad journal boxes

Whoever, without lawful authority, takes or removes the packing or waste from out of a journal box or boxes of a locomotive-engine, tender, coach, caboose or truck, used or operated on a railroad, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2187. Boarding train with intent to obtain free ride

Whoever boards a passenger, freight or other railway train, whether moving or standing, for any purpose and without in good faith intending to become a passenger thereon, and with no lawful business thereon, and with intent to obtain a free ride on the train, however short the distance, without the consent of the person or persons in charge thereof, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2188. Jumping on or off train; riding on roof, platform, appliances or projections

Whoever, other than a member of a train crew, or a transportation official or employee engaged in the performance of his duties:

(1) jumps on or off a railroad locomotive, car, or train while it is in motion; or

(2) rides on the roof of a car of a railroad train, or on the platform, coupling, or any other appliance or projection on the outside of the car—

shall, for each offense, be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2189. Overcharges by agents of common carriers

Whoever, being an officer, agent or employee of a railroad company or other common carrier, asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 107—RAPE

Sec.

§ 2221. Rape defined

Rape is an act of sexual intercourse accomplished with a female not the wife of the perpetrator, where the female:

(1) is under the age of 16 years;

(2) is incapable, through unsoundness of mind, whether temporary or permanent, of giving legal consent;

(3) is prevented from resisting by threats of great and immediate bodily harm, accompanied by apparent power of execution, or by any intoxicating, narcotic or anaesthetic substance, administered by or with the privity of the accused;

(4) resists, but her resistance is overcome by force or violence;

(5) is at the time unconscious of the nature of the act, and this is known to the accused; or

(6) submits under the belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense or concealment practiced by the accused, with intent to induce the belief.

§ 2222. Proof of physical ability where defendant under fourteen

Conviction for rape may not be had against one who was under the age of 14 years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact and beyond a reasonable doubt.

§ 2223. Gist of offense; penetration sufficient

The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

§ 2224. Punishment for rape

(a) Except as provided by subsections (b) and (c) of this section, rape is punishable by imprisonment in the penitentiary for any term of years or for life.

(b) If the offense is under paragraph (1) of section 2221 of this title, it is punishable either by imprisonment in jail for not more than one year or by imprisonment in the penitentiary for any term of years or for life.

(c) In a prosecution pursuant to paragraph (1) of section 2221 of this title, if the defendant is convicted by a jury, the jury shall recommend by their verdict whether the punishment shall be by imprisonment in jail or in the penitentiary; or, if he pleads guilty of the offense, or is tried by the court without a jury and found guilty thereof, the punishment shall be, in the discretion of the court, by imprisonment either in jail for not more than one year or in the penitentiary for any term of years or for life.

CHAPTER 109—RECORDS, DOCUMENTS AND REPORTS

§ 2251. Theft, destruction, falsification, mutilation or removal of record by officer having custody

Whoever, being an officer having the custody of a record, map, or book, or of a paper or proceeding of a court filed or deposited in a public office or placed in his hands for any purpose:

(1) steals, willfully and unlawfully destroys, mutilates, defaces, alters, falsifies, removes, or secretes the whole or any part of record, map, book, paper, or proceeding; or

(2) permits another person to commit any of the acts specified by paragraph (1) of this section—

shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years, or both.

§ 2252. Theft, destruction, falsification, mutilation or removal of record by private person

Whoever, not being an officer referred to in section 2251 of this title, commits any of the acts described in that section, shall be punished by a fine of not more than $1,000, or by imprisonment in jail for not more than one year or in the penitentiary for not more than five years, or by both such fine and imprisonment.

§ 2253. Defacing or destroying posted copies of laws or notifications

Whoever intentionally defaces, obliterates, tears down or destroys a copy, transcript, or extract from or of a law of the United States or of the Canal Zone, or a proclamation, advertisement or notification set up at any place in the Canal Zone, by authority of a law of the United States or of the Canal Zone, or by order of a court, before the expiration of the time for which it was to remain set up, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 111—RIOTS, ROUTS AND UNLAWFUL ASSEMBLIES

§ 2281. Definitions

As used in this chapter:

"riot" means a:

(1) disturbance of the public peace by the use of force or violence; or

(2) threat or attempt to disturb the public peace by the use of force or violence, when accompanied by immediate power of execution—

by two or more persons acting together and without lawful authority;

"rout" means an assembly of two or more persons who act together in making an attempt or advance toward the commission of an act which would be a riot if actually committed; and

"unlawful assembly" means an assembly of two or more persons who assemble together to do an unlawful act and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous or tumultuous manner.

§ 2282. Punishment for participation in riot, rout or unlawful assembly

(a) Whoever participates in a riot shall be fined not more than $2,000 or imprisoned in the penitentiary not more than two years, or both.

(b) Whoever participates in a rout shall be fined not more than $500 or imprisoned in jail not more than 180 days, or both.

(c) Whoever participates in an unlawful assembly shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2283. Remaining at place of riot, rout or unlawful assembly

(a) Whoever remains at the place of a riot, rout, or unlawful assembly, after the persons assembled have been lawfully warned to disperse, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) Subsection (a) of this section does not apply to public or peace officers and persons assisting them in attempting to disperse the persons assembled.

§ 2284. Officials neglecting to disperse unlawful or riotous assembly

Whoever, being a public or peace officer, and having notice of a riotous or unlawful assembly, mentioned in this chapter, neglects to proceed to the place of assembly or as near thereto as he can proceed with safety, and to exercise the authority with which he is invested for suppressing it and arresting the offenders, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2285. Refusal to disperse upon lawful command

If two or more persons assemble for the purpose of disturbing the public peace or committing an unlawful act, and do not disperse on being desired or commanded so to do by a public or peace officer, each of the persons so offending shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 113—ROADS, BRIDGES, FERRIES, PIERS AND DOCKS

Sec.

§ 2321. Throwing injurious substances on highways

Whoever throws or deposits any glass bottle, glass, nails, tacks, hoops, wire, cans or any other substance likely to injure a person, animal or vehicle, upon a highway, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2322. Removal of, or injuries to, highway guideposts

Whoever removes, destroys, injures, breaks, or defaces a mile board, post or stone, or guidepost, or any inscription thereon, erected upon or near a highway, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2323. Removal of, or injury to, bridge, viaduct, culvert, pier or dock

Whoever maliciously digs up, removes, displaces, or otherwise injures, destroys or obstructs a bridge, viaduct, culvert, pier, or dock shall be fined not more than $5,000 or imprisoned in the penitentiary not more than 10 years, or both.

§ 2324. Charging toll without lawful authority

Whoever, without authority of law:

(1) demands or receives compensation for the use of a bridge or ferry; or

(2) sets up or keeps a road, bridge or ferry or constructed ford for the purpose of receiving any remuneration for the use thereof—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2325. Failure to keep and attend ferry

Whoever, having entered into an undertaking to keep and attend a ferry, violates the conditions of the undertaking, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 115—ROBBERY

Sec.

§ 2361. Definition of, and punishment for, robbery

Whoever, by means of force or fear, feloniously takes personal property in the possession of another, from his person or immediate presence and against his will, is guilty of robbery, and shall be imprisoned in the penitentiary not more than 20 years.

§ 2362. Fear as element in robbery

The fear referred to in section 2361 of this title may be the fear of an:

(1) unlawful injury to the person or property of the person robbed or of a relative of his, or member of his family; or

(2) immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery.

CHAPTER 117—SEDUCTION

Sec.

§ 2391. Seduction under promise of marriage

Whoever, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous good reputation for chastity, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

§ 2392. Intermarriage as bar to prosecution

The intermarriage of the parties prior to the trial is a bar to prosecution for a violation of section 2391 of this title.

CHAPTER 119—SEPULTURE

Sec.

§ 2421. Mutilation or removal of human remains

(a) Whoever, without authority of law, mutilates, disinters or removes from the place of interment any human remains, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

(b) Subsection (a) of this section does not apply to a person who lawfully removes the remains of a relative or friend for reinterment.

§ 2422. Removal of human remains for sale or dissection

Whoever removes any part of any human remains from a grave or other place where it has been buried, or from a place where it is deposited while awaiting burial, with intent to sell it or to dissect it, without authority of law, or from malice or wantonness, shall be imprisoned in the penitentiary not more than five years.

§ 2423. Defacing or injuring tombs, monuments, or cemetery property

(a) Whoever unlawfully or without right willfully:

(1) destroys, cuts, mutilates, breaks, effaces, defaces, or otherwise injures, tears down, or removes a tomb, gravestone, monument, memorial, or marker in a cemetery, or a gate, door, fence, wall, post or railing, or an enclosure for the protection of a cemetery or any property in a cemetery;

(2) obliterates a grave, vault, niche, or crypt;

(3) destroys, cuts, breaks, or injures a building, statue, ornamentation, tree, shrub, or plant within the limits of a cemetery; or

(4) disturbs, obstructs, detains, or interferes with a person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) Paragraphs (1), (2) and (3) of subsection (a) of this section do not apply to the removal or unavoidable breakage or injury, by a cemetery official or employee acting under lawful authority, of anything placed in or upon a portion of a cemetery in violation of an order, rule or regulation issued under lawful authority, nor to the removal of anything, placed in a cemetery by or with the consent of an official or employee authorized to give consent, which has become in a wrecked, unsightly, or dilapidated condition.

§ 2424. Interment or disposal of human remains outside cemetery

Whoever, except with the permission of the Governor, buries, inters, or otherwise disposes of, any human remains, in any place other than in a cemetery or place of burial existing under the laws of the Canal Zone and in which interments are or have been made, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 121—SODOMY AND BESTIALITY

Sec.
2451. Sodomy.
2452. Bestiality.
2453. Penetration sufficient.

§ 2451. Sodomy

Whoever carnally knows a male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, shall—

(1) if the act is committed with a person under 16 years of age, be imprisoned in the penitentiary not more than 20 years; or

(2) if the act is committed with any other person, be imprisoned in the penitentiary not more than 10 years.

§ 2452. Bestiality

Whoever carnally copulates with a beast shall be imprisoned in the penitentiary not more than five years.

§ 2453. Penetration sufficient

Any sexual penetration, however slight, is sufficient to complete either of the crimes prohibited by sections 2451 and 2452 of this title.

CHAPTER 123—STOLEN PROPERTY

Sec.
2481. Buying or receiving stolen goods; presumptive evidence.

§ 2481. Buying or receiving stolen goods; presumptive evidence

(a) Whoever buys or receives property which has been stolen or which has been obtained in a manner constituting larceny, embezzlement, the obtaining of money or property by false pretenses, or extortion, knowing the property to have been stolen or so obtained, or conceals or withholds any such property from the owner, shall be imprisoned in the penitentiary not more than five years.

(b) If the property which has been stolen or has been obtained in a manner described in subsection (a) of this section is brought or received from a person under the age of 18 years, it is presumptive evidence that the person so buying or receiving it knew it to have been stolen or so obtained, unless the property is sold by the minor at a fixed place of business carried on by the minor or his employer.

CHAPTER 125—SUICIDE

Sec.
2511. Aiding or encouraging suicide.

§ 2511. Aiding or encouraging suicide

Whoever deliberately aids, advises or encourages another person to commit suicide, shall be fined not more than $5,000 or imprisoned in the penitentiary not more than five years, or both.

CHAPTER 127—VAGRANCY

Sec.
2541. Miscellaneous acts constituting vagrancy.

§ 2541. Miscellaneous acts constituting vagrancy

Whoever:

(1) is found within or loitering about a building or structure, or a vessel, railroad car, or storage yard, without authority or permission so to be or to do so;

(2) peddles goods or merchandise about a laborers' camp or mess house during hours when laborers are ordinarily employed at work, or in or about places where groups of men are at work;

(3) is found in a public place in such a state of intoxication as to disturb others, or as to be unable, by reason of his condition, to care for his own safety or the safety of others;

(4) roams about from place to place without any lawful business, and without being able to give a satisfactory account of himself;

(5) loiters, prowls or wanders upon the property of another, in the nighttime, without visible or lawful business with the owner or occupant thereof;

(6) while loitering, prowling or wandering upon the property of another in the manner and circumstances described by paragraph (4) of this section, peeks in the door or window of a building or structure located thereon which is inhabited by human beings, without visible or lawful business with the owner or occupant thereof;

(7) being able by lawful means, to support himself or his spouse or his or her children, willfully refuses or neglects to do so;

(8) being a common prostitute, wanders in the public streets or highways, or in a place of public resort and behaves in a riotous and indecent manner;

(9) being in a street, highway or public place, accosts a stranger and offers to take him to the house or residence of a prostitute;

(10) being a common prostitute or nightwalker, loiters in a street or highway and importunes passengers for the purpose of prostitution;

(11) wanders abroad or places himself in a public place, street, wharf, highway, court or passage in order to beg or gather alms or to cause, procure or encourage a child to so do;

(12) being in a street, highway or public place, accosts a stranger or follows him about, without lawful authority or excuse;

(13) pretends or professes to tell fortunes by palmistry, "obeah" or any such like superstitious means, or uses or pretends to use any subtle craft or device, in order to deceive and impose upon other persons;

(14) lives in or loiters about houses of ill fame;

(15) wanders about the streets at late or unusual hours of night, without any visible or lawful business, and without being able to give a satisfactory account of himself;

(16) loiters in or about public toilets in public places;

(17) annoys or molests a child under the age of 18 years;

(18) loiters about a school or public place at or near which school children attend;

(19) willfully exposes to view in a street, road, highway or public place, or in the window or other part of a shop or other building situated in a street, road, highway or public place, an obscene print, picture or other indecent exhibition;

(20) willfully, openly and obscenely exposes his person in a public street, road, highway or place of public resort, or in view thereof;

(21) wanders abroad and endeavors by the exposure of wounds and deformities to obtain or gather alms;

(22) endeavors to procure charitable contributions under any false or fraudulent pretenses;

(23) being known to be a pickpocket, thief, burglar, or confidence operator, either by his own confession or by his having been convicted as such, and having no visible or other lawful means of support, loiters around a steamboat landing, railroad depot, banking institution, broker's office, place of amusement, auction room, store, shop, or crowded thoroughfare, car, or omnibus, or a public gathering or assembly;

(24) has in his custody a picklock, key, crow, jack, bit or other implement with intent to break into a dwelling house, warehouse, store, shop, coachhouse, stable, garage, outbuilding, vehicle, motorboat, launch, or aircraft;

(25) is unlawfully armed with a gun, pistol, cutlass, bludgeon or other offensive weapon;

(26) has upon him an instrument with intent to commit a felonious act; or

(27) engages in any kind of disorderly conduct or breach of the peace, or in any act or conduct inciting to violence or tending to provoke or incite another to breach of the peace—

is a vagrant, and shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

CHAPTER 129—WEAPONS; HUNTING

Sec.

§ 2571. General prohibition regarding arms

It is unlawful for a person to carry on or about his person any:

(1) firearm;

(2) dirk, dagger, knife, or other arm manufactured or sold for the purpose of offense or defense; or

(3) slung shot, air gun, sword cane, blackjack, or knuckles made of metal or other hard substance.

§ 2572. Nonapplicability of section 2571 to certain persons

(a) Section 2571 of this title does not apply to:

(1) members of the Armed Forces;

(2) peace officers or officers authorized to execute judicial process of the United States or the Canal Zone; or

(3) persons engaged in the:

(A) carrying of mail; or

(B) collection or custody of funds of the United States or a department or agency thereof—

while they are engaged in the performance of their respective duties.

(b) Section 2571 of this title does not apply to:

(1) members of gun or pistol clubs organized for the promotion of target practice, when they are going to or from target ranges or are engaged in target practice thereat, if certified copies of the respective constitutions and bylaws of the clubs have been approved by the Governor and filed with the chief of police and fire division; or

(2) persons authorized to have or carry arms by permits granted pursuant to the provisions of this chapter or chapter 87 of Title 2.

(c) A certificate of membership in a gun or pistol club shall be issued by the organization and approved by the chief of the police and fire division. It shall entitle the holder to carry firearms as provided in this section.

§ 2573. Permits to keep and carry arms

The Governor may authorize the granting of permits to have and carry arms and may prescribe and from time to time amend suitable regulations thereon. Applications for such permits shall be made to the Governor, and must contain the full name, residence and occupation of the applicant. If the applicant is a minor, a permit may not be granted without the consent of his parent or guardian, and no permit may be granted to a minor under 15 years of age.

§ 2574. Penalties for violation

Whoever, without authority granted under this chapter, carries on or about his person any of the arms specified by section 2571 of this title, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

§ 2575. Disposition of arms possessed by persons convicted of crime

In rendering a judgment of conviction of any misdemeanor or felony in violation of the laws of the Canal Zone, perpetrated in whole or in part by means of any of the arms specified by section 2571 of this title and section 1473 of Title 2, a judge or magistrate may, in addition to imposing the penalty provided by law for each offense, order the confiscation and disposal of the arms and ammunition found in the possession or under the immediate control of the defendant at the time of his arrest or determined to have been used or carried by him in the perpetration of the offense charged.

The court may direct delivery of the arms and ammunition ordered to be confiscated to the chief of the Canal Zone police, or to his successor in title, for official use or any other proper disposition in his discretion.

CHAPTER 131—WEIGHTS AND MEASURES

Sec.

§ 2601. False weight or measure defined

A false weight or measure is one which does not conform to the standard established by the National Bureau of Standards of the Department of Commerce of the United States.

§ 2602. Offenses and penalties

Whoever:

(1) uses a weight or measure, or a weighing or measuring instrument, knowing it to be false, by which use another person is defrauded or otherwise injured;

(2) knowingly marks or stamps false or short weight or measure, or false tare, on a cask or package, or knowingly sells or offers for sale a cask or package so marked;

(3) fails to give to the purchaser full weight in a sale of sugar, coal, or other commodity, usually sold by the ton or fractional parts thereof;

(4) fails to give to the purchaser full weight or measure in a sale of merchandise, wares, article of food or drink, or whatever else is purchased by weight or measure; or

(5) in putting up in a bag or container of any kind, goods usually sold by weight, places in or conceals therein any other substance or thing whatever, including moisture, except such moisture as may be included or absorbed by the goods or commodity therein during preparation for market or processing in accordance with ordinary commercial practice, for the purpose of increasing the weight or measurement of the container with the intent thereby to sell the goods therein or to enable another person to sell them, for an increased weight or measurement—

shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

PART 2—CRIMINAL PROCEDURE

CHAPTER 201—CRIMINAL PROCEDURE GENERALLY

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—DOUBLE JEOPARDY

SUBCHAPTER III—CHARGING PREVIOUS CONVICTIONS

Subchapter I—General Provisions

§ 3501. Application of Federal Rules of Criminal Procedure

(a) Except as otherwise provided in this Code, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district court in criminal proceedings are governed by the then current Federal Rules of Criminal Procedure for the district courts of the United States prescribed by the Supreme Court of the United States pursuant to sections 3771 and 3772 of Title 18, United States Code. All offenses may, however, be prosecuted in the district court by information.

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(b) In applying the Federal Rules of Criminal Procedure, the term "district court" includes the United States District Court for the District of the Canal Zone. The terms "district" and "insular possession" include the Canal Zone.

§ 3502. Criminal action defined

The proceedings by which a party charged with a public offense is accused and brought to trial and punishment is known as a criminal action.

§ 3503. Parties to criminal action

A criminal action which is originally commenced in the Canal Zone is prosecuted in the name of the Government of the Canal Zone as a party against the person charged with the offense.

§ 3504. Style of process

The style of all process issued by the district court or a magistrate's court shall be in the name of the Government of the Canal Zone.

§ 3505. Designation of party prosecuted

The party prosecuted in a criminal action is designated in this title as the defendant.

§ 3506. Rights of defendant to trial and counsel

(a) In a criminal action the defendant is entitled:

(1) to a speedy and public trial; and

(2) to be allowed counsel as in civil actions, or to appear and defend in person and with counsel.

(b) Rule 44 of the Federal Rules of Criminal Procedure applies only in criminal actions within the original jurisdiction of the district court, and is subject to section 10 of Title 3, relating to the public defender.

§ 3507. Right to produce and be confronted with witnesses; depositions; prior testimony

In a criminal action the defendant is entitled to produce witnesses on his behalf and to be confronted with the witnesses against him, in the presence of the court, except that:

(1) the deposition of a witness may be read, upon its being satisfactorily shown to the court that he is dead or insane or cannot with due diligence be found within the Canal Zone, in cases wherein the charge has been preliminarily examined before a committing magistrate and the testimony taken down in question and answer form in the presence of the defendant who has either in person or by counsel cross-examined or had an opportunity to cross-examine the witness;

(2) the testimony on behalf of the government or the defendant of a witness who is deceased, insane, out of the jurisdiction, or who cannot with due diligence be found within the Canal Zone, given on a former trial of the action in the presence of the defendant who has either in person or by counsel cross-examined or had an opportunity to cross-examine the witness, may be admitted;

(3) a deposition may be used as provided by chapter 217 of this title; and

(4) hearsay evidence may be admitted under an exception to the hearsay rule prescribed by section 2962 of Title 5, other than exception (3) therein relating to depositions and prior testimony, unless the court finds that the admission of such evidence would violate the traditional right of a defendant in a criminal action to be confronted with the witnesses against him.

§ 3508. Right of attorney to visit prisoner

An attorney at law entitled to practice in the courts of the Canal Zone may, at the request of a prisoner, after his arrest, visit the person so arrested.

§ 3509. Modes of conviction of public offense

A person may be convicted of a public offense only:

(1) by the verdict of a jury, accepted and recorded by the court;

(2) upon a plea of guilty;

(3) upon a judgment of the district court, when a jury is waived, or upon appeal from a judgment of a magistrate's court; or

(4) upon a judgment of a magistrate's court.

§ 3510. Offenses committed within special maritime and territorial jurisdiction of United States

The practice and procedure in prosecutions under section 143 of Title 3 for offenses committed within the special maritime and territorial jurisdiction of the United States shall be the same as in other criminal actions tried under the laws of the Canal Zone.

§ 3511. Restraint before conviction

A person charged with a public offense shall not be subjected before conviction to any more restraint than is necessary for his detention to answer the charge.

Subchapter II—Double Jeopardy

§ 3541. Prohibition of second prosecution for same offense

A person may not be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

§ 3542. Conviction, acquittal, or jeopardy; attempts; included offenses

When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an information, the conviction, acquittal or jeopardy is a bar to another information for the same offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that information.

§ 3543. Former acquittal on merits

Whenever the defendant is acquitted on the merits he is acquitted of the same offense notwithstanding any defect in form or substance in the information on which the trial was had.

§ 3544. Former acquittal other than on merits

If the defendant was formerly acquitted on the ground of variance between the information and the proof, or the information was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

§ 3545. Dismissal on motion raising defense or objection to information

If a motion is granted which raises a defense or objection to an information on the ground that:

(1) it does not substantially conform to the requirements of this title or the Federal Rules of Criminal Procedure;

(2) more than one offense is charged;

(3) the facts stated do not constitute a public offense; or

(4) it contains any matter which if true would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution—

the judgment is final upon that information, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the motion is granted may be avoided in a new information, directs a new information to be filed.

§ 3546. Dismissal of unsigned information

An order to dismiss an information, because it is not subscribed by the United States attorney, is not a bar to a future prosecution for the same offense.

§ 3547. Dismissal by attorney for government or for want of prosecution

An order for the dismissal of the action, as provided in sections 4051–4053 of this title or Rule 48 of the Federal Rules of Criminal Procedure, is a bar to any other prosecution for the same offense, if it is a misdemeanor, unless the order is explicitly made for the purpose of amending the complaint or information in the action, in which instance the order for dismissal of the action is not a bar to a prosecution upon the amended complaint or information; but an order for the dismissal of the action is not a bar if the offense is a felony.

Subchapter III—Charging Previous Convictions

§ 3571. Charging previous conviction of offenses

In charging in an information the fact of a previous conviction of felony, or of an attempt to commit an offense which if perpetrated would have been a felony, or of petit larceny, it is sufficient to state, "That the defendant, before the commission of the offense charged in this information, was in (giving the title of the court in which the conviction was had) on (date) convicted of a felony (or attempt, and so forth, or of petit larceny)."

§ 3572. Pleading judgments

In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, shall be established on the trial.

§ 3573. Plea and procedure on charge of previous conviction

When a defendant who is charged in the information with having suffered a previous conviction pleads either guilty or not guilty of the offense for which he is informed against, he shall be asked whether he has suffered the previous conviction. If he answers that he has, his answer shall be entered by the clerk in the minutes of the court, and, unless withdrawn by consent of the court, shall be conclusive of the fact of his having suffered the previous conviction in all subsequent proceedings. If he answers that he has not, his answer shall be entered by the clerk in the minutes of the court, and the question whether or not he has suffered the previous conviction shall be tried by the court or jury which tries the issue upon the plea of not guilty, or in case of a plea of guilty, by the court or a jury impaneled for that purpose. The refusal of the defendant to answer is equivalent to a denial that he has suffered the previous conviction. If the defendant pleads not guilty, and answers that he has suffered the previous conviction, the charge of the previous conviction may not be read to the court or jury, nor alluded to on the trial.

§ 3574. Finding on charge of previous conviction

When the fact of a previous conviction of another offense is charged in an information, the court or jury, if it finds a verdict of guilty of the offense with which he is charged, shall also, unless the answer of the defendant admits the charge, find whether or not he has suffered the previous conviction. The verdict of the jury or finding of the court upon a charge of a previous conviction may be: "The charge of previous conviction is true," or "The charge of previous conviction is not true."

CHAPTER 203—SECURITY TO KEEP THE PEACE

Sec.

§ 3611. Complaint before magistrate of threatened offense

A complaint may be laid before a magistrate that a person has threatened to commit an offense against the person or property of another.

§ 3612. Examination of informer and witnesses

When the complaint is laid before the magistrate he shall:

(1) examine under oath the informer and any witness he may produce;

(2) take their depositions in writing and cause them to be subscribed by the parties making them; and

(3) examine all other proofs that may be presented.

§ 3613. Warrant of arrest

If it appears that there is just reason to fear the commission of the offense threatened by the person so informed against, the magistrate shall issue a warrant directed to any constable or policeman, reciting the substance of the complaint and commanding the officer forthwith to arrest the person informed of and bring him before the magistrate.

§ 3614. Taking of testimony

When the person informed against is brought before the magistrate and the charge is controverted, the magistrate shall take testimony in relation thereto. The evidence shall be reduced to writing and subscribed by the witnesses.

§ 3615. Discharge of person complained of

If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of shall be discharged and the complaining witness shall pay the costs.

§ 3616. Requiring security to keep the peace

If there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in a sum fixed by the magistrate, not exceeding $1,000, with one or more sufficient sureties, to keep the peace toward the Government of the Canal Zone and particularly toward the informer. The undertaking shall be valid and binding for six months and may upon the

renewal of the complaint be extended for a longer period or a new undertaking may be required.

§ 3617. Effect of giving or failing to give security

If the undertaking required by section 3616 of this title is given, the party informed against shall be discharged. If he does not give it, the magistrate shall commit him to jail, specifying in the order of commitment the requirement to give security, the amount thereof, and the omission to give it.

§ 3618. Discharge after commitment

If a person complained of is committed for not giving the undertaking required by section 3616 of this title, he may be discharged upon giving it.

§ 3619. Approval and filing of undertaking

The undertaking required by section 3616 of this title, if satisfactory, shall be approved by, and filed with, the magistrate.

§ 3620. Assault or threat in presence of magistrate

A person who in the presence of a magistrate assaults or threatens to assault another, or to commit an offense against his person or property, may be ordered by the magistrate to give security as provided by this chapter, and if he refuses to do so, may be committed as provided by section 3617 of this title.

§ 3621. Breach of undertaking

Upon the conviction of the person informed against of a breach of the peace, the undertaking is broken.

§ 3622. Action upon the undertaking

Upon the United States attorney's producing evidence of a conviction referred to in section 3621 of this title to the district court, the court shall order the undertaking to be prosecuted and the United States attorney shall thereupon commence an action upon it in the name of the Government of the Canal Zone.

§ 3623. Security to keep peace not otherwise required

Security to keep the peace or to be of good behavior may not be required except as prescribed in this chapter.

CHAPTER 205—LIMITATION OF ACTIONS

Sec.

§ 3661. Crimes having no limitation

There is no limitation of time within which a prosecution for murder, the embezzlement of public moneys or the falsification of public records must be commenced.

§ 3662. Felonies generally

The prosecution for any felony other than murder, the embezzlement of public money or the falsification of public records, may be commenced only within three years after its commission.

§ 3663. Misdemeanors

The prosecution for any misdemeanor may be commenced within one year only after its commission.

§ 3664. Exception when defendant is out of Canal Zone

Time during which the defendant is not an inhabitant of, or usually resident within, the Canal Zone, is not a part of the limitations prescribed by sections 3662 and 3663 of this title.

CHAPTER 207—COMPLAINT, WARRANT, AND ARREST

SUBCHAPTER I—COMPLAINT; WARRANT OF ARREST

SUBCHAPTER II—ARREST

Subchapter I—Complaint; Warrant of Arrest

§ 3701. Complaint

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate or other officer empowered to commit persons charged with offenses and may be based upon information and belief.

§ 3702. Warrant or summons upon complaint

(a) Rule 4 of the Federal Rules of Criminal Procedure applies to the issuance, form, execution or service, and return of a warrant of arrest or summons upon a complaint. As to proceedings within the Canal Zone, references in Rule 4 to a commissioner shall be deemed to refer to a magistrate.

(b) Notwithstanding Rule 4(b)(1) of the Federal Rules of Criminal Procedure, the warrant shall command that the defendant be arrested and brought before the magistrate of the subdivision in which the offense was committed if the arrest is made in the Canal Zone, or before the nearest available United States commissioner if the arrest is made outside the Canal Zone.

(c) Notwithstanding Rule 4(c)(2) and Rule 9(c)(1) of the Federal Rules of Criminal Procedure, a warrant of arrest issued upon a complaint or information may be executed outside the Canal Zone only if the offense charged is an offense against the United States.

(d) Notwithstanding the first sentence of Rule 4(c)(4) of the Federal Rules of Criminal Procedure, the officer executing a warrant in the Canal Zone shall make return thereof to the magistrate, commissioner, or other officer before whom the defendant is brought pursuant to section 3781 of this title.

Subchapter II—Arrest

§ 3731. Arrest defined

An arrest is taking a person into custody in a case and in the manner authorized by law.

§ 3732. Method of making arrest; restraint

An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

§ 3733. Peace officers defined

The following are peace officers:

(1) the marshal and deputy marshals;

(2) constables of the magistrates' courts; and

(3) all officers and members of the police force.

§ 3734. Arrests by peace officers with or without warrant

A peace officer may make an arrest in obedience to a warrant. He may arrest a person without a warrant when:

(1) he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence;

(2) the person to be arrested has committed a felony, although not in his presence; or

(3) he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed.

§ 3735. Arrests by private persons

A private person may arrest another:

(1) for a public offense committed or attempted in his presence;

(2) when the person arrested has committed a felony although not in his presence; or

(3) when a felony has been in fact committed and he has reasonable cause for believing the person arrested to have committed it.

§ 3736. Oral order for arrest

The district judge, United States attorney, or a magistrate may orally order a peace officer or private person to arrest anyone committing or attempting to commit a public offense in the presence of the judge, United States attorney or magistrate.

§ 3737. Authority to summon assistance

(a) A peace officer attempting to serve a criminal process issued by a court or other authority, may summon a sufficient number of men to assist in the arresting or safekeeping of a person who refuses to be taken or who is likely to make his escape.

(b) A person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

§ 3738. Time of arrest

If the offense charged is a felony, an arrest may be made on any day and at any time of day or night. If it is a misdemeanor, an arrest may not be made at night, except upon direction of a magistrate by indorsement on the warrant or except when the offense is committed in the presence of the arresting officer.

§ 3739. Manner of making arrest

A person making an arrest shall inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape.

§ 3740. Use of all reasonable means

If a person about to be arrested either flees or forcibly resists, after he has been informed of the intention of the arresting officer to place him under arrest, the officer may use all reasonable means to effect the arrest.

§ 3741. Breaking door or window

(a) To make an arrest, a private person if the offense is a felony, and a peace officer, in all cases, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

(b) A person who has lawfully entered a house for the purpose of making an arrest may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself. An officer may do the same when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest and is detained therein.

§ 3742. Escape or rescue; retaking

(a) If a person arrested escapes or is rescued, a person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place.

(b) To retake a person escaping or rescued, a person pursuing may break open an outer or inner door or window of a dwelling house if after notice of his intention he is refused admittance.

§ 3743. Taking weapons from person arrested

A person making an arrest may take from the person arrested all dangerous weapons which he may have about his person.

§ 3744. Taking of fingerprints and photographs

A person arrested for an offense, except for violations of regulations prescribed pursuant to law which are triable in the magistrates' courts, shall be fingerprinted, photographed, weighed, and measured for height.

CHAPTER 209—APPEARANCE BEFORE MAGISTRATE; PRELIMINARY EXAMINATION

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—PRELIMINARY EXAMINATION BY MAGISTRATES OF OFFENSES TRIABLE IN DISTRICT COURT

Subchapter I—General Provisions

§ 3781. Taking defendant before magistrate

(a) A peace officer making an arrest under a warrant issued upon a complaint, or making an arrest without a warrant, or to whom an arrested person is delivered under subsection (b) of this section, shall take the arrested person without unnecessary delay before the magistrate of the subdivision wherein the offense was committed.

(b) A private person making an arrest shall without unnecessary delay deliver the arrested person to a peace officer or take him before the magistrate of the subdivision wherein the offense was committed.

(c) When a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith.

(d) This section does not apply to arrests outside the Canal Zone, which are governed by Rule 5 of the Federal Rules of Criminal Procedure.

§ 3782. Release by peace officer without appearance before magistrate

(a) A peace officer may release from custody, instead of taking before a magistrate, any person arrested without a warrant whenever:

(1) the peace officer is satisfied that there is no ground for making a criminal complaint against the person arrested; or

(2) the person arrested was arrested for intoxication only, and no further proceedings are desirable.

(b) If a person is released pursuant to subsection (a) (1) of this section, the record of the arrest shall include a record of the release and thereafter the proceedings shall be deemed a detention only and not an arrest.

§ 3783. Admission to bail in subdivision of arrest

(a) If a defendant is arrested in a subdivision other than the subdivision wherein the offense was committed, the officer shall, upon being required by the defendant, take him before the magistrate of the subdivision of arrest, who may admit the defendant to bail to answer within a reasonable time before the magistrate of the subdivision wherein the offense was committed.

(b) Upon the taking of bail as provided by subsection (a) of this section, the magistrate shall certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer shall then release the defendant from custody, and without delay deliver the warrant and undertaking to the magistrate before whom the defendant is required to appear.

(c) If, on the admission of the defendant to bail as provided by subsection (a) of this section, the bail is not forthwith given, the officer shall take the defendant before the magistrate of the subdivision wherein the offense was committed.

Subchapter II—Preliminary Examination by Magistrates of Offenses Triable in District Court

§ 3801. Preliminary examination

(a) Unless waived by both parties, when a person is charged with an offense not triable before a magistrate, the magistrate shall hold a preliminary examination.

(b) The magistrate shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in this title and the Federal Rules of Criminal Procedure.

(c) The defendant shall not be called upon to plead. If both parties waive preliminary examination, the magistrate shall forthwith hold the defendant to answer in the district court. If examination is not waived, the magistrate shall hear the evidence in a reasonable time. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the magistrate shall forthwith hold him to answer in the district court; otherwise the magistrate shall discharge him. The magistrate shall

admit the defendant to bail as provided in this title and the Federal Rules of Criminal Procedure.

(d) The United States attorney may conduct an investigation and present an information to the district court as provided by sections 4012 and 4013 of this title after a defendant has been discharged by a magistrate's court.

§ 3802. Committing defendant to district court

When a magistrate orders the defendant to be held to answer, after preliminary examination in cases triable in the district court, and the defendant is not admitted to bail or does not give bail, the magistrate shall make out a commitment signed by him with his name and office and deliver it with the defendant to the officer to whom he is committed, or if that officer is not present, to a peace officer, who shall deliver the defendant to the proper custody, together with the commitment.

§ 3803. Form of commitment

The commitment must be to the following effect:

Magistrate's Court,
Town and Subdivision of _____,

The Government of the Canal Zone, to the warden of the jail of _____.

An order having been this day made by me, that _____ be held to answer upon a charge of (stating briefly the nature of the offense and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this ____ day of _____, nineteen _____.

§ 3804. Material witnesses; bail; commitment

(a) On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the Government a written undertaking to the effect that he will appear and testify at the court to which the warrant and other proceedings are to be sent, or that he will forfeit the sum of $100.

(b) When a magistrate is satisfied by proof on oath that there is reason to believe that a witness referred to by subsection (a) of this section will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as the magistrate deems proper, for his appearance as prescribed by subsection (a) of this section.

(c) If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate shall commit him to jail until he complies or is legally discharged.

(d) Upon the failure to appear of a witness who has entered into an undertaking to appear, the undertaking is forfeited in the same manner as undertakings of bail.

§ 3805. Material witnesses; depositions

When it satisfactorily appears by examination, on oath, of the witness or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined before the magistrate on behalf of the Government. The examination shall be by question and answer, in the presence of the defendant or after notice to him if on bail, and conducted in the manner provided by sections 4296–4300 of this title, and the witness shall be thereupon discharged. The deposition may be used upon the trial under the same conditions as prescribed by section 4301 of this title. This section does not apply to an accomplice in the commission of the offense charged.

§ 3806. Disposition of papers and bail

(a) A magistrate shall keep all papers relating to criminal matters in which a preliminary examination has been held in good order and on file in his office until an information is filed in the district court.

(b) Within two days after the preliminary examination, the magistrate shall deliver to the United States attorney a transcript of all proceedings had in the action, and copies of all papers relating thereto including the original complaint, warrant, affidavits and the names of the witnesses.

(c) Upon the filing of an information by the United States attorney, the magistrate shall deliver to the clerk of the district court all papers relating to the proceedings and all undertakings or moneys deposited in lieu thereof with the magistrate for appearance in the district court.

CHAPTER 211—PROCEEDINGS IN MAGISTRATES' COURTS

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—COMPLAINT, ARREST, TRIAL, AND JUDGMENT

SUBCHAPTER III—APPEALS TO DISTRICT COURT

SUBCHAPTER IV—CRIMINAL CONTEMPTS

Subchapter I—General Provisions

§ 3841. Provisions applicable to magistrates' courts

(a) Magistrates' courts being courts of limited jurisdiction, this Part, other than this chapter, applies to magistrates' courts and the proceedings therein only to the exent to which it is specifically made applicable by this chapter.

(b) The Federal Rules of Criminal Procedure do not apply to magistrates' courts unless:

(1) they are incorporated by reference in a section of this Part and the section is applicable to the magistrates' courts under this chapter; or

(2) they are specifically made applicable by this chapter.

(c) When a provision of law or of the Federal Rules of Criminal Procedure governing the district court is applicable to the magistrates' courts, references therein to the court or judge shall be deemed to refer to the magistrate; references to the marshal shall be deemed to refer to the constable; and references to the clerk of the district court shall be deemed to refer to the magistrate.

§ 3842. Rules of procedure in criminal actions in magistrates' courts

(a) The district court may from time to time make and amend rules governing criminal procedure in the magistrates' courts not inconsistent with law.

(b) Each magistrate may from time to time make and amend rules governing criminal procedure in his court not inconsistent with law or with the rules adopted by the district court pursuant to subsection (a) of this section. Copies of rules and amendments so made by a magistrate shall be filed promptly with the district court.

§ 3843. Criminal dockets

Each magistrate shall keep a book denominated the "criminal docket", which shall be separate and distinct from the civil docket, in which he shall enter:

(1) the title of every action or proceeding which shall be "Government of the Canal Zone vs. ———, defendant";

(2) the date of the warrant;

(3) the defendant's name and when arrested;

(4) the names of the complainant and the witnesses and whether or not they testified;

(5) the time of issuing summons and the return thereon by the person who served it; and

(6) the time of trial and the judgment thereon, or if there is no trial under a plea of guilty, the amount of fine or time of imprisonment, or if it is a case in which the offense is beyond the jurisdiction of the magistrate's court, the commitment or bail, or whatever proceeding is had therein.

§ 3844. Computation of time

Rule 45(a) of the Federal Rules of Criminal Procedure applies to the computation of time in criminal actions in the magistrates' courts.

§ 3845. Presence of defendant

The defendant in a criminal action in a magistrate's court shall be present at every stage of the trial, including the rendering of judgment and the imposition of sentence, except as otherwise provided by this section. The defendant's voluntary absence after the trial has commenced in his presence shall not prevent continuing the trial to and including the rendering of judgment. A corporation may appear by counsel for all purposes. With the written consent of the defendant, the magistrate's court may permit reading of the complaint, plea, trial, and imposition of sentence in the defendant's absence.

§ 3846. Harmless error; plain error

(a) An error, defect, irregularity or variance which does not affect substantial rights shall be disregarded by a magistrate's court.

(b) Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

§ 3847. Application of general provisions

The following provisions of this chapter apply in the magistrates' courts unless otherwise provided therein or unless by their nature they are clearly inapplicable:

(1) sections 3502–3505, 3506(a), and 3507–3511 of this title, relating to criminal procedure generally;

(2) sections 4551–4557, 4559, 4591–4596, 4631–4635, 4671–4673, 4701, 4703, and 4704 of this title, relating to bail;

(3) sections 4741–4743 of this title, relating to search and seizure;

(4) sections 4821–4824 of this title, as to compromising crimes;

(5) sections 4861–4868 of this title, relating to mental incompetency of a defendant;

(6) sections 4901–4907 of this title, relating to disposal of property stolen or embezzled;

(7) sections 4941–4944 of this title, relating to corporations as defendants; and

(8) chapter 237, section 4981 et seq. of this title, relating to criminal extradition and removal.

§ 3848. Double jeopardy

Sections 3541–3545 and 3547 of this title, relating to double jeopardy, apply in the magistrates' courts. References in those sections to an information apply to a complaint in an action triable in a magistrate's court.

§ 3849. Security to keep the peace

Sections 3611–3621 and 3623 of this title, relating to security to keep the peace, apply in the magistrates' courts.

§ 3850. Limitation of actions

Sections 3663 and 3664 of this title, relating to limitation of actions, apply in the magistrates' courts.

Subchapter II—Complaint, Arrest, Trial, and Judgment

§ 3881. Complaint, warrant, and arrest

Sections 3701, 3702, and 3731–3744 of this title relating to complaint, warrant, and arrest, apply in the magistrates' courts.

§ 3882. Appearance before magistrate

(a) Sections 3781–3783 of this title, relating to the taking of a defendant before a magistrate and release by a peace officer without appearance before a magistrate, apply in the magistrates' courts.

(b) Sections 3801–3806 of this title, relating to preliminary examinations, apply to proceedings before magistrates in actions not triable in the magistrates' courts.

(c) Section 4014 of this title applies to the remand of causes to the magistrates' courts.

§ 3883. Postponement or continuance of trial

Upon good cause shown by either party to a criminal action in a magistrate's court:

(1) the commencement of the trial may be postponed for a reasonable period; or

(2) after commencement of the trial a continuance for a reasonable period may be granted.

§ 3884. Dismissal of actions

Sections 4051–4053 of this title, relating to dismissal of actions, apply in the magistrates' courts to the extent that they specifically refer to proceedings therein.

§ 3885. Amendment of complaint

A complaint in a magistrate's court may be amended by the Government without leave of court at any time before the defendant pleads or before the preliminary examination. An amendment may be permitted at any time thereafter, in the discretion of the court, if it can be done without prejudice to the substantial rights of the defendant.

§ 3886. Joinder of offenses and defendants

(a) Two or more offenses may be charged in the same complaint in a magistrate's court in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Two or more defendants may be charged in the same complaint in a magistrate's court if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all the defendants need not be charged in each count.

§ 3887. Trial together of complaints; relief from prejudicial joinder

(a) A magistrate's court may order two or more complaints to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single complaint.

(b) If it appears that a defendant or the Government is prejudiced by a joinder of offenses or of defendants in a complaint or by such joinder for trial together, a magistrate's court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

§ 3888. Reading complaint to defendant; plea

When a defendant is put upon trial in a magistrate's court, the complaint shall be read to the defendant, whereupon the defendant may plead to it. The plea shall be "guilty" or "not guilty". If the defendant refuses to plead, the magistrate shall enter a plea of not guilty.

§ 3889. Proceedings on plea of guilty

If the defendant pleads guilty, the magistrate may hear testimony to determine the gravity of the offense and, within 24 hours after the plea of guilty or the hearing of testimony, shall render judgment as to the punishment to be imposed.

§ 3890. Proceedings on plea of not guilty

If the defendant, after having heard the charge, pleads not guilty, the proceedings shall be as follows:

(1) The witnesses for the prosecution shall be examined under oath.

(2) The witnesses for the defendant, including the defendant himself if he wishes to testify, shall be examined under oath. If the defendant does not testify, section 2866 of Title 5 applies.

(3) Witnesses for the prosecution may be called to testify in rebuttal only of testimony given by the defendant or his witnesses.

(4) The magistrate shall then consider the evidence, and within 24 hours thereafter shall render judgment. If the defendant is acquitted, he shall be immediately released. If the defendant is ad-

judged guilty, the magistrate shall, within the time limit, fine or commit him to jail, or both, as the case may be, unless he is placed on probation.

§ 3891. Conduct of trial; evidence

Subject to this chapter, the following provisions, except as otherwise provided therein, apply to criminal actions in the magistrates' courts unless by their nature they are clearly inapplicable:

(1) chapter 217 of this title, relating to conduct of the trial; and

(2) Part 3 of Title 5, relating to evidence.

§ 3892. Judgment and execution; probation

(a) Sections 4373–4375, 4411–4413, and 4415–4418 of this title, relating to judgment and execution, apply in the magistrates' courts.

(b) Sections 4511 and 4512 of this title, relating to suspension of sentence and probation, apply in the magistrates' courts.

Subchapter III—Appeals to District Court

§ 3921. Right of appeal by defendant

Appeals by defendants from judgments of the magistrates' courts to the district court are authorized in all criminal actions.

§ 3922. Manner of taking appeal

An appeal from the judgment of a magistrate's court may be taken and perfected by the defendant by giving oral or written notice in the magistrate's court of his intention so to do at any time within five days after judgment is rendered.

§ 3923. Transmitting warrant and complaint to district court

Upon the perfection of an appeal by the defendant, the magistrate shall forthwith transmit the warrant and the complaint to the clerk of the district court.

§ 3924. Trial de novo in district court

All offenses triable in the magistrates' courts, when appealed by the defendant to the district court, shall be tried de novo on the original complaint. Unless the context clearly indicates otherwise, all references to an information in this Part and in the Federal Rules of Criminal Procedure shall be deemed to include a complaint in an action which is being tried in the district court on appeal.

§ 3925. Amendment of complaint in district court

The complaint may be amended in the district court as to matters of form or substance where the rights of the defendant are not substantially prejudiced thereby; but the amended complaint may not charge a crime different from that charged or sought to be charged in the original complaint.

§ 3926. Appeals by Government

(a) An appeal may be taken by the Government of the Canal Zone from a magistrate's court to the district court in all criminal actions:

(1) from a decision, ruling, or judgment setting aside, or dismissing the complaint, or any count thereof, where the decision, ruling, or judgment is based upon the invalidity or construction of the statute or regulation upon which the complaint is founded;

(2) from a decision, ruling, or judgment dismissing the complaint for insufficiency;

(3) from a decision, ruling, or judgment sustaining a motion in bar, when the defendant has not been put in jeopardy.

(b) The appeal in cases under this section shall be taken within 10 days after the decision, ruling, or judgment has been rendered by filing in the magistrate's court a written notice of appeal reflecting the basis or bases for the appeal. The appeal shall be diligently prosecuted.

(c) Pending the prosecution and determination of the appeal under this section, the defendant shall be admitted to bail on his own recognizance.

(d) Upon the perfection of the appeal, the magistrate shall promptly transmit to the district court certified copies of the warrant and complaint together with the transcript of the proceedings reflecting the decision, ruling, or judgment and the magistrate's basis or bases for it, and a copy of the notice of appeal filed with the magistrate's court.

(e) The district court may affirm, modify, vacate, set aside, or reverse a decision, ruling, or judgment lawfully brought before it for review under this section, and may remand the cause and direct the entry of such appropriate decision, ruling, or judgment, or require such further proceedings to be had as may be just under the circumstances.

§ 3927. Withdrawal of appeal by defendant

At any time before a trial de novo begins, a defendant who has appealed may give notice in writing to the district court that he withdraws the appeal. Upon receiving the notice, the clerk of the district court shall return to the magistrate, from whose judgment the appeal was taken, all papers forwarded pursuant to section 3923 of this title and a certified copy of defendant's notice of withdrawal. Upon receiving these papers, the magistrate shall forthwith take action to enforce the judgment.

Subchapter IV—Criminal Contempts

§ 3961. Summary disposition

A criminal contempt of a magistrate's court may be punished summarily if the magistrate certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court, or in all instances of failure to obey a summons or subpoena of the court if properly served. The order of contempt shall recite the facts and shall be signed by the magistrate and entered in the criminal docket after the defendant is given an opportunity to be heard.

§ 3962. Disposition; notice and hearing

(a) Form of notice; how given

Except as provided by section 3961 of this title, a criminal contempt of a magistrate's court shall be prosecuted on notice, and if it occurs in a cause it shall be prosecuted in the cause in which it occurs. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the contempt charged. The notice may be given orally by the magistrate in open court in the presence of the person charged with criminal contempt or, on application of the United States attorney or of an attorney appointed by the magistrate's court for that purpose, by an order to show cause or an order of arrest.

(b) Bail

If the person charged with criminal contempt gives a good and sufficient bond, or cash deposit in lieu thereof, for his appearance at the hearing, approved by the magistrate, he shall be admitted to bail pending the hearing.

(c) Disqualification of magistrate

Except as provided by section 3961 of this title, if the criminal contempt charged involves disrespect to, or criticism of, a magistrate, that magistrate is disqualified from presiding at the trial or hearing except with the consent of the person charged with the contempt.

(d) Pleas

Where an order to show cause is made, the person charged with criminal contempt may, not later than one day before the return day of the order, or within such time as the court may allow, serve an answer or answering affidavit, or he may plead orally at the hearing.

§ 3963. Judgment

Upon a finding of guilt in a criminal contempt proceeding, the magistrate's court shall enter a judgment fixing the punishment.

CHAPTER 213—INFORMATION; DISMISSAL OF ACTIONS

SUBCHAPTER I—INFORMATION

SUBCHAPTER II—DISMISSAL OF ACTIONS

Subchapter I—Information

§ 4011. Offenses prosecuted by information

(a) Every offense of which the district court has original jurisdiction shall be prosecuted by information signed by the United States attorney, or in his absence by an assistant United States attorney.

(b) The following provisions of the Federal Rules of Criminal Procedure do not apply to the district court:

(1) Rule 6, relating to the grand jury;

(2) Rule 7, subdivisions (a) and (b), relating to use of indictment or information and to waiver of indictment; and

(3) all other provisions relating to an indictment or to a grand jury.

§ 4012. Investigation by United States attorney after preliminary examination

When a defendant has been held to answer in the district court or discharged by a magistrate upon preliminary examination as provided by sections 3801 and 3802 of this title, the United States attorney may, within 20 days thereafter, issue subpoenas for witnesses and examine the witnesses under oath as to the offense charged. The examination shall be conducted in private.

§ 4013. Filing information after investigation

If it appears from the investigation that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the United States attorney shall, within the 20-day period, file an information against the person in the division of the district court in which the offense is triable, charging the defendant with the offense.

§ 4014. Remanding cause to magistrate

If the offense committed is within the original jurisdiction of a magistrate's court, the cause shall be remanded thereto for proceedings therein as prescribed by law.

Subchapter II—Dismissal of Actions

§ 4051. Dismissal by attorney for Government

(a) After a defendant has been held to answer in the district court by a magistrate upon preliminary examination, if it appears from the investigation of the United States attorney under section 4012 of this title that a public offense has not been committed or that there is not sufficient cause to believe the defendant guilty, the United States attorney shall, within the 20-day period specified in section 4012 of this title, file with the committing magistrate an order that the defendant be discharged, and the magistrate shall forthwith enter an order discharging the defendant.

(b) After the filing of an information, the United States attorney may by leave of court file a dismissal of the information and the prosecution shall thereupon terminate. The dismissal may not be filed during the trial without the consent of the defendant.

(c) In an action triable in a magistrate's court, the United States attorney may file a dismissal of the complaint at any time without leave of court.

§ 4052. Dismissal by court for want of prosecution; continuance

(a) Unless good cause to the contrary is shown, the prosecution shall be dismissed:

(1) by a magistrate's court, where a person has been held to answer for a public offense if an information is not filed against him within 20 days thereafter;

(2) by the district court, if a defendant, whose trial has not been postponed upon his application, is not brought to trial in the district court within 120 days after the filing of the information; or

(3) by a magistrate's court, if a defendant, whose trial has not been postponed upon his application, is not brought to trial in a magistrate's court within 15 days after he is arrested and brought within the jurisdiction of the court.

(b) If the defendant is not charged or tried as provided in subsection (a) of this section, and sufficient reason therefor is shown, the court may order the action to be continued from time to time, and in the meantime may discharge the defendant from custody on his own undertaking or bail for his appearance to answer the charge at the time to which the action is continued.

§ 4053. Discharge of defendant upon dismissal of action

If the district court or a magistrate's court directs the action to be dismissed, the defendant shall, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or the money deposited in lieu of bail shall be refunded to him.

CHAPTER 215—MODE OF TRIAL; TRIAL JURY

Sec.

§ 4091. Plea and motions upon which issues of fact arise

An issue of fact arises in a criminal action upon a:

(1) plea of not guilty;

(2) motion raising the defense of a former conviction or acquittal of the same offense; or

(3) motion raising the defense of once in jeopardy.

§ 4092. Jury trial in criminal cases

Issues of fact in criminal cases within the original jurisdiction of the district court shall be tried by jury, unless a trial by jury is waived in the manner provided by Rule 23(a) of the Federal Rules of Criminal Procedure.

§ 4093. Definition and kinds of challenge

A challenge is an objection made to the trial jurors, and is of two kinds:

(1) to the panel; and

(2) to an individual juror.

§ 4094. Panel defined

The panel is a list of jurors returned by the marshal to serve for a particular period or for the trial of a particular action.

§ 4095. Challenge to panel; who may challenge

A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

§ 4096. Grounds of challenge to panel

A challenge to the panel may be founded only on:

(1) a material departure from the forms prescribed with respect to the drawing and return of the jury; or

(2) the intentional omission of the marshal to summon one or more of the jurors drawn.

§ 4097. Time and method of challenge to panel

A challenge to the panel may be taken only before a juror is sworn and shall be in writing or be noted by the reporter. It shall plainly and distinctly state the facts constituting the ground of challenge.

§ 4098. Exception to challenge to panel

If the sufficiency of the facts alleged as ground of the challenge to the panel is denied the adverse party may except to the challenge. The exception need not be in writing but shall be entered on the minutes of the court or of the reporter and thereupon the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

§ 4099. Determination on exception to challenge to panel

If on exception to the challenge to the panel the court finds the challenge sufficient, it may if justice requires it permit the party excepting to withdraw his exception and to deny the facts alleged in the challenge. If exception is allowed the court may in like manner permit an amendment of the challenge.

§ 4100. Denial of challenge to panel and trial thereon

If the challenge to the panel is denied, the denial may be oral and shall be entered on the minutes of the court or of the reporter and the court shall proceed to try the question of fact. Upon the trial the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

§ 4101. Challenge to panel for bias of summoning officer

If the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them which would be good ground of challenge to a juror. The challenge shall be made in the same form and determined in the same manner as if made to a juror.

§ 4102. Effect of allowance or disallowance of challenge to panel

If, either upon an exception to the challenge to the panel or a denial of the facts, the challenge is allowed, the court shall discharge the jury as far as the trial in question is concerned. If it is disallowed, the court shall direct the jury to be impaneled.

§ 4103. Informing defendant as to time to challenge individual juror

Before a juror is called the defendant shall be informed by the court, or under its direction, that if he intends to challenge an individual juror he must do so when the juror appears and before he is sworn.

§ 4104. Kinds of challenge to individual juror

A challenge to an individual juror is either:

(1) peremptory; or
(2) for cause.

§ 4105. Time for challenge to individual juror

A challenge to an individual juror shall be taken when the juror appears and before he is sworn to try the cause; but the court may for cause permit it to be taken after the juror is sworn and before the jury is completed.

§ 4106. Peremptory challenge

A peremptory challenge may be taken by either party and may be oral. It is an objection to a juror for which no reason need be given but upon which the court must exclude him.

§ 4107. Number of peremptory challenges; waiver

Upon a trial by jury in a criminal case, the parties are entitled to peremptory challenges to the extent authorized by Rule 24(b) of the Federal Rules of Criminal Procedure. A waiver of a challenge by either party precludes him, except by consent of court, from

thereafter challenging peremptorily any juror then in the jury box, and his remaining challenges shall be limited to jurors thereafter called.

§ 4108. Challenge for cause; kinds

A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either:

(1) general—that the juror is disqualified from serving in any case; or

(2) particular—that he is disqualified from serving in the action on trial.

§ 4109. General causes of challenge

General causes of challenge are:

(1) a conviction of felony;

(2) a want of any of the qualifications prescribed by law to render a person a competent juror; or

(3) unsoundness of mind or such defect in the faculties of the mind or organs of the body as to render him incapable of performing the duties of a juror.

§ 4110. Particular causes of challenge

(a) Particular causes of challenge are for:

(1) such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this title as implied bias; or

(2) the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party, which is known in this title as actual bias.

(b) A person may not be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to the jury, founded upon public rumor, statements in public journals, or common notoriety, if it appears to the court upon his declaration under oath or otherwise that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him.

§ 4111. Challenge for implied bias

A challenge to an individual juror for implied bias may be taken for:

(1) consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;

(2) standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted, or in his employment on wages;

(3) being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution;

(4) having served on a trial jury which has tried another person for the offense charged;

(5) having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it;

(6) having served as a juror in a civil action brought against the defendant for the act charged as an offense; or

(7) if the offense charged is punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he may neither be permitted nor compelled to serve as a juror.

§ 4112. Exemption from service as cause of challenge

An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

§ 4113. Form and entry of challenge

A challenge may be oral, but shall be entered in the minutes of the court or of the reporter.

§ 4114. Exception to or denial of challenge

An adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings shall be had thereon as are prescribed in section 4098 of this title, except that if the exception is allowed the juror shall be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

§ 4115. Trial of challenge to individual juror

If, upon a challenge to an individual juror, the facts are denied, the challenge shall be tried by the court.

§ 4116. Examination of juror and witnesses

Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge and shall answer every question pertinent to the inquiry. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

§ 4117. Allowance or disallowance of challenge

After the trial of a challenge to an individual juror, the court shall allow or disallow the challenge. Its decision shall be entered in the minutes of the court.

CHAPTER 217—CONDUCT OF THE TRIAL; VERDICT

SUBCHAPTER I—GENERALLY

Sec.

SUBCHAPTER II—EVIDENCE GENERALLY

SUBCHAPTER III—WITNESSES; SUBPOENAS

SUBCHAPTER IV—DEPOSITIONS

Article A—Depositions Generally

Article B—Examination of Witness Conditionally

SUBCHAPTER V—SECURING THE ATTENDANCE OF WITNESSES FROM WITHOUT A STATE IN CRIMINAL PROCEEDINGS

Subchapter I—Generally

§ 4151. Order of proceedings on trial

Unless otherwise directed by the judge, the trial in a criminal action in the district court shall be conducted in the following order:

(1) the United States attorney or other counsel for the Government shall open the cause and offer the evidence in support of the charge;

(2) the defendant or his counsel may then open the defense and offer his evidence in support thereof;

(3) the parties may then respectively offer rebutting testimony only, unless the court for good reason in furtherance of justice permits them to offer evidence upon their original case; and

(4) when the evidence is concluded unless the case is submitted on either side or on both sides without argument, the United States attorney or other counsel for the Government and counsel for the defendant may argue the case; the United States attorney or other counsel for the Government opening the argument and having the right to close.

§ 4152. Number of counsel who may argue cause

If the information is for an offense punishable with death two counsel on each side may argue the cause. If it is for any other offense the district court may in its discretion restrict the argument to one counsel on each side.

§ 4153. View by jury

If, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed,

or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the marshal, to the place, which shall be shown to them by a person appointed by the court for that purpose. The marshal shall be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay or at a specified time.

§ 4154. Forms of verdict

The verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the information. Upon a defense of a former conviction or acquittal of the same offense or a defense of once in jeopardy, the verdict is either "for the Government" or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict shall be "not guilty by reason of insanity."

§ 4155. Finding degree of crime

(a) When a crime is distinguished into degrees, a verdict of conviction shall find the degree of the crime of which the defendant is guilty.

(b) When a crime is distinguished into degrees, upon a plea of guilty, or upon a trial without a jury, the district court or magistrate's court shall determine the degree before passing sentence.

§ 4156. Conviction of included offense or attempt

The jury, the district court in a case tried without a jury, or the magistrate's court, may find the defendant guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or of an offense necessarily included therein if the attempt is an offense.

§ 4157. Several defendants; conviction or acquittal of some

Upon a prosecution against several defendants any one or more may be convicted or acquitted.

§ 4158. Several defendants; several offenses; verdict

(a) Rule 31(b) of the Federal Rules of Criminal Procedure applies to verdicts if there are two or more defendants.

(b) If two or more offenses are charged in separate counts in the same information, or in two or more informations tried together, the jury at any time during its deliberations may return a verdict or verdicts with respect to a count or counts as to which it has agreed; if the jury cannot agree with respect to all, the count or counts as to which it does not agree may be tried again.

§ 4159. Reconsideration of verdict

When there is a verdict of conviction, in which it appears to the court that the jury has mistaken the law, the court may explain the reason for that opinion and direct the jury to reconsider its verdict. After the reconsideration, if the jury returns the same verdict, it shall be entered. When there is a verdict of acquittal, the court may not require the jury to reconsider it.

§ 4160. Judgment upon informal verdict

If the jury persists in finding an informal verdict, from which, however, it can be clearly understood that the jury's intention is to find in favor of the defendant upon the issue, the verdict shall be entered in the terms in which it is found, and the court shall give judgment of acquittal. A judgment of conviction may not be given unless the jury finds against the defendant upon the issue.

§ 4161. Recording verdict

When the verdict given is such as the court may receive, the clerk shall immediately record it in full upon the minutes, read it to the jury, and inquire of the jury whether it is its verdict. If any juror disagrees, the fact shall be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury shall be discharged from the case.

Subchapter II—Evidence Generally

§ 4191. Presumption of innocence; reasonable doubt

A defendant in a criminal action is presumed to be innocent until the contrary is proved and in case of a reasonable doubt as to his guilt is entitled to an acquittal.

§ 4192. Reasonable doubt as to degree of crime

If it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he may be convicted of the lowest of the degrees only.

§ 4193. Proof of treason

A person may not be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court.

§ 4194. Discharge of defendant to be witness

(a) If two or more persons are included in the same charge, the court may, at any time before the defendants have adduced testimony in defense, on the application of the United States attorney, direct a defendant to be discharged, that he may be a witness for the Government.

(b) When two or more persons are included in the same charge, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it shall order him to be discharged before the evidence for the defense is closed, that he may be a witness for his codefendant.

(c) The order prescribed by subsections (a) and (b) of this section is an acquittal of the defendant discharged and a bar to another prosecution for the same offense.

Subchapter III—Witnesses; Subpoenas

§ 4231. Subpoenas generally

Except as otherwise provided by this subchapter, a subpoena in a criminal action in the district court or a magistrate's court is governed by Rule 17 of the Federal Rules of Criminal Procedure.

§ 4232. Issuance of subpoena

(a) A subpoena may be signed and issued by:

(1) a magistrate before whom a complaint is made, on behalf of either the Government or the defendant;

(2) the judge of the district court;

(3) the clerk of the district court upon application either of the Government or the defendant; or

(4) the United States attorney.

(b) A subpoena issued by a magistrate or the United States attorney need not be under the seal of a Court.

(c) A magistrate or the clerk of the district court shall, at any time and without charge, issue subpoenas for witnesses for the defendant upon his request.

§ 4233. Service of subpoena

(a) A subpoena shall be served as provided by Rule 17(d) of the Federal Rules of Criminal Procedure.

(b) A peace officer shall serve a subpoena delivered to him for service, either on the part of the Government or of the defendant, and shall, without delay, make a written return of the service, subscribed by him, stating the time and place of service.

§ 4234. Tendering fees and mileage

(a) Notwithstanding Rule 17(d) of the Federal Rules of Criminal Procedure, fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the Government of the Canal Zone.

(b) When a person attends before a court or magistrate as a witness in a criminal action, upon a subpoena or in pursuance of an undertaking to testify on behalf of the prosecution, and it appears that he has come from a place more than three miles distant from the place where he is to appear, or that he is poor and unable to pay the expenses of his attendance, the court or magistrate, in its or his discretion, by an order upon the minutes if the attendance of the witness is upon a trial and by a written order in any other case, may direct the payment to the witness of a reasonable sum to pay his expenses, which sum shall be charged against his per diem.

§ 4235. Place of service; subpoena for taking deposition

(a) In criminal actions originally triable in the district court, a subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the United States.

(b) In criminal actions triable in a magistrate's court, and in trials in the district court on appeal from a magistrate's court, a subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the Canal Zone.

(c) Notwithstanding Rule 17(f)(2) of the Federal Rules of Criminal Procedure, a subpoena for a deposition to be taken in the Canal Zone may be served, and attendance of the witness may be required, anywhere within the Canal Zone.

§ 4236. Civil liability for disobedience

A witness disobeying a subpoena in a criminal action issued on the part of the defendant, unless he shows good cause for his nonattendance, is liable to the defendant in the sum of $100, which may be recovered in a civil action.

§ 4237. Summoning witnesses for trial in magistrate's court

(a) When a person arrested charged with an offense cognizable by a magistrate is placed on trial, he shall give the names of his witnesses, if he has any, and their places of abode; and the magistrate shall forthwith issue subpoenas for them to testify in the cause. The subpoenas shall state the day, hour and place of trial.

(b) Rule 17(b) of the Federal Rules of Criminal Procedure applies to the issuance of subpoenas by a magistrate's court at the request of an indigent defendant, and the payment of costs and fees therefor.

(c) When a day is set for trial by the magistrate, the witnesses for the prosecution shall immediately be summoned. Subpoenas being issued and served upon them, they shall appear before the magistrate where the trial is to take place.

§ 4238. Prisoner as witness

(a) When the testimony of a material witness for the Government or the defendant is required before a court in a criminal action and the witness is a prisoner in the penitentiary, or in jail, an order for his

temporary removal from the penitentiary or jail, and for his production before the court, may be made by the court in which the action is pending, or by the judge thereof. The order may only be made upon the affidavit of the United States attorney or other person on behalf of the Government, or of the defendant or his counsel, showing that the testimony is material and necessary.

(b) The order shall be directed to the warden of the penitentiary or the keeper of the jail in which the prisoner is confined and the warden or keeper or their designees shall bring the prisoner before the proper court and safely keep him, and when he is no longer required as a witness, return him to the penitentiary or jail. The expense of executing the order shall be paid from the funds of the Canal Zone Government.

(c) When the testimony of a material witness who is a prisoner is required in an investigation being conducted by the United States attorney, an order may be made pursuant to this section by the district judge or, in his absence, by a magistrate.

Subchapter IV—Depositions

Article A—Depositions Generally

§ 4271. Depositions on motion of defendant

(a) Except as provided by this section, Rule 15 of the Federal Rules of Criminal Procedure, relating to depositions, applies to criminal actions in the district court and the magistrates' courts.

(b) An order to take a deposition may be made at any time after the filing of a complaint. Prior to the filing of the information in an action triable in the district court, or prior to the filing of the complaint on appeal in the district court in an action triable in a magistrate's court, the order shall be made by a magistrate. After the filing of the information or complaint in the district court, the order shall be made by the district court.

(c) In addition to the provisions of Rule 15(e) of the Federal Rules of Criminal Procedure, a deposition taken under Rule 15 may be used in the Canal Zone at a trial or upon any hearing if it appears that the witness is out of the Canal Zone, unless it appears that the absence of the witness was procured by the party offering the deposition.

Article B—Examination of Witness Conditionally

§ 4291. Right to have witnesses examined conditionally

At any time after the preliminary examination in an action triable in the district court, or after the defendant's arrest in an action triable in a magistrate's court, either or both the defendant and the Government may have witnesses examined conditionally in his or its behalf, as prescribed by sections 4291–4301 of this title.

§ 4292. Grounds for examination

When a material witness for the defendant, or for the Government, is about to leave the Canal Zone, or is so sick or infirm as to afford reasonable grounds for apprehension that he will be unable to attend the trial, the defendant or the Government may apply for an order that the witness be examined conditionally.

§ 4293. Form of application for order

The application for conditional examination shall be made upon affidavit stating:

(1) the nature of the offense charged;

(2) the state of the proceedings in the action;

(3) the name and residence of the witness, and that his testimony is material to the defense or the prosecution of the action; and

(4) that the witness is about to leave the Canal Zone, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

§ 4294. Application for order to district court or magistrate

(a) Prior to the filing of the information in an action triable in the district court, or prior to the filing of the complaint on appeal in the district court in an action triable in a magistrate's court, the application for conditional examination may be made to a magistrate. After the filing of the information or complaint in the district court, the application may be made to the district court or the judge thereof, or in case of his absence or inability to act to a magistrate.

(b) Three days' notice of the application shall be given to the adverse party.

§ 4295. Order for examination

If the court, judge or magistrate is satisfied that the examination of the witness is necessary, an order shall be made that the witness be examined conditionally, at a specified time and place, and before a judge or magistrate designated therein.

§ 4296. Examination not to take place when grounds nonexistent

If, at the time and place designated, it is shown to the satisfaction of the court, judge or magistrate that the witness is not about to leave the Canal Zone, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination may not take place.

§ 4297. Presence of defendant at examination

The defendant has the right to be present in person and with counsel at the examination, and if the defendant is in custody, the officer in whose custody he is, shall be informed of the time and place of the examination and shall take the defendant thereto and keep him in the presence and hearing of the witness during the examination.

§ 4298. Subpoena for witness

(a) The attendance of the witness may be enforced by a subpoena, issued by the judge or magistrate before whom the examination is to be taken.

(b) The subpoena may be served, and attendance of the witness may be required, anywhere within the Canal Zone.

§ 4299. Testimony; reduction to writing; authentication

The testimony given by the witness shall be reduced to writing and properly authenticated.

§ 4300. Transmittal of deposition to court

The judge or magistrate shall seal up the deposition taken and transmit it to the clerk of the court in which the action is pending or may come for trial.

§ 4301. Use of deposition in evidence

The deposition, or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness or infirmity, or of his continued absence from the Canal Zone. Upon reading the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in court.

Subchapter V—Securing the Attendance of Witnesses from Without a State in Criminal Proceedings

§ 4331. Definitions

As used in this subchapter:

"witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding;

"State" includes any territory of the United States, the Canal Zone, the District of Columbia, and the Commonwealth of Puerto Rico; and

"summons" includes a subpoena, order or other notice requiring the appearance of a witness.

§ 4332. Summoning witness in Canal Zone to testify in another State

If a judge of a court of record in any State which by its laws has made provision for commanding persons within that State to attend and testify in the Canal Zone certifies under the seal of the court that there is a criminal prosecution pending in that court, or that a grand jury investigation has commenced or is about to commence, that a person being within the Canal Zone is a material witness in the prosecution or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of the certificate to the judge of the district court, the judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other State, and that the laws of the State in which the prosecution is pending or grand jury investigation has commenced or is about to commence, and of any other State through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence, at a time and place specified in the summons. In such a hearing the certificate is prima facie evidence of all the facts stated therein.

If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting State to assure his attendance in the requesting State, the judge may, in lieu of notification of the hearing, direct that the witness be forthwith brought before him for the hearing; and the judge at the hearing being satisfied of the desirability of the custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting State.

If a witness, who is summoned as above provided, after being paid or tendered by a properly authorized person the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from the district court.

§ 4333. Witness from another State summoned to testify in the Canal Zone

If a person in any State, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions in the Canal Zone, is a material witness in a prosecution originally triable and pending in the district court, the judge of the district court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of the Canal Zone to assure his attendance in the Canal Zone. The certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If a witness is summoned to attend and testify in the Canal Zone he shall be tendered the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the district court and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the Canal Zone a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If the witness, after coming into the Canal Zone, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from the district court.

A certificate need not be issued pursuant to this section if it appears that the attendance of the witness can be obtained under Rule 17 of the Federal Rules of Criminal Procedure.

§ 4334. Exemption from arrest and service of process

If a person comes into the Canal Zone in obedience to a summons directing him to attend and testify in the Canal Zone he shall not while in the Canal Zone pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into the Canal Zone under the summons.

If a person passes through the Canal Zone while going to another State in obedience to a summons to attend and testify in that State or while returning therefrom, he is not while so passing through the Canal Zone subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into the Canal Zone under the summons.

§ 4335. Uniformity of interpretation

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the States which enact it.

§ 4336. Short title

This subchapter may be cited as the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.

CHAPTER 219—JUDGMENT AND EXECUTION; APPEALS

SUBCHAPTER I—JUDGMENT; APPEALS

Sec.

SUBCHAPTER II—EXECUTION GENERALLY

SUBCHAPTER III—EXECUTION OF DEATH SENTENCE

Subchapter I—Judgment; Appeals

§ 4371. Circumstances in aggravation or mitigation of punishment

In addition to the statement and information by defendant in mitigation of punishment pursuant to Rule 32(a) of the Federal Rules of Criminal Procedure and the presentence investigation pursuant to Rule 32(c), before imposing sentence the district court may in its discretion permit the attorney for the Government to present evidence and make a recommendation in aggravation or mitigation of punishment.

§ 4372. Imprisonment for nonpayment of fine and costs in district court

A judgment of the district court that the defendant pay a fine and costs may also direct that he be imprisoned until the fine and costs are satisfied. The judgment shall specify the extent of the imprisonment, which may not exceed one day for each $2.50 of the fine and costs, nor extend in any case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted.

§ 4373. Imprisonment for nonpayment of fine in magistrate's court

When a judgment is rendered against a defendant that he pay a fine, if he fails to do so at once, the magistrate shall commit him to jail, to be confined one day for each $2.50 of fine remaining unpaid. The imprisonment may not extend in any case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted.

§ 4374. Discharge of indigent prisoner

(a) When a convict, sentenced for violation of any law applicable to and within the Canal Zone by any court in the Canal Zone to be imprisoned and pay a fine, or fine and costs, or to pay a fine, or fine and costs, has been confined in a penitentiary, prison, or jail for 30 days, solely for the nonpayment of the fine, or fine and costs, the convict may make application in writing to the magistrate for the subdivision wherein he is confined setting forth his inability to pay

the fine, or fine and costs, and after notice to the United States attorney, who may appear, offer evidence, and be heard, the magistrate shall proceed to hear and determine the matter.

(b) If on examination it appears to the magistrate that the convict is unable to pay the fine, or fine and costs, and that he has not any property exceeding $20 in value, except such as is by law exempt from being taken on execution for debt, the magistrate shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, exceeding $20, except such as is by law exempt from being taken on civil process for debt; and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." Upon taking the oath the convict shall be discharged.

(c) If the convict is found by the magistrate to possess property valued at an amount in excess of that exemption, nevertheless, if the magistrate finds that the retention by the convict of all such property is reasonably necessary for his support or that of his family, the convict shall be discharged without further imprisonment solely for the nonpayment of the fine, or fine and costs; or if he finds that the retention by the convict of any part of the property is reasonably necessary for his support or that of his family, the convict shall be discharged without further imprisonment solely for nonpayment of the fine, or fine and costs, upon payment on account of his fine, or fine and costs, of that portion of his property in excess of the amount found to be reasonably necessary for his support or that of his family.

(d) Upon discharging a convict without further imprisonment solely for nonpayment of a fine, or fine and costs, the magistrate shall file with the penitentiary, prison, or jail in which the convict is confined, a certificate setting forth the facts.

§ 4375. Mitigation of punishment when act already punished as contempt

When it appears at the time of passing sentence upon a person convicted upon an information, that the person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed in its discretion.

§ 4376. Discharge or detention of defendant after acquittal

If judgment of acquittal is given on a verdict, and the defendant is not detained for any other legal cause, he shall be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the pleading and proof, which may be obviated by a new information. The court may order his detention, to the end that a new information may be preferred in the same manner and with like effect as provided by law.

§ 4377. Appeals by Government of the Canal Zone

An appeal may be taken by and on behalf of the Government of the Canal Zone from the district court in accordance with section 3731 of Title 18, United States Code.

Subchapter II—Execution Generally

§ 4411. Furnishing copy of judgment and commitment to officer

When a judgment other than death has been pronounced, the clerk shall forthwith furnish a certified copy of the judgment and commitment to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

§ 4412. Judgment for fine and costs; attachment of property

If a judgment is for a fine and costs, with or without imprisonment, execution may be issued thereon attaching the property of the defendant.

§ 4413. Execution of judgment for imprisonment or for fine and costs

If the judgment is for imprisonment, or a fine and costs and imprisonment until they are paid, the defendant shall forthwith be committed to the custody of the proper officer and be detained by him until the judgment is complied with.

§ 4414. Execution of judgment for imprisonment in penitentiary

If the judgment is for imprisonment in the penitentiary, the marshal, upon receipt of a certified copy thereof, shall take and deliver the defendant to the warden of the penitentiary. He shall also deliver to the warden the certified copy of the judgment, and take from the warden a receipt for the defendant.

§ 4415. Execution of judgment for imprisonment in jail

A sentence of imprisonment in jail, when imposed either by the district judge or a magistrate, may be executed by confinement in any jail of the Canal Zone.

§ 4416. Concurrent and consecutive sentences

(a) A judgment imposing a sentence of imprisonment in a penitentiary or jail shall specify whether the sentence is to be served concurrently with or consecutively to any other sentence imposed at the same time or prior thereto. If the sentences are to be served consecutively, the judgment shall specify when each sentence is to begin with reference to the termination of any other sentence.

(b) Unless the judgment specifically postpones the commencement of a sentence pursuant to subsection (a) of this section, the sentence commences to run on the date fixed by section 4417 of this title, and shall be served concurrently with any other sentence imposed at the same time or prior thereto.

(c) Concurrent penitentiary and jail sentences shall all be served in the penitentiary until all penitentiary sentences have been served.

§ 4417. Commencement of term of imprisonment

Except as provided by section 4416 of this title and Rule 38 of the Federal Rules of Criminal Procedure, the term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of the imprisonment.

Credit toward the service of a sentence shall be given to a defendant for any days spent in custody prior to the imposition of sentence by the sentencing court for want of bail set for the offense under which sentence was imposed where the statute requires the imposition of a minimum mandatory sentence.

§ 4418. Temporary releases

If during the term of imprisonment the defendant by any legal means is temporarily released from imprisonment and subsequently returned thereto, the time during which he was at large may not be computed as part of the term.

Subchapter III—Execution of Death Sentence

§ 4451. Warrant for execution of judgment of death; time of execution

When judgment of death is rendered, a warrant signed by the judge and attested by the clerk, under the seal of the court, shall be drawn and delivered to the marshal. It shall state the conviction and judgment, and appoint a day on which judgment is to be executed, which must be not less than 90 nor more than 120 days from the time of judgment, and shall direct the marshal to deliver the defendant, within 10 days from the time of judgment, to the warden of the penitentiary, for execution.

§ 4452. Transmission of statement of conviction and testimony to Governor

Immediately after a conviction in the district court requiring a judgment of death, the judge thereof shall transmit to the Governor, by mail or otherwise, a statement of the conviction and judgment and of the testimony given at the trial.

§ 4453. Suspension of execution of judgment of death generally

A judge or court, or, except as provided in sections 4454–4459 of this title, an officer other than the Governor, may not suspend the execution of a judgment of death, unless an appeal is taken.

§ 4454. Inquiry into sanity of defendant

(a) If, after his delivery to the warden of the penitentiary for execution, there is good reason to believe that a defendant under judgment of death has become insane, the warden shall call this fact to the attention of the United States attorney, who shall immediately file in the district court a petition, stating the conviction and judgment, and the fact that the defendant is believed to be insane, and asking that the question of his sanity be inquired into.

(b) Upon the filing of the petition, the district court shall order that the defendant be examined as to his mental condition by at least three designated examiners, as defined by section 1631 of Title 5. For the purpose of the examination the court may order the defendant committed to a hospital, as defined by section 1631 of Title 5, for such reasonable period as the court may determine. The designated examiners shall report to the court, and the report shall be placed on file and shall be accessible to the counsel for the Government and to the defendant or his counsel.

§ 4455. Hearing and findings as to sanity

Upon receiving the report of the designated examiners pursuant to section 4454 of this title, the district court shall hold a hearing upon due notice, in which evidence as to the mental condition of the defendant may be submitted, including that of the reporting designated examiners, and the court shall make a finding with respect to the sanity of the defendant. If the defendant appears without counsel, the court shall appoint counsel to represent him at the hearing.

§ 4456. Order as to sanity; commitment to hospital

The finding of the district court shall be entered upon the minutes, and the court shall enter an order reciting the fact of the hearing and the result thereof. When it is found that the defendant is insane, the order shall commit the defendant to a hospital as defined in section 1631 of Title 5 and direct that he be kept there in safe confinement until his reason is restored.

§ 4457. Procedure on finding of sanity or insanity

(a) If it is found that the defendant is sane, the warden shall proceed to execute the judgment as specified in the warrant.

(b) If it is found that the defendant is insane, the warden shall suspend the execution and transmit a copy of the order mentioned in section 4456 of this title to the Governor, and deliver the defendant, together with a certified copy of the order, to the head of the hospital named in the order.

(c) When in the opinion of at least one designated examiner, as defined by section 1631 of Title 5, the defendant has become sane, the head of the hospital to which the defendant has been committed shall report the opinion and findings of the designated examiner to the district court. The report shall be made a part of the court record and shall be accessible to the counsel for the Government and the defendant or his counsel.

(d) Within a reasonable time after the filing of a report under subsection (c) of this section, the district court shall hold a hearing, upon due notice, in which evidence as to the mental condition of the defendant may be submitted, and the court shall make a finding with respect thereto. If the defendant appears without counsel, the court shall appoint counsel to represent him at the hearing.

(e) If the district court finds that the defendant has recovered his sanity, it shall certify that fact to the Governor, who shall thereupon issue to the warden his warrant appointing a day for the execution of the judgment, and the warden shall thereupon return the defendant to the penitentiary pending the execution of the judgment. If the district court finds that the defendant has not recovered his sanity, it shall direct the return of the defendant to the hospital, to be there kept in safe confinement until his sanity is restored.

§ 4458. Inquiry into supposed pregnancy of defendant

If there is good reason to believe that a female against whom a sentence of death is rendered is pregnant, proceedings shall be had as provided by section 4454 of this title, except that the district court shall cause the defendant to be examined by three disinterested physicians, of good standing in their profession. Upon receiving the report of the physicians, the district court shall hold a hearing as provided in section 4455 of this title and make a finding with respect to the pregnancy of the defendant.

§ 4459. Procedure on finding of pregnancy or otherwise

If the district court finds that the female is not pregnant, the warden shall execute the judgment. If it is found that the female is pregnant, the warden shall suspend the execution of the judgment and transmit a certified copy of the finding to the Governor. When the Governor receives from the warden a certificate that the defendant is no longer pregnant, the Governor shall issue to the warden his warrant appointing a day for the execution of the judgment.

§ 4460. Ordering execution of judgment of death remaining in force unexecuted

If, for any reason other than the pendency of an appeal or a suspension of judgment under section 4457 or 4459 of this title, a judgment of death has not been executed and it remains in force, the district court, on the application of the United States attorney, shall order the defendant to be brought before it, or if he is at large, a warrant for apprehension may be issued. Upon the defendant being brought before the court, it shall inquire into the facts, and if no legal reason exists against the execution of the judgment, shall make an order that the warden of the penitentiary to whom the marshal is directed to

deliver the defendant, shall execute the judgment at a specified time. The warden shall execute the judgment accordingly.

From an order fixing the time for and directing the execution of a judgment, as provided in this section, there shall be no appeal.

§ 4461. Mode of inflicting punishment of death

The punishment of death shall be inflicted by hanging the defendant by the neck until he is dead.

§ 4462. Place of execution of judgment of death; persons present

A judgment of death shall be executed within the walls of the penitentiary. The warden of the penitentiary shall be present at the execution, and shall invite the presence of a physician, the United States attorney, and at least 12 reputable residents of the Canal Zone, to be selected by him; and he shall, at the request of the defendant, permit such ministers of the Gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. No other persons than those mentioned in this section may be present at the execution, nor may any person under 21 years of age be allowed to witness it.

§ 4463. Return upon death warrant

After the execution of a judgment of death, the warden shall make a return upon the death warrant to the district court, showing the time and the mode in which it was executed.

CHAPTER 221—PROBATION

SUBCHAPTER I—DISTRICT COURT

SUBCHAPTER II—MAGISTRATES' COURTS

Subchapter I—District Court

§ 4491. Suspension of sentence and probation

Section 3651 of Title 18, United States Code, applies to the United States District Court for the District of the Canal Zone. For such purpose, the references in that section to "any court having jurisdiction to try offenses against the United States" and "court" include the United States District Court for the District of the Canal Zone and all offenses of which it has jurisdiction; and the references therein to "defendant" include defendants convicted of offenses in that court.

§ 4492. Report of probation officer and arrest of probationer

Section 3653 of Title 18, United States Code, applies to the United States District Court for the District of the Canal Zone, to probationers under the jurisdiction of that court, to the probation officer for the Canal Zone, and, insofar as it also relates to powers and duties of United States marshals, to the United States marshal for the District of the Canal Zone. For such purpose, the references in that section to "court", "court for the district", and "court for the other district", include the United States District Court for the District of the Canal Zone; and the references therein to "district" include the Canal Zone.

Subchapter II—Magistrates' Courts

§ 4511. Suspension of sentence and probation

(a) After a conviction of, or a plea of guilty to, an offense tried in a magistrate's court, that court may, when it appears to the satisfaction of the court that the ends of justice and the best interests of the public, as well as the defendant, will be subserved thereby:

(1) suspend the imposition or execution of sentence and place the defendant upon probation; or

(2) impose a fine and also place the defendant upon probation.

(b) Probation granted under this section shall be upon such terms and conditions and for such period of time as the court deems best, but the period of probation, together with any extension thereof, may not exceed one year.

(c) The court may revoke or modify any condition of probation granted under this section or change the period thereof.

§ 4512. Conditions which may be imposed upon probationer

A magistrate's court, in placing a defendant upon probation pursuant to section 4511 of this title, may require the probationer to:

(1) pay in one or several sums a fine imposed at the time of being placed upon probation;

(2) make restitution or reparation to the aggrieved party for actual damages or loss caused by the offense for which conviction was had; and

(3) provide for the support of persons for whose support he is legally responsible.

CHAPTER 223—BAIL

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—OFFENSES TRIABLE IN MAGISTRATES' COURTS

SUBCHAPTER III—CASH DEPOSIT

SUBCHAPTER IV—SURRENDER OF DEFENDANT

SUBCHAPTER V—RECOMMITMENT OF DEFENDANT; BENCH WARRANT

Subchapter I—General Provisions

§ 4551. Admission to bail defined; authority to admit to bail

(a) Admission to bail is the order by a competent court judge or magistrate that the defendant be discharged from actual custody upon bail.

(b) In the case of an offense punishable by death, admission to bail before conviction in the exercise of discretion as provided by Rule 46(a)(1) of the Federal Rules of Criminal Procedure may be by the magistrate or district judge before whom the proceeding is pending, or by a judge who has power to issue a writ of habeas corpus.

§ 4552. Taking of bail defined; excessive bail

The taking of bail consists in the acceptance by a competent court of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the Government of the Canal Zone a specified sum. Excessive bail may not be required in any case.

§ 4553. Notice to United States attorney when bail discretionary

When the admission to bail is a matter of discretion the court or officer to whom the application is made shall require reasonable notice thereof to be given to the United States attorney.

§ 4554. Time and terms of admission to bail

A defendant may be admitted to bail before conviction:

(1) for his appearance before a magistrate for trial or for preliminary examination in cases triable in the district court;

(2) to appear in the district court to which the magistrate is required to return the complaint, upon the defendant being held to answer after preliminary examination; or

(3) after the information is filed either before a bench warrant is issued for his arrest, or upon an order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail to answer the information in the court in which it is found or to which it may be transferred for trial.

§ 4555. Qualifications of sureties

(a) The qualifications of sureties, other than corporate sureties, are as follows:

(1) each of them must be a resident of the Canal Zone; and

(2) each must be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or judge, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification is equivalent to that of sufficient bail.

(b) Corporate sureties are governed by sections 432 and 433 of Title 3.

§ 4556. Bail upon being held to answer before information

(a) When a defendant has been held to answer upon a preliminary examination for a public offense, the admission to bail may be by the magistrate by whom he is so held, or by any judge who has power to issue the writ of habeas corpus. The power of the magistrate to admit to bail extends to the time of filing of an information, and the magistrate may increase or reduce the amount of the bail in the manner provided by section 4558 of this title.

(b) Upon the allowance of bail and the execution of the undertaking, the magistrate or judge shall, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer the defendant shall be discharged.

§ 4557. Bail upon an information before conviction; continuation of prior bail

The bail fixed pursuant to section 4556 of this title, upon holding the defendant to answer for an offense triable in the district court, shall be construed to continue so as to require the defendant:

(1) to appear and answer the information filed in the district court;

(2) to render himself at all times amenable to the orders and process of the court; and

(3) if convicted to appear for judgment and render himself in execution thereof.

§ 4558. Fixing, increase or reduction of bail after information filed

After the filing of an information, the district court may fix, or, upon good cause shown, either increase or reduce the amount of bail. If the amount is increased the court may order the defendant to be committed to actual custody unless he gives bail in the increased amount. If application is made by the defendant for a reduction of the amount, notice of the application shall be served on the United States attorney.

§ 4559. Holding defendant in custody after appearance for trial

When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the keeper of the jail, to abide the judgment or further order of the court, and he shall be committed and held in custody accordingly.

Subchapter II—Offenses Triable in Magistrates' Courts

§ 4591. Admission to bail

If the offense charged against a person is triable in a magistrate's court, the defendant shall be admitted to bail upon executing a bond in a sum not exceeding $1,000, to be fixed by the magistrate.

§ 4592. Form of bond; sureties

(a) The bond shall be in favor of the Government of the Canal Zone and shall be conditioned that the defendant is to appear in the magistrate's court in accordance with all orders and directions of the magistrate relating to the appearance of the defendant before the magistrate's court in the case.

(b) The bond shall be signed by the defendant. One or more sureties may be required, cash or bonds or notes of the United States may be accepted and in proper cases no security need be required.

(c) The qualifications and justification of sureties are governed by section 4555 of this title and Rule 46(e) of the Federal Rules of Criminal Procedure.

§ 4593. Commitment to jail on failure to furnish bond

If the defendant fails to enter into the bond referred to in sections 4591 and 4592 of this title, the magistrate shall commit him to jail awaiting trial.

§ 4594. Admission to bail by officer in charge of police station

When an arrest is made either with or without a warrant for a misdemeanor triable in a magistrate's court and for any reason the officer making the arrest is unable to take him forthwith before a magistrate, he may take such offender forthwith to the nearest police station. The officer in charge of the police station may accept bond, or a cash deposit in lieu thereof, in a sum not exceeding $1,000, to se-

cure the appearance of the offender before the magistrate having jurisdiction of the case. In lieu of the bond or deposit, the officer in charge may accept the offender's signed agreement to appear before the magistrate. The offender shall then be released from custody and the bond, deposit, or agreement shall be delivered to the magistrate having jurisdiction of the case and a receipt therefor shall be given to the officer by the magistrate.

When a money deposit is made in lieu of bail bond the deposit shall be held and disposed of in accordance with sections 4631–4635 and 4673 of this title.

§ 4595. Bail on appeal to the district court

(a) After conviction of an offense in a magistrate's court, a defendant who has appealed to the district court shall be admitted to bail as a matter of right. Admission to bail may be by the magistrate before whom the trial was had or by any judge having the power to issue a writ of habeas corpus.

(b) The bail is governed by the provisions applicable to bail given in actions originally triable in the district court, except that the undertaking of bail shall be that the defendant will appear in the district court in accordance with all orders and directions of that court relating to the appearance of the defendant before the court in the case, and further, will appear before the magistrate's court from whose judgment he appealed for the purpose of complying with the judgment of that court if he withdraws the appeal as authorized by section 3927 of this title.

§ 4596. Forfeiture and exoneration of bail

Rules 46(f) and 46(g) of the Federal Rules of Criminal Procedure apply to the forfeiture and exoneration of bail in actions triable in the magistrates' courts.

Subchapter III—Cash Deposit

§ 4631. Right to make cash deposit

The defendant in a criminal proceeding, or any other person, may make a cash deposit in lieu of a bail bond.

§ 4632. Certificate of deposit

A certificate of deposit shall be issued by the magistrate or the clerk of the district court, as the case may be, to each depositor who makes a cash deposit in lieu of bail.

§ 4633. Deposit in exoneration of bail

If bail has been given, at any time before the forfeiture of the undertaking the defendant or any other person may deposit the sum mentioned in the recognizance, and, upon the deposit being made, the bail is exonerated.

§ 4634. Application of deposit to fine and costs; surplus

(a) If money has been deposited and the certificate of deposit issued in the name of the defendant, and it remains on deposit at the time of a judgment for the payment of a fine, the magistrate, or the clerk of the district court under the direction of the court, as the case may be, shall apply the money in satisfaction thereof, and, after satisfying the fine and costs, shall refund the surplus, if any, to the defendant. If the defendant is not found within a period of two years from the date of the judgment, the magistrate or the clerk of the district court, as the case may be, shall account for the surplus in the same manner as fines are accounted for.

(b) If the certificate of deposit was issued in the name of a person other than the defendant, the deposit shall be returned to the depositor after judgment.

§ 4635. Forfeiture and exoneration of deposit; disposition

(a) Rules 46(f) and 46(g) of the Federal Rules of Criminal Procedure apply to the forfeiture and exoneration of money deposited in lieu of bail.

(b) If money deposited in lieu of bail is forfeited, and the forfeiture is not set aside or remitted, the magistrate, or the clerk of the district court, as the case may be, with whom it is deposited shall pay over the money in the manner prescribed for the paying over of other funds.

Subchapter IV—Surrender of Defendant

§ 4671. Surrender of defendant and exoneration of bail or deposit

At any time before the forfeiture of the undertaking of bail or deposit by a third person, the bail or depositor may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

(1) a certified copy of the undertaking of the bail or a certified copy of the certificate of deposit shall be delivered to the officer, who shall detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender; and

(2) upon the undertaking or certificate of deposit, and the certificate of the officer, the court in which the action or appeal is pending may, upon notice of five days to the United States attorney, with a copy of the undertaking or certificate of deposit, and the certificate of the officer, order that the bail or deposit be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

§ 4672. Arrest by bail or depositor

For the purpose of surrendering the defendant, the bail or a person who has made a deposit to secure the release of the defendant, at any time before they are finally discharged, and at any place within the Canal Zone, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking or a certified copy of the certificate of deposit, may empower any person of suitable age and discretion to do so.

§ 4673. Return of deposit on surrender

If money has been deposited in lieu of bail and the defendant at any time before the forfeiture thereof surrenders himself or is surrendered to the officer to whom the commitment was directed, in the manner provided by sections 4671 and 4672 of this title, the court shall order a return of the deposit to the defendant, or to the person or persons found by the court to have deposited the money on behalf of the defendant, upon the production of the certificate of the officer showing the surrender, and upon five days' notice to the United States attorney, with a copy of the certificate.

Subchapter V—Recommitment of Defendant; Bench Warrant

§ 4701. Failure to appear; insufficient bail; bench warrant

(a) If the defendant in a criminal action triable in a district court or a magistrate's court has been released from custody on bail or on a deposit of money in lieu of bail, and does not appear in accordance with an order or direction of the court relating to his appearance, the court, in addition to the forfeiture of the bail or deposit, may issue a bench warrant for the defendant's arrest.

(b) If proof is made to the district judge or a magistrate that a defendant previously admitted to bail on a criminal charge is about to abscond, or that one or more of his bail are dead or insufficient, or have removed from the Canal Zone, the judge or magistrate shall require the defendant to give better security, or, for default thereof, cause him to be committed; and an order for his arrest may be indorsed on the former commitment, or a bench warrant for his arrest may be issued, setting forth the cause thereof.

§ 4702. Issuance and execution of bench warrant

In the district court, the bench warrant shall be issued by the clerk on order of the district judge. On application of the United States attorney, the clerk may issue additional warrants at any time after the order, whether the court is sitting or not.

§ 4703. Form and execution of bench warrant

(a) A bench warrant issued under this subchapter shall recite generally the facts upon which it is founded, and direct that the defendant be arrested by any peace officer, and either brought before the court or committed to the officer in whose custody he was at the time he was admitted to bail, to be detained until legally discharged.

(b) The defendant may be arrested upon the bench warrant in the same manner as upon a warrant of arrest.

§ 4704. Commitment or admission to bail

(a) If the bench warrant recites as the ground upon which it is made the failure of the defendant to appear for judgment upon conviction, the defendant shall be committed according to the requirement of the warrant.

(b) If the bench warrant is made for a cause other than failure to appear for judgment, the court may fix the amount of bail and cause a direction to be inserted in the warrant that the defendant be admitted to bail in the sum fixed, which shall be specified in the warrant. When the defendant is admitted to bail, the bail may be taken by a magistrate.

CHAPTER 225—SEARCH AND SEIZURE

See.

§ 4741. Search and seizure generally

(a) Except as provided in this section, Rule 41 of the Federal Rules of Criminal Procedure applies to search and seizure in the Canal Zone in connection with offenses triable in either the district court or a magistrate's court. References in Rule 41 to a United States commissioner shall be deemed to refer to a magistrate. The reference in Rule 41(b)(1) to the laws of the United States includes this Code and any other law of the United States applicable in the Canal Zone.

(b) In any case, a search warrant authorized by Rule 41(a) of the Federal Rules of Criminal Procedure may be issued by the district judge or by a magistrate.

(c) A search warrant may be directed to a peace officer, in addition to the officers designated by Rule 41(c) of the Federal Rules of Criminal Procedure.

(d) In an action triable in a magistrate's court, a motion for return of property and to suppress evidence pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure shall be made before the magistrate who issued the search warrant or the magistrate before whom the trial is to be had or is being held, unless the search warrant was issued by the district judge and the motion is made before trial.

(e) In an action triable in a magistrate's court, if the search warrant was issued by a magistrate, the warrant, return, inventory, and other papers shall be filed with the magistrate before whom the action is triable, notwithstanding Rule 41(f) of the Federal Rules of Criminal Procedure.

§ 4742. Disposition of property

All property taken on a search warrant shall be retained by the officer executing the warrant in his custody, subject to the order of the court to which the papers are returned or the order of any other court in which the offense in respect to which the property was taken is triable.

§ 4743. Search of defendant in presence of judge or magistrate

When a person charged with a felony is believed by the judge or magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the judge or magistrate may direct him to be searched and the weapons or other thing to be retained, subject to his order, or to the order of the court in which the defendant may be tried.

CHAPTER 227—CORONER; POST-MORTEM EXAMINATIONS

§ 4781. Appointment of coroner and deputies

The Governor shall appoint a coroner for the Canal Zone, and may appoint such deputy coroners as may be required.

§ 4782. Regulations of the Governor

The Governor shall prescribe, and from time to time may amend, regulations relating to the office of coroner, including, but not limited to, the procedure for investigating deaths.

§ 4783. Duties of coroner; investigation of deaths

(a) The coroner or deputy coroner shall investigate, and determine and record the cause of, the death of a person whose body is found in the Canal Zone, or whose body is brought into the Canal Zone and whose death occurred within the special maritime and territorial jurisdiction of the district court as defined by section 143 of Title 3, whenever:

(1) there is reason to believe that death was caused by:
  (A) violence or unlawful means;
  (B) suicide; or
  (C) accident or casualty;
(2) the deceased was not under the care of a physician at the time of death; or
(3) the death was sudden or unusual or occurred under suspicious circumstances.

(b) In the investigation of a death, the coroner or deputy coroner may order an autopsy if he deems it necessary.

(c) The coroner is not required to investigate the death of a member of the Armed Forces of the United States that is investigated by a board of inquiry of the Armed Forces.

§ 4784. Post-mortem examinations by health director

(a) The health director of the Canal Zone shall perform or cause to be performed a post-mortem examination on a body found within the Canal Zone if:

(1) the cause of death can not otherwise be definitely determined; or

(2) there is reason to believe that death may have been due to a disease the knowledge of which, gained by the post-mortem examination, would be of importance in guarding the health of the community.

(b) Except as provided by subsections (c) and (d) of this section, a post-mortem examination may not be performed without the consent of the person or persons having the right and duty to control the disposition of the remains of the deceased, who are, in the absence of testamentary dispositions of the deceased, respectively in order of precedence the:

(1) surviving spouse;

(2) surviving child or children;

(3) surviving parent or parents; and

(4) person or persons respectively in the next degree of kindred in the order named by law as entitled to succeed the estate of the deceased.

(c) Post-mortem examinations on bodies found within the Canal Zone may be performed by the health director or his designee, without the consent specified by subsection (b) of this section, if:

(1) the coroner or deputy coroner has ordered an autopsy in a matter within his jurisdiction; or

(2) there are reasonable grounds to believe that the deceased may have died from a quarantinable disease.

(d) Post-mortem examinations on bodies brought into the Canal Zone shall be performed by the health director or his designee only in cases specified in paragraphs (1) and (2) of subsection (c) of this section. In such cases, the consent specified in subsection (b) of this section is not required.

CHAPTER 229—COMPROMISING CRIMES

Sec.

§ 4821. Compromise of certain misdemeanors

When the person injured by an act constituting a misdemeanor has a remedy by civil action, the offense may be compromised as provided by section 4822 of this title, except when it is committed:

(1) by or upon an officer of justice, while in the execution of the duties of his office;

(2) riotously; or

(3) with an intent to commit a felony.

§ 4822. Procedure for compromise

If the person injured appears before the court in which the action is pending at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom. The reasons for the order shall be set forth therein, and entered on the minutes.

§ 4823. Order as bar to another prosecution

The order prescribed by section 4822 of this title is a bar to another prosecution for the same offense.

§ 4824. Other compromises prohibited

A public offense may not be compromised, nor may any proceeding or prosecution for the punishment thereof be stayed upon a compromise, except as provided by this chapter.

CHAPTER 231—MENTAL INCOMPETENCY OF DEFENDANT

Sec.

§ 4861. Trial or punishment of insane person prohibited

A person may not be tried, adjudged to punishment, or punished for a public offense while he is insane.

§ 4862. Mental incompetency after arrest and before sentence or expiration of probation

(a) If, at any time during the pendency of the proceedings in a criminal action triable in the district court or a magistrate's court and prior to the imposition of sentence or prior to the expiration of any period of probation, a substantial doubt arises as to the sanity of the defendant, the court shall determine if he is presently insane or is otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense.

(b) In making the determination the court shall cause the defendant, whether or not previously admitted to bail, to be examined as to his mental condition by at least one designated examiner, as defined by section 1631 of Title 5. For the purpose of the examination the court may order the defendant committed to a hospital, as defined by section 1631 of Title 5, for such reasonable period as the court may determine. The designated examiner shall report to the court, and the report shall be placed on file and shall be accessible to the counsel for the Government and to the defendant or his counsel.

(c) Upon receiving the report of the designated examiner, the court shall hold a hearing, upon due notice, in which evidence as to the mental condition of the defendant may be submitted, including that of the reporting designated examiner, and the court shall make a finding with respect thereto.

(d) No statement made by the defendant, in the course of an examination into his sanity or mental competency provided for by this section, whether the examination is made with or without the consent of the defendant, shall be admitted in evidence against the defendant on the issue of guilt in any criminal proceedings. A finding by the court that the defendant is mentally competent to stand trial or hearing shall in no way prejudice the defendant in a plea of insanity as a defense to the crime charged; and such finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

§ 4863. Mental incompetency undisclosed at trial

(a) When the Civil Affairs Director of the Canal Zone Government certifies that a prisoner convicted of a criminal offense and in the custody of the Canal Zone Government has been examined by at least three designated examiners as defined in section 1631 of Title 5, and that there is probable cause to believe that the person was insane or mentally incompetent at the time of his trial, provided the issue of insanity or mental competency was not raised and determined before or during the trial, the United States attorney shall transmit the report of the designated examiners and the certificate of the Civil Affairs Director to the court wherein the conviction was had.

(b) The court shall thereupon hold a hearing to determine the sanity or mental competency of the defendant in accordance with section 4862 of this title and with all the powers therein granted. In the hearing the certificate of the Civil Affairs Director together with the report of the designated examiners shall be prima facie evidence of the facts and conclusions certified therein.

(c) If the court finds that the defendant was insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense at the time of trial, the court shall vacate the judgment of conviction and grant a new trial.

§ 4864. Procedure upon finding of mental incompetency

When the court determines in accordance with section 4862 or 4863 of this title that a defendant is or was insane or mentally incompetent, the criminal proceedings shall be suspended and the court shall commit the defendant to a hospital as defined by section 1631 of Title 5 until:

(1) the defendant shall be sane or mentally competent to continue with the proceedings; or

(2) the pending charges against the defendant are dismissed or otherwise disposed of according to law and he is discharged from the hospital pursuant to chapter 57 of Title 5.

§ 4865. Commitment to hospital as exonerating bail

The commitment of the defendant, as provided for by section 4864 of this title, exonerates his bail. A cash deposit in lieu of bail shall be returned to the depositor or, if made by the defendant, to the person authorized to receive the property of the defendant.

§ 4866. Rehearing as to mental incompetency after commitment to hospital

(a) When in the opinion of at least one designated examiner, as defined by section 1631 of Title 5, the defendant has become sane or mentally competent, the head of the hospital to which the defendant has been committed shall report the opinion and findings of the designated examiner to the court which committed the defendant. The report shall be made a part of the court record and shall be accessible to the counsel for the Government and the defendant or his counsel.

(b) At any time after his commitment, the defendant may file a petition with the court which committed him for a rehearing on the question of his mental incompetency, if the petition is supported by an opinion and findings of at least one designated examiner, as defined by section 1631 of Title 5, that the defendant has become sane or mentally competent.

(c) Within a reasonable time after the filing of a report under subsection (a) of this section or a petition under subsection (b) of this section, the court shall hold a hearing, upon due notice, in which evidence as to the mental condition of the defendant may be submitted and the court shall make a finding with respect thereto.

(d) Section 4862(d) of this title applies to a statement by the defendant and a finding by the court in an examination or hearing provided for by this section.

§ 4867. Appeal from magistrate's determination of mental incompetency

(a) The determination by a magistrate that a defendant is insane or is otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense may be appealed by the defendant or by the Government to the district court, except that the Government may appeal only in proceedings not triable before the magistrate.

(b) Appeals shall be begun and proceeded with de novo in the district court.

(c) Upon announcement of his determination, the magistrate shall advise the defendant of his right to appeal and the manner of taking the appeal pursuant to section 3922 of this title.

(d) If an appeal is taken from a magistrate's determination that the defendant is insane or mentally incompetent, the defendant shall be committed pursuant to section 4864 of this title.

(e) Upon perfection of an appeal as required by section 3922 of this title, the magistrate shall forthwith transmit the judgment, and all documents pertaining thereto, to the clerk of the district court.

§ 4868. Mental examination of indigent defendant

If the court has reasonable cause to believe that a defendant in a criminal proceeding may have been insane at the time of the commission of the offense with which he is charged and it is demonstrated to the satisfaction of the court that the defendant is indigent, the district judge or magistrate, as the case may be, shall order the defendant, whether or not previously admitted to bail, to be observed and examined by at least one designated examiner, as defined by section 1631 of Title 5, regarding the defendant's sanity at the time of the commission of the offense. For the purpose of the examination the court may order the defendant committed to a hospital, as defined by section 1631 of Title 5, for such reasonable period as the court may determine. The designated examiner or examiners shall report to the court, and the report shall be placed on file and shall be accessible to the counsel for the Government and to the defendant or his counsel before the resumption of the proceedings. The appearance of the designated examiners to testify in behalf of the indigent defendant shall be at no expense to the defendant.

CHAPTER 233—DISPOSAL OF STOLEN OR EMBEZZLED PROPERTY AND PROPERTY TAKEN FROM ARRESTED PERSON

§ 4901. Custody of peace officer

When property alleged to have been stolen or embezzled comes into the custody of a peace officer, he shall hold it subject to the order of the court authorized by section 4902 of this title to direct the disposal thereof.

§ 4902. Delivery to owner

On satisfactory proof of the ownership of the property, the court before which the complaint is laid, or which examines the charge against the person accused of stealing or embezzling it, may, if neither party objects, order it to be delivered, permanently, or temporarily upon such conditions as the court may prescribe, to the owner on his paying the necessary expense incurred in its preservation, to be certified by the judge or magistrate of the court. The order entitles the owner to demand and receive the property.

§ 4903. Custody of court; delivery to owner

If the property stolen or embezzled comes into custody of a court, it may, if neither party objects, be delivered, permanently, or temporarily upon such conditions as the court may prescribe, to the owner on satisfactory proof of his title, and on his paying the necessary expense incurred in its preservation, to be certified by the judge or magistrate of the court.

§ 4904. Delivery by trial court

If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, may, if the time for appeal has expired and no appeal has been taken, on proof of his title, order it to be restored to the owner.

§ 4905. Unclaimed property

If the property stolen or embezzled is not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the court shall order it sold on such terms and under such conditions as the court directs. The officer making the sale shall return the proceeds into court, whereupon the court shall order the balance of the proceeds, after deducting therefrom the expenses incurred in the preservation and sale of the property, to be delivered to the Canal Zone Government to be covered into the Treasury of the United States as miscellaneous receipts.

§ 4906. Money or property taken from arrested person

When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it shall at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken. The officer shall deliver one of the receipts to the defendant and forthwith file the other, together with the money or property, with the desk officer of the police station.

§ 4907. Police department entries

The clerk or person having charge at the police department shall enter in a suitable book a description of every article of property alleged to be stolen or embezzled and brought into the office or taken from the person of a prisoner, and shall attach a number to each article, and make a corresponding entry thereof.

CHAPTER 235—CORPORATIONS AS DEFENDANTS

Sec.

§ 4941. Summons on complaint against corporation; service

(a) Upon the filing of a complaint against a corporation in a criminal action triable in the district court or a magistrate's court, a summons shall be issued as provided by Rule 4 of the Federal Rules of Criminal Procedure and section 3702 of this title, summoning the corporation to appear before the magistrate to answer the charge at a stated time and place. The time may not be less than 10 days after the issuance of the summons.

(b) The summons to the corporation shall be served as provided by Rule 4(c)(1), (2), and (3) and Rule 9(c)(1) of the Federal Rules of Criminal Procedure and return thereof shall be made as provided by Rule 4(c)(4). The service shall be made at least five days before the date of appearance stated in the summons.

§ 4942. Preliminary examination, information, and subsequent proceedings

If the action is triable in the district court, the magistrate before whom the corporation is summoned to appear shall hold a preliminary examination as in the case of a natural person and certify either that there is or is not sufficient cause to believe the corporation guilty of the offense charged. In either case, the United States attorney may conduct an investigation and present an information to the district court and thereafter the same proceedings shall be had as in the case of a natural person.

§ 4943. Actions triable in magistrate's court

If an action against a corporation is triable in a magistrate's court, the same proceedings shall be had as in the case of a natural person. If the corporation fails to appear at the trial, the magistrate shall enter a plea of not guilty.

§ 4944. Collection of fine

When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the proper officer of the court, out of the real and personal property of the corporation, in the same manner as upon an execution in a civil action.

CHAPTER 237—CRIMINAL EXTRADITION AND REMOVAL

SUBCHAPTER I—EXTRADITION AND REMOVAL GENERALLY; REWARDS

SUBCHAPTER II—UNIFORM CRIMINAL EXTRADITION ACT

SUBCHAPTER III—EXTRADITION OF FUGITIVES FROM REPUBLIC OF PANAMA

Subchapter I—Extradition and Removal Generally; Rewards

§ 4981. Application of extradition laws and treaties of United States

All laws and treaties relating to the extradition of persons accused of crime in force in the United States, to the extent that they are not in conflict with or superseded by any special treaty entered into between the United States and the Republic of Panama with respect to the Canal Zone, and all laws relating to the rendition of fugitives from justice as between the several States and Territories of the United States, shall extend to and be considered in force in the Canal Zone, and for such purposes the Canal Zone shall be considered and treated as an organized Territory of the United States.

§ 4982. Arrest and removal to or from the Canal Zone

Section 3041 of Title 18, United States Code, and Rule 40 of the Federal Rules of Criminal Procedure, as far as applicable, apply throughout the United States for the arrest and removal therefrom to the Canal Zone of any person charged with the commission of any crime or offense against the United States within the Canal Zone, and apply within the Canal Zone for the arrest and removal therefrom to the United States of any person charged with the commission of any crime or offense against the United States.

The person may, by any judge or magistrate of the Canal Zone, and agreeably to the usual mode of process against offenders therein, be arrested and imprisoned or bailed, as the case may be, pending the issuance of a warrant for his removal to the United States, which warrant it shall be the duty of a judge of the district court seasonably to issue, and of the officer or agent of the United States designated for the purpose to execute. The officer or agent, when engaged in executing the warrant without the Canal Zone, has all the powers of a marshal of the United States as far as such powers are requisite for the prisoner's safe keeping and the execution of the warrant.

§ 4983. Payment of expenses

When the Governor of the Canal Zone demands the surrender to the authorities of the Canal Zone of an accused person who has been found and arrested in any State of the United States or in any foreign country, the accounts of the person employed by the Governor to bring back the accused person shall be audited and paid out of the treasury of the Canal Zone.

§ 4984. Limitation on compensation, fee, or reward

Compensation, fees, or rewards of any kind may not be paid to or received by a public officer of the Canal Zone, or other person, for a service rendered in procuring from the Governor the demand provided for by section 4983 of this title, or the surrender of the accused person, or for conveying him to the Canal Zone, or detaining him therein, except as provided in that section.

§ 4985. Rewards for apprehension of fugitives

The Governor may offer a reward not exceeding $1,000 for the apprehension of:

(1) a convict who has escaped from the penitentiary; or

(2) a person who has committed or is charged with the commission of an offense punishable with death.

Subchapter II—Uniform Criminal Extradition Act

§ 5021. Definitions

In this subchapter, the term "Governor" includes any person performing the functions of Governor by authority of the law applicable in the Canal Zone. The term "Executive Authority" includes the governor and any person performing the functions of governor in a state other than the Canal Zone, and the term "State", referring to a state other than the Canal Zone, includes any state or territory, organized or unorganized, of the United States of America.

§ 5022. Fugitives from justice; duty of Governor

Subject to this subchapter, the provisions of the Constitution of the United States controlling, and acts of Congress in pursuance thereof, it is the duty of the Governor of the Canal Zone to have arrested and delivered up to the Executive Authority of a State any person charged in that State with treason, felony, or other crime, who has fled from justice and is found in the Canal Zone.

§ 5023. Form of demand

A demand for the extradition of a person charged with crime in another State may not be recognized by the Governor unless in writing alleging, except in cases arising under section 5026 of this title, that the accused was present in the demanding State at the time of the commission of the alleged crime, and that thereafter he fled from the State, and accompanied by a copy of an indictment found or by information supported by affidavit in the State having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the Executive Authority of the demanding State that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that State; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the Executive Authority making the demand.

§ 5024. Governor may investigate case

When a demand is made upon the Governor of the Canal Zone by the Executive Authority of a State for the surrender of a person so charged with crime, the Governor may call upon the United States attorney to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

§ 5025. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion

When it is desired to have returned to the Canal Zone a person charged in the Canal Zone with a crime, and he is imprisoned or is held under criminal proceedings then pending against him in another State, the Governor of the Canal Zone may agree with the Executive Authority of the other State for the extradition of the person before the conclusion of the proceedings or his term of sentence in the other State, upon condition that he be returned to the other State at the expense of the Canal Zone as soon as the prosecution in the Canal Zone is terminated.

The Governor of the Canal Zone may also surrender on demand of the Executive Authority of a State any person in the Canal Zone who is charged in the manner provided by section 5023 of this title with

having violated the laws of the State whose Executive Authority is making the demand, even though the person left the demanding State involuntarily.

§ 5026. Extradition of persons not present in demanding state at time of commission of crime

The Governor of the Canal Zone may also surrender, on demand of the Executive Authority of a State, any person in the Canal Zone charged in that State in the manner provided by section 5023 of this title with committing an act in the Canal Zone, or in a third State, intentionally resulting in a crime in the State whose Executive Authority is making the demand, and the provisions of this subchapter not otherwise inconsistent, apply to such cases, even though the accused was not in that State at the time of the commission of the crime, and has not fled therefrom.

§ 5027. Issue of Governor's warrant of arrest; its recitals

If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the seal of the Canal Zone, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

§ 5028. Manner and place of execution

The warrant prescribed by section 5027 of this title shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the Canal Zone and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this subchapter, to the duly authorized agent of the demanding State.

§ 5029. Authority of arresting officer

A peace officer or other person empowered to make the arrest has the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

§ 5030. Rights of accused person; application for writ of habeas corpus

A person arrested upon such a warrant may not be delivered over to the agent whom the Executive Authority demanding him has appointed to receive him unless he is first taken forthwith before the judge of the district court, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the district court shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such a writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the United States attorney, and to the agent of the demanding State.

During the absence of the district judge, the powers conferred upon the district court by this section may be exercised by a magistrate or a magistrate's court.

§ 5031. Penalty for non-compliance with preceding section

An officer who delivers to the agent for extradition of the demanding State a person in his custody under the Governor's warrant in willful disobedience to section 5030 of this title, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than $1,000 or be imprisoned in jail not more than six months, or both.

§ 5032. Confinement in jail when necessary

The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding State to whom the prisoner may have been delivered may, when necessary, confine the prisoner in any jail in the Canal Zone; and the keeper of the jail shall receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, the officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding State to whom a prisoner may have been delivered following extradition proceedings in another State, or to whom a prisoner may have been delivered after waiving extradition in the other State, and who is passing through the Canal Zone with such a prisoner for the purpose of immediately returning him to the demanding State may, when necessary, confine the prisoner in any jail in the Canal Zone; and the keeper of the jail shall receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, the officer or agent being chargeable with the expense of keeping, if the officer or agent produces and shows to the keeper of the jail satisfactory written evidence of the fact that he is actually transporting the prisoner to the demanding State after a requisition by the Executive Authority of the demanding State. The prisoner is not entitled to demand a new requisition while in the Canal Zone.

§ 5033. Arrest prior to requisition

When a person within the Canal Zone is charged on the oath of a credible person before a judge or magistrate of the Canal Zone with the commission of a crime in another State and, except in cases arising under section 5026 of this title, with having fled from justice, or with having been convicted of a crime in that State and having escaped from confinement, or having broken the terms of his bail, probation or parole, or when complaint has been made before a judge or magistrate of the Canal Zone setting forth on the affidavit of a credible person in another State that a crime has been committed in the other State and that the accused has been charged in that State with the commission of the crime, and, except in cases arising under section 5026 of this title, has fled from justice, or with having been convicted of a crime in that State and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in the Canal Zone, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in the Canal Zone, and bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

§ 5034. Arrest without a warrant

The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a State with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in section 5033 of this title; and thereafter his answer shall be heard as if he had been arrested on a warrant.

§ 5035. Commitment to await requisition; bail

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 5026 of this title, that he has fled from justice, the judge or magistrate shall, by a warrant reciting the accusation, commit him to jail for such time not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the Executive Authority of the State having jurisdiction of the offense, unless the accused gives bail as provided by section 5036 of this title, or until he is legally discharged.

§ 5036. Bail; in what cases; conditions of bond

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the State in which it was committed, a judge or magistrate in the Canal Zone may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in the bond, and for his surrender, to be arrested upon the warrant of the Governor of the Canal Zone.

§ 5037. Extension of time of commitment; adjournment

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed 60 days, or a judge or magistrate may again take bail for his appearance and surrender, as provided by section 5036 of this title, but within a period not to exceed 60 days after the date of the new bond.

§ 5038. Forfeiture of bail

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within the Canal Zone. Recovery may be had on the bond as in the case of other bonds given by the accused in criminal proceedings within the Canal Zone.

§ 5039. Persons under criminal prosecution in Canal Zone at time of requisition

If a criminal prosecution has been instituted against the person under the laws applicable in the Canal Zone and is still pending the Governor, in his discretion, may either surrender him on demand of the Executive Authority of a State or hold him until he has been tried and discharged or convicted and punished in the Canal Zone.

§ 5040. Guilt or innocence of accused, when inquired into

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided has been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

§ 5041. Governor may recall warrant or issue alias

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems it proper.

§ 5042. Fugitives from Canal Zone; duty of Governor

When the Governor of the Canal Zone demands a person charged with crime, other than an offense against the United States,

or with escaping from confinement or breaking the terms of his bail or breaking the terms of probation granted by a magistrate's court, in the Canal Zone, from the Executive Authority of a State, or from the chief judge or an associate judge of the United States District Court for the District of Columbia authorized to receive the demand under the laws of the United States, he shall issue a warrant under the seal of the Canal Zone, to an agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the Canal Zone.

§ 5043. Application for issuance of requisition; by whom made; contents

(a) When the return to the Canal Zone of a person charged with crime in the Canal Zone, other than an offense against the United States, is required, the United States attorney shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the State in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the United States attorney the ends of justice require the arrest and return of the accused to the Canal Zone for trial and that the proceeding is not instituted to enforce a private claim.

(b) When the return to the Canal Zone is required of a person who has been convicted of a crime in the Canal Zone, other than an offense against the United States, and has escaped from confinement or broken the terms of his bail or broken the terms of probation granted by a magistrate's court, the United States attorney, probation officer, or peace officer from whom, or warden of the institution from which, escape was made, shall present to the Governor a written application for a requisition for the return of the person in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail or probation, and the State in which he is believed to be, including the location of the person therein at the time application is made.

(c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The United States attorney or other officer making the application may also attach such further affidavits and other documents in duplicate as he deems proper to be submitted with the application. One copy of the application, with the action of the Governor indicated by indorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the executive secretary of the Canal Zone Government to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

§ 5044. Costs and expenses

When the Governor of the Canal Zone demands a person pursuant to this subchapter, costs and expenses shall be paid as provided by section 4983 of this title.

§ 5045. Immunity from service of process in certain civil actions

A person brought into the Canal Zone by, or after waiver of, extradition based on a criminal charge is not subject to service of personal

process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

§ 5046. Written waiver of extradition proceedings

A person arrested in the Canal Zone charged with having committed a crime in another State or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for by sections 5027 and 5028 of this title and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of the judge of the district court a writing which states that he consents to return to the demanding State; but if before the waiver is executed or subscribed by the person it shall be the duty of the judge to inform the person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for by section 5030 of this title.

If and when the consent has been duly executed it shall forthwith be forwarded to the office of the Governor of the Canal Zone and filed therein. The judge shall direct the officer having the person in custody to deliver forthwith the person to the duly accredited agent or agents of the demanding State, and shall deliver or cause to be delivered to the agent or agents a copy of the consent; but this section does not limit the rights of the accused person to return voluntarily and without formality to the demanding State, and this waiver procedure is not an exclusive procedure and does not limit the powers, rights or duties of the officers of the demanding State or of the Canal Zone.

During the absence of the district judge, the powers conferred upon the district court by this section may be exercised by a magistrate or a magistrate's court.

§ 5047. Non-waiver by Canal Zone

This subchapter does not constitute a waiver by the Government of the Canal Zone of its right, power or privilege to try such a demanded person for crime committed within the Canal Zone, or of its right, power or privilege to regain custody of the person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within the Canal Zone, and proceedings had under this subchapter which result in, or fail to result in, extradition does not constitute a waiver by the Government of the Canal Zone, of any of its rights, privileges or jurisdiction.

§ 5048. No right of asylum; no immunity from other criminal prosecutions

After a person has been brought back to the Canal Zone by, or after waiver of extradition proceedings, he may be tried in the Canal Zone for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

§ 5049. Uniformity of interpretation

The provisions of this subchapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

§ 5050. Short title

This subchapter may be cited as the Uniform Criminal Extradition Act.

Subchapter III—Extradition of Fugitives From Republic of Panama

§ 5081. Delivery to Panama of offenders who seek refuge in Canal Zone

All persons who have been condemned, prosecuted or accused before the courts of the Republic of Panama as authors or accomplices of crimes, transgressions or offenses against the laws of that Republic, who seek refuge in the Canal Zone, shall be, upon apprehension, taken into custody by the authorities of the Canal Zone and delivered to the authorities of the Republic of Panama, upon the demand of the Government of that Republic and compliance with the procedure prescribed in this subchapter.

§ 5082. Discretion as to delivery of citizen of United States

The Government of the Canal Zone may decline compliance with a demand of the Government of the Republic of Panama for the arrest and delivery to the authorities of that Republic of a fugitive from the justice of the Republic of Panama when the fugitive is a citizen of the United States. The discretion reserved shall be exercised by the Governor of the Canal Zone.

§ 5083. Person under accusation or sentence in Canal Zone

If the person whose arrest and delivery is demanded is accused of, or under sentence for, a crime, transgression or offense committed in the Canal Zone, he may not be delivered to the authorities of the Republic of Panama until he has been acquitted or pardoned, or has undergone his sentence pursuant to the laws of the Canal Zone.

§ 5084. Prosecution for graver offense

If, in the course of the proceedings in the courts of the Republic of Panama, in the case to which the arrest and delivery appertain, it appears that probable cause exists for believing the delinquent guilty of another and graver offense against the laws of the Republic of Panama than that which gave rise to the request for his apprehension and delivery, the Government of that Republic may prosecute the fugitive for such other offense after notice to that effect to the Government of the Canal Zone.

§ 5085. Form of demand for arrest and delivery

A demand for the arrest and delivery of a fugitive from the justice of the Republic of Panama, pursuant to the terms of this subchapter, will be complied with when made in writing and signed by the Minister for Foreign Affairs of the Republic of Panama, or by his direction, and presented to the Governor of the Canal Zone. If the demand is for a condemned and fugitive criminal, it shall be accompanied by a duly certified copy of sentence pronounced by a court of competent jurisdiction, and, as far as possible, a description of the fugitive sought to be reclaimed.

§ 5086. Telegraphic request for detention

In case of urgency, where there are reasonable grounds for fearing that the fugitive may avoid apprehension, his detention may be asked for by telegraph.

§ 5087. Procedure for arrest and detention

The arrest and detention shall be accomplished in the manner and by the officials prescribed by the laws of the Canal Zone.

§ 5088. Term of detention

Detentions authorized by this subchapter may not continue longer than 15 days, during which the procedure for securing the delivery of the fugitive to the authorities of the Republic of Panama shall be completed.

§ 5089. Authority of agents of Panama receiving fugitive in Canal Zone

For the purpose of accomplishing the delivery of the fugitives apprehended and delivered in pursuance of this subchapter the Republic of Panama may send its agent or agents duly authorized to receive the fugitive into the territory of the Canal Zone, but the agent's action and authority shall be limited to receiving the fugitive at the point of departure for return to the Republic of Panama and, at the moment of departure and thenceforth, to exercising the necessary vigilance and restraint to prevent the escape of the person in custody.

§ 5090. Duty of Canal Zone authorities to facilitate return of fugitive

It is the duty of the authorities of the Canal Zone on the line of transit to provide the persons charged with the conveyance of the fugitives so delivered with all the means necessary to prevent escape and to remove all unlawful obstacles that may hinder or delay the return of the fugitives to the territory of the Republic of Panama.

§ 5091. Delivery of objects found in fugitive's possession

All papers and other objects found in the possession of the fugitive at the time of his detention that refer to the crime, transgression or offense of which the fugitive is accused or convicted shall be delivered to the Government of the Republic of Panama. These papers and objects shall be restored after the conclusion of the case if there are third parties who assert a right to or over them. The authorities of the Government of the Canal Zone may provisionally retain the objects and papers as long as they are required for use as evidence in any other case pending or contemplated in the courts of the Canal Zone, whether or not the case is related to the case wherein the demand for the apprehension and return of the fugitive originated.

§ 5092. Expense of capture, detention and transportation of fugitive

The expense of capture, detention and transportation of a fugitive from the justice of the Republic of Panama, shall be paid by that Republic; but such expenses shall not include compensation for the services of the judiciary, military or police authorities of the Government of the Canal Zone.

PART 3—PRISONS AND PRISONERS

CHAPTER 351—PRISONS AND PRISONERS GENERALLY

§ 6501. Regulations for management of prisoners

The Governor shall prescribe, and from time to time may amend, regulations providing for the management of prisoners in the penal institutions of the Canal Zone, including provisions for treatment,

care, assignment for work insofar as authorized by law, discipline, and welfare.

§ 6502. Hard labor in felony convictions; work in misdemeanor convictions

In all cases of conviction of felony the sentence of imprisonment shall be served at hard labor. In all cases of conviction of misdemeanor the sentence of confinement shall entail the performance of work incidental to maintenance of the jails, premises and equipment.

§ 6503. Transfer of prisoners

(a) Prisoners may be transferred from one penal institution to another within the Canal Zone designated by the Governor when:

(1) the room in a penal institution is insufficient for the prisoners confined therein; or

(2) the Governor determines, in the cases of women prisoners or prisoners under 18 years of age, that the public welfare will best be subserved by imprisonment elsewhere than in the prison at Gamboa.

(b) A transfer under this section may not aggravate or affect the condition of the prisoners in any way, and they shall serve in accordance with their sentences.

§ 6504. Penitentiary at Gamboa

The prison situated at Gamboa is a penitentiary of and for the Canal Zone.

§ 6505. Receipt and detention of convicts at penitentiary

The warden or keeper of the penitentiary shall receive, imprison and detain all persons who have been sentenced to imprisonment therein by the district court or by other courts possessing the requisite jurisdiction or by other competent authority.

§ 6506. Bringing prisoner before a court

When it is necessary to have a person who is imprisoned in a penal institution brought before a court, an order for that purpose may be made by the court and executed by the officer of the court where it is made.

§ 6507. Clothing and money for discharged prisoners

On the discharge of a prisoner from a penal institution in the Canal Zone the prisoner may, in the discretion of the Governor, be furnished with such suitable clothing as may be authorized by the Governor, and an amount of money not exceeding $20.

CHAPTER 353—GOOD CONDUCT ALLOWANCES

Sec.

§ 6541. Computation of good time allowances

Each prisoner convicted of an offense against the laws of the United States or the laws of the Canal Zone and confined in a penal institution in the Canal Zone for a definite term other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence beginning with the day on which the sentence commences to run, as follows:

Five days for each month, if the sentence is not less than six months and not more than one year.

Six days for each month, if the sentence is more than one year and less than three years.

Seven days for each month, if the sentence is not less than three years and less than five years.

Eight days for each month, if the sentence is not less than five years and less than ten years.

Ten days for each month, if the sentence is ten years or more.

When two or more consecutive sentences are to be served, the aggregate of the served sentences shall be the basis upon which the deduction shall be computed.

§ 6542. Discharge

A prisoner shall be released at the expiration of his term of sentence less the time deducted for good conduct. A certificate of such deduction shall be entered on the commitment by the warden or keeper.

§ 6543. Released prisoner as parolee

A prisoner having served his term or terms less good-time deductions shall, upon release, be deemed as if released on parole until the expiration of the maximum term or terms for which he was sentenced less 180 days.

This section does not prevent delivery of a prisoner to the authorities of any State or country otherwise entitled to his custody.

§ 6544. Forfeiture for offense

If during the term of imprisonment a prisoner commits any offense or violates the rules of the institution, all or any part of his earned good time may be forfeited.

§ 6545. Restoration of forfeited commutation

The Governor may restore any forfeited or lost good time or such portion thereof as he deems proper.

CHAPTER 355—PARDONS AND REPRIEVES

Sec.

§ 6581. Pardons and reprieves by Governor

The Governor may grant pardons and reprieves and remit fines and forfeitures for offenses against the laws of the Canal Zone. He may also grant reprieves for offenses against the laws of the United States until the decision of the President is made known thereon. Pardons granted by the Governor have the same legal effect for all purposes as pardons granted by the President.

CHAPTER 357—PAROLE

Sec.

§ 6621. Eligibility for parole

A prisoner confined in a penitentiary, jail or prison in the Canal Zone for a definite term or terms of over six months or for the term of his natural life, whose record shows that he has observed the rules of the institution in which he is confined, may be released by the Governor on parole after serving one-third of such term or terms or after serving 15 years of a life sentence or of a sentence of over 45 years.

§ 6622. Application for parole

Application for parole shall be made in writing. An application may not be considered unless the penitentiary, jail, or prison records show that:

(1) the applicant's conduct has been uniformly excellent for a period of at least six months immediately preceding the date of the application, or for a period immediately preceding the date of the application amounting to at least one-third of the term of imprisonment; and

(2) the applicant has served the minimum time fixed by section 6621 of this title.

§ 6623. Conditions of parole

(a) If it appears to the Governor from a report by the proper officers of the penitentiary, prison or jail, or upon application by a prisoner for release on parole that there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws, and if in the opinion of the Governor the release is not incompatible with the welfare of society, the Governor may in his discretion authorize the release of the prisoner on parole.

(b) The parolee shall be allowed to return to his home, or to go elsewhere, upon such terms and conditions as the Governor prescribes.

§ 6624. Violation of parole

(a) Violation of any condition of the parole within the maximum term or terms for which he was sentenced shall subject the prisoner to be retaken upon a warrant issued by the Governor or his designee and the warrant may be served by any peace officer. The unexpired term of imprisonment of the prisoner shall begin to run from the date he is returned under the warrant to the penitentiary, prison or jail from which he was paroled.

(b) A prisoner taken into custody by virtue of a warrant under this section shall be given an opportunity to appear before the Governor or his designee or designees and the Governor may, after a hearing, or after a hearing has been waived, revoke the order of parole or modify the terms and conditions thereof.

(c) If the order of parole is revoked the prisoner shall serve all or any part of the remainder of the sentence originally imposed and the time the prisoner was out on parole may not be taken into account to diminish the time for which he was sentenced.

§ 6625. Regulations by Governor

The Governor shall prescribe, and from time to time may amend, regulations regarding parole necessary or desirable in carrying out the provisions of this chapter and not inconsistent therewith.

TITLE 7—DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

PART 1—WILLS

CHAPTER 1—GENERAL PROVISIONS REGARDING WILLS

§ 1. Definition of will

As used in this Code, unless it is otherwise provided or the context requires a different construction, application or meaning, "will" means "last will and testament" and includes "codicil".

§ 2. Persons who may make a will; property subject to disposal

Every person of sound mind, over 18 years of age, may dispose by will, of:

(1) his separate property;

(2) the whole or any part of his body to a teaching institution, university, college, the health director of the Canal Zone Government, or a legally licensed hospital, or to or for the use of a nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by an agency approved under regulations established pursuant to section 911 of Title 2, either for use as the institution, university, college, the health director, hospital or agency may see fit, or for use as expressly designated in the will; and

(3) community property to the extent provided by sections 521 and 522 of this title.

The estate not disposed of by will is succeeded to as provided by chapters 31 and 33 of this title.

§ 3. Effect of duress, menace, fraud or undue influence

A will, or part of a will, procured by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

§ 4. Conjoint or mutual will

A conjoint or mutual will is valid, but may be revoked by any of the testators in like manner as any other will.

§ 5. Republication by codicil

The execution of a codicil referring to a previous will republishes the will as modified by the codicil.

§ 6. Bequest for charitable uses

(a) A bequest or legacy to a charitable or benevolent society or corporation, or to a person, in trust for charitable uses, is not valid unless the will is duly executed at least 30 days before the death of the testator.

If the testator has legal heirs, the charitable bequests may not exceed one third of his estate; if their aggregate amount is more, they shall be reduced pro rata to one third of the estate.

Testamentary dispositions contrary to this section are void and the property shall go to the residuary legatee, next of kin, or heirs, according to law.

(b) This section does not apply to bequests or devises made by will executed at least six months prior to the death of a testator, if:

(1) he leaves no parent, spouse, child, or grandchild; or

(2) his parents, spouse, children, and grandchildren waived the restriction in this section by a writing executed at least six months before his death.

CHAPTER 3—EXECUTION OF WILLS

Sec.

§ 41. Execution of written will; attestation

A will, other than a nuncupative will, shall be in writing, and a will other than a holographic will, and a nuncupative will, shall be executed and attested as follows:

(1) it shall be subscribed at the end thereof to the testator himself, or by another person in his presence and by his direction; and a person who subscribes the testator's name, by his direction, shall write his own name as a witness to the will, but a failure to do so does not affect the validity of the will;

(2) the subscription shall be made, or the testator shall acknowledge it to have been made by him or by his authority, in the presence of both of the attesting witnesses, present at the same time;

(3) at the time of subscribing or acknowledging the instrument, the testator shall declare to the attesting witnesses that it is his will;

(4) there shall be at least two attesting witnesses, each of whom shall sign the instrument as a witness, at the end of the will, at the testator's request and in his presence; and the witnesses shall give their places of residence, but a failure to do so will not affect the validity of the will.

§ 42. Devises and bequests to subscribing witnesses

Beneficial devises, bequests and legacies to a subscribing witness are void, unless there are two other competent and disinterested subscribing witnesses to the will, except that if the interested witness would be entitled to a share of the estate of the testator in case the will were not established, he shall take such proportion of the devise or bequest made to him in the will as does not exceed the share of the estate which would be distributed to him if the will were not established.

§ 43. Creditors as competent witnesses

A mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

§ 44. Holographic will

A holographic will is one that is entirely written, dated, and signed by the testator himself. It is subject to no other form, and may be made in or out of the Canal Zone, and need not be witnessed. An address, date or other matter written, printed or stamped upon the document, which is not incorporated in the provisions that are in the handwriting of the decedent, may not be considered as a part of the will.

§ 45. Nuncupative will; persons who may make; witnesses; property disposable

(a) A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. It may be made orally by a person who, at the time of making, is in:

(1) actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death; or

(2) expectation of immediate death from an injury received the same day.

(b) A nuncupative will shall be proved by two witnesses who were present at the making thereof, at least one of whom was asked by the testator, at the time, to bear witness that it was his will, or to that effect.

(c) A nuncupative will may dispose of personal property only, and the estate bequeathed may not exceed $1,000 in value.

§ 46. Will made outside the Canal Zone

A will made outside the Canal Zone which might be proved and allowed by the laws of the State or country in which it was made, may be proved, allowed, and recorded in the Canal Zone, and has the same effect as if executed according to the laws of the Canal Zone.

§ 47. Will made in Canal Zone by citizen of another State or country

A will made within the Canal Zone by a citizen or subject of another State or country, which:

(1) is executed in accordance with the law of the State or country of which he is a citizen or subject; and

(2) might be proved and allowed by the law of that State or country—

may be proved, allowed, and recorded in the Canal Zone, and has the same effect as if executed according to the laws of the Canal Zone.

§ 48. Construction of chapter

This chapter does not impair the validity of the execution of a will made before January 2, 1963.

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CHAPTER 5—REVOCATION OF WILLS

Sec.
81. Revocation of written will; duplicate will.
82. Revocation by subsequent will.
83. Effect on prior will of revocation of subsequent will.
84. Revocation by marriage.
85. Revocation by marriage and birth of issue or adoption of children.
86. Instrument altering interest in property previously disposed of by will.
87. Contract for sale or transfer of property previously disposed of by will.
88. Mortgage or transfer of property previously disposed of by will.
89. Revocation of codicils.
90. Construction of chapter.

§ 81. Revocation of written will; duplicate will

(a) Except as provided in this chapter, a written will, or any part thereof, may be revoked or altered only by:

(1) a written will, or other writing of the testator, declaring the revocation or alteration, and executed with the same formalities required for the execution of a will; or

(2) being burned, torn, cancelled, defaced, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the testator himself, or by another person in his presence and by his direction; and if the act is done by a person other than the testator, the direction of the testator, and the fact of the injury or destruction, shall be proved by two witnesses.

(b) A will executed in duplicate is revoked if one of the duplicates is burned, torn, cancelled, defaced, obliterated, or destroyed under the circumstances specified by subsection (a)(2) of this section.

§ 82. Revocation by subsequent will

A will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the prior will. In other cases the prior will remains effectual as far as consistent with the provisions of the subsequent will; but the mere naming of an executor in the prior will need not be given effect by the court when the subsequent will is otherwise wholly inconsistent with the terms of the prior will, the intention of the testator in this respect being left to the determination of the court.

§ 83. Effect on prior will of revocation of subsequent will

If, after making a will, the testator makes a second will, the destruction or other revocation of the second will does not revive the first will, unless:

(1) it appears by the terms of the revocation that it was the intention to revive and give effect to the first will; or

(2) after the destruction or other revocation, the first will is duly republished.

§ 84. Revocation by marriage

If a person marries after making a will, and the spouse survives the maker, the will is revoked as to the spouse, unless:

(1) provision has been made for the spouse by marriage contract; or

(2) the spouse is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision.

Other evidence to rebut the presumption of revocation may not be received.

§ 85. Revocation by marriage and birth of issue or adoption of children

If a person marries after making a will and has issue of the marriage, or marries after making a will and, with his or her spouse, legally adopts a child or children, and any of the issue of the marriage,

or of the children so adopted, survive the maker, or any of the issue of the marriage is born after the maker's death, the will is revoked as to the issue or adopted children so surviving, or as to the issue so born, unless:

(1) provision has been made for the issue or adopted child or children by some settlement; or

(2) the issue or adopted child or children are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision.

Other evidence to rebut the presumption of revocation may not be received.

§ 86. Instrument altering interest in property previously disposed of by will

If the instrument by which an alteration is made in the testator's interest in any property previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless the inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

§ 87. Contract for sale or transfer of property previously disposed of by will

An agreement made by a testator for the sale or transfer of property disposed of by a will previously made does not revoke the disposal. The property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise, against the legatees, as might be had against the testator's successors, if the property had passed by succession.

§ 88. Mortgage or transfer of property previously disposed of by will

A testamentary disposal of property is not revoked by a subsequent:

(1) charge or encumbrance placed by the testator upon the property to secure the payment of money or the performance of a covenant or agreement; or

(2) transfer, settlement, or other act of the testator by which his interest in the property is altered but not wholly divested.

Subject to the charge or encumbrance, the property, or the remaining interest therein, passes by the will.

§ 89. Revocation of codicils

The revocation of a will revokes all its codicils.

§ 90. Construction of chapter

This chapter applies to wills made by a testator living at the expiration of one year after January 2, 1963.

CHAPTER 7—KINDRED NOT MENTIONED IN WILL; DEATH OF LEGATEES

Sec.

§ 121. Children and grandchildren omitted in will

When a testator omits to provide in his will for any of his children, or for the issue of a deceased child, whether born before or after the making of the will or before or after the testator's death, and the child or issue are unprovided for by a settlement, and have not had an equal proportion of the testator's property bestowed on them by way of

advancement, unless it appears from the will that the omission was intentional, the omitted child or issue succeed to the same share in the estate of the testator as if he had died intestate.

§ 122. Same; sources of share; apportionment

The share of the estate which is assigned to a child or issue omitted in the will, as provided by section 121 of this title, shall first be taken from the estate not disposed of by will, if any. If that is not sufficient, as much as may be necessary shall be taken from all the legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to a specific bequest, or other provision in the will, would thereby be defeated. In such a case, the specific legacy or provision may be exempted from the apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

§ 123. Distribution in case of prior death of legatee

If a legatee dies before the testator, the testamentary disposition to him fails, unless:

(1) an intention appears to substitute another person in his place; or

(2) the bequest is to any kindred of the testator, and the legatee leaves lineal descendants, or is dead at the time the will is executed, but leaves lineal descendants surviving the testator.

The descendants referred to in paragraph (2) of this section take the estate so given by the will in the same manner as the legatee would have done had he survived the testator.

CHAPTER 9—INTERPRETATION OF WILLS

Sec.

§ 151. Rules of interpretation

(a) Except as provided by subsection (b) of this section, in interpreting a will subject to the law of the Canal Zone, the rules prescribed by this chapter and chapters 11 and 13 and section 1981 of this title shall be observed, unless an intention to the contrary clearly appears.

(b) With respect to the interpretation of wills executed before January 2, 1963, the rules prescribed by the laws in force when the wills were executed govern.

§ 152. Several testamentary instruments; intent

Several testamentary instruments, executed by the same testator, shall be taken and construed together as one instrument. A will shall be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it shall have effect as far as possible.

§ 153. Every expression to be given some effect; avoidance of intestacy

The words of a will shall receive an interpretation which will give to every expression an effect, rather than one which will render any of the expressions inoperative. Of two modes of interpreting a will, that shall be preferred which will prevent a total intestacy.

§ 154. Ambiguity and doubts; construction as a whole; irreconcilable parts

Where the meaning of a part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or a recital thereof, in another part of the will. All the parts of a will shall be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable the latter prevails.

§ 155. Clear bequest; effect of reasons or other parts of will

A clear and distinct bequest is not affected by:

(1) reasons assigned therefor;

(2) other words not equally clear and distinct;

(3) inference or argument from other parts of the will; or

(4) an inaccurate recital of or reference to its contents in another part of the will.

§ 156. Ascertainment of intention

In case of uncertainty arising from the face of the will, as to the application of any of its provisions, the testator's intention shall be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

§ 157. Ordinary sense of words; technical words

(a) The words of a will shall be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

(b) Technical words are not necessary to give effect to any species of disposition by a will; but technical words in a will shall be taken in their technical sense, unless the context clearly indicates a contrary intention, or unless it satisfactorily appears that the will was drawn solely by the testator, and that he was unacquainted with their technical sense.

§ 158. Words of donation or of limitation; disposition to heirs, etc.

(a) A testamentary disposition to "heirs", "relations", "nearest relations", "representatives", "legal representatives", "personal representatives", "family", "issue", "descendants", "nearest" or "next of kin" of a person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of that person, according to the provisions of chapter 31 of this title on succession.

(b) The terms defined by subsection (a) of this section are used as words of donation, and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to his ancestor.

CHAPTER 11—EFFECT OF CERTAIN PROVISIONS

Sec.

§ 191. Words referring to death or survivorship

Words in a will referring to death or survivorship simply, relate to the time of the testator's death, unless possession is actually postponed, when they shall be referred to the time of possession.

§ 192. Bequest to a class; after-born children

A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

A child conceived before, but not born until after, a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

§ 193. Bequest of all property; power to devise

A bequest of all the testator's property, in express terms, or in any other terms denoting such an intent, passes all the property which he was entitled to dispose of by will at the time of his death, including property embraced in a power to devise.

§ 194. Residuary disposition

A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

§ 195. Mistakes and omissions; extrinsic evidence; oral declarations

When there is an imperfect description in a will, or no person or property exactly answers the description, mistakes and omissions shall be corrected, if the error appears from the context of the will or from extrinsic evidence, excluding the oral declarations of the testator as to his intentions.

§ 196. Vesting of bequests

Testamentary dispositions, including bequests to a person on attaining majority, are presumed to vest at the testator's death.

§ 197. Plural legatees

A legacy given to more than one person vests in them as owners in common, unless the will otherwise provides.

CHAPTER 13—CONDITIONS AND REMAINDERS

Sec.

§ 231. Death of legatee of limited interest

The death of a legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator.

§ 232. Conditional disposition defined

A conditional disposition is one that depends upon the occurrence of an uncertain event, by which it is either to take effect or be defeated.

§ 233. Condition precedent; construction; operation

A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect. It is to be deemed performed when the testator's intention has been substantially, though not literally, complied with. Nothing vests until the condition is fulfilled, except where the fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

§ 234. Condition subsequent; operation

A condition subsequent is one under which an estate or interest is so given as to vest immediately, subject only to be divested by a subsequent act or event.

A testamentary disposition, when vested, may not be divested except upon the occurrence of the precise contingency prescribed by the testator for that purpose.

CHAPTER 15—LEGACIES AND INTEREST

Sec.

§ 261. Nature and designations of legacies

Legacies are distinguished and designated, according to their nature, as follows:

(1) A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if the legacy fails, resort may not be had to the other property of the testator.

(2) A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if the fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy.

(3) An annuity is a bequest of certain specified sums periodically. If the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy.

(4) A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

(5) All other legacies are general legacies.

§ 262. Bequest of interest or income; time of accrual

In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

§ 263. Time legacies due; interest; commencement of annuities

Legacies are due and deliverable one year after the testator's death, and bear interest from that time, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's death. Annuities commence at the testator's death.

§ 264. Construction of chapter

In all cases the provisions of this chapter are to be controlled by a testator's express intention.

PART 2—SUCCESSION; ESCHEAT; SIMULTANEOUS DEATHS

CHAPTER 31—SUCCESSION GENERALLY

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—COMMUNITY PROPERTY

SUBCHAPTER III—SEPARATE PROPERTY

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

Subchapter I—General Provisions

§ 501. Succession defined

Succession is the acquisition of title to the property of one who dies without disposing of it by will.

Subchapter II—Community Property

§ 521. Title of surviving spouse; portion subject to testamentary disposition or succession

Upon the death of either husband or wife, one-half of the community property belongs to the surviving spouse. The other half is subject to the testamentary disposition of the decedent, and in the absence thereof goes to the surviving spouse, subject to section 522 of this title.

§ 522. Community property subject to administration; exception; husband's control after death of wife

(a) Community property passing from the control of the husband by reason of his death is subject to administration, his debts, family allowance, and the charges and expenses of administration.

(b) Upon the death of the husband, his clothing and the household effects not exceeding $2,500 in value go to the surviving wife without administration, and are not subject to the debts and allowance referred to in subsection (a) of this section.

(c) Community property passing from the control of the husband by virtue of testamentary disposition by the wife is subject to administration, his debts, and the charges and expenses of administration, but the husband, pending administration, shall retain the same power to sell, manage and deal with the community personal property as he had in her lifetime; and his possession and control of the community property may not be transferred to the personal representative of the wife, except to the extent necessary to carry her will into effect.

Subchapter III—Separate Property

§ 541. Succession controlled by contract and Code

The separate property of a person who dies without disposing of it by will is succeeded to and shall be distributed as provided by this Part and Part 3 of this title, subject to the limitation of a marriage or other contract, and to this title.

§ 542. Distribution to surviving spouse and issue

(a) If the decedent leaves a surviving spouse and only one child or the lawful issue of a deceased child, the estate goes one-half to the surviving spouse and one-half to the child or issue.

(b) If the decedent leaves a surviving spouse, and:

(1) more than one child living; or

(2) one child living and the lawful issue of one or more deceased children; or

(3) the lawful issue of two or more deceased children—

the estate goes one-third to the surviving spouse and the remainder in equal shares to the children, if living, and to the lawful issue of any deceased child, by right of representation.

(c) If the decedent does not leave a child living at his death, the remainder goes to all his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally; otherwise, they take by right of representation.

§ 543. Distribution to issue where no surviving spouse

If the decedent does not leave a surviving spouse, but leaves issue, the whole estate goes to the issue. If all the descendants are in the same degree of kindred to the decedent, they share equally; otherwise, they take by right of representation.

§ 544. Distribution where no issue

If the decedent does not leave issue, the estate goes one-half to the surviving spouse, and the other half to the decedent's parents in equal shares, and if either is dead the whole of half goes to the other. If there are no parents, one-half goes in equal shares to the brothers and sisters of the decedent and to the children or grandchildren of deceased brothers or sisters by right of representation.

§ 545. Distribution to surviving spouse where no issue or immediate relatives

If the decedent leaves a surviving spouse and neither issue, parent, brother, sister, nor the children or grandchildren of a deceased brother or sister, the whole estate goes to the surviving spouse.

§ 546. Distribution to immediate family where neither issue nor spouse

If the decedent does not leave issue or a surviving spouse, the estate goes to his parents in equal shares, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of the decedent and to children or grandchildren of deceased brothers or sisters, by right of representation.

§ 547. Distribution to next of kin where no spouse, issue or immediate family

If the decedent does not leave either issue, spouse, father, mother, brother, or sister, the estate goes to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor are preferred to those claiming through an ancestor more remote.

§ 548. Unmarried minor decedent

If a decedent dies under age without having been married, all the estate that came to him by succession from a parent goes in equal shares to the other children of the same parent, and by right of representation to the issue of any of the children who are dead; or if all the children of the parent are dead and any of them has left issue, to the issue. If all the issue are in the same degree of kindred to the decedent, they share equally; otherwise, they take by right of representation.

§ 549. Distribution of common property acquired from predeceased spouse where no surviving spouse or issue

If the decedent does not leave spouse or issue and the estate or any portion thereof was common property of the decedent and a previously deceased spouse while the spouse was living, the property goes in equal shares to the children of the deceased spouse and their descendants by right of representation.

If there are no children of the deceased spouse, one-half of the common property goes to the parents of the decedent in equal shares, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of the decedent and their descendants by right of representation; and the other half goes to the parents of the deceased spouse, in equal shares, or if either is dead to the survivor, or if both are dead, then in equal shares to the brothers and sisters of the deceased spouse and their descendants by right of representation.

§ 550. Distribution of former separate property of predeceased spouse where no surviving spouse or issue

If the estate of a decedent, or any portion thereof, was separate property of a deceased spouse while living, and came to the decedent from the spouse by descent or bequest, the property goes in equal shares to the children of the spouse and their descendants by right of representation; and if none, then to the parents of the spouse, in equal shares, or if either is dead to the survivor, or if both are dead, then in equal shares to the brothers and sisters of the spouse and their descendants by right of representation.

§ 551. Distribution to next of kin of property acquired from predeceased spouse

If there is no one to succeed to a portion of the property in any of the contingencies provided for by sections 549 and 550 of this title, according to the provisions of those sections, that portion goes to the next of kin of the decedent in the manner provided for by section 547 of this title.

Subchapter IV—Miscellaneous Provisions

§ 571. Succession by right of representation; posthumous child

Inheritance or succession "by right of representation" takes place when the descendants of a deceased person take the same share or right in the estate of another person that the deceased person would have taken as an heir if living. A posthumous child is considered as living at the death of the parent.

§ 572. Determination of degree of kindred

The degree of kindred is established by the number of generations, and each generation is called a degree.

§ 573. Lineal consanguinity; division

Lineal consanguinity, or the direct line of consanguinity, is the relationship between persons one of whom is a descendant of the other. The direct line is divided into a direct line descending, which connects a person with those who descend from him, and a direct line ascending, which connects a person with those from whom he descends. In the direct line there are as many degrees as there are generations. Thus, the child is, with regard to the parent, in the first degree; the grandchild, with regard to the grandparent, in the second; and vice versa as to the parents and grandparents with regard to their respective children and grandchildren.

§ 574. Collateral consanguinity

Collateral consanguinity is the relationship between persons who spring from a common ancestor, but are not in direct line. The degree is established by counting the generations, from one relative up to the common ancestor, and from the common ancestor to the other relative. In the computation the first relative is excluded, the other included, and the ancestor counted but once. Thus, brothers are related in the second degree, uncle and nephew in the third degree, cousins-german in the fourth, and so on.

§ 575. Inheritance rights of kindred of the half blood

Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance came to the intestate by descent or gift of one of his ancestors, in which case all those who are not of the blood of the ancestor are excluded from the inheritance in favor of those who are.

§ 576. Inheritance rights of illegitimate children; limitations

An illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of the child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents have intermarried, and his father, after the marriage, acknowledges him as his child, or adopts him into his family; in which case the child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother, respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

§ 577. Succession to estate of illegitimate child

The estate of an illegitimate child, who, having title to an estate not otherwise limited by marriage contract, dies without disposing thereof by will, is succeeded to as if he had been born in lawful wedlock if he has been legitimated by a subsequent marriage of his parents, or adopted by his father as provided by section 387 of Title 8; otherwise, the estate is succeeded to as if the child had been born in lawful wedlock and had survived his father and all persons related to him only through his father.

§ 578. Inheritance rights of adopted children; restriction

An adopted child is a descendant of one who has adopted him, the same as a natural child, for all purposes of succession by, from or through the adopting parent, the same as a natural parent. An adopted child does not succeed to the estate of a natural parent when the relationship between them has been severed by adoption, nor does the natural parent succeed to the estate of the adopted child, nor does the adopted child succeed to the estate of a relative of the natural parent, nor does any relative of the natural parent succeed to the estate of an adopted child.

§ 579. Person convicted of murder or voluntary manslaughter of decedent

A person who has been convicted of the murder or voluntary manslaughter of the decedent is not entitled to succeed to any portion of his estate; but the portion thereof to which he would otherwise be entitled to succeed descends to the other persons entitled thereto under this chapter.

CHAPTER 33—ESCHEAT

Sec.

§ 611. When property escheats

If an intestate decedent does not leave a spouse or kindred, and there are no heirs to take his estate or any portion thereof, under section 549, 550 or 551 of this title, or if a person dies leaving any property in his estate not disposed of by will, and there are no persons entitled to succeed thereto under the laws of the Canal Zone, the property escheats to the United States.

§ 612. Action to determine right of United States to escheated property

When the United States attorney is informed that an estate has escheated or is about to escheat to the United States or that the property involved in an action or special proceeding has escheated or is about to escheat to the United States, he may commence an action on behalf of the United States to determine its rights to the property or may intervene on its behalf in an action or special proceeding affecting any such estate and contest the rights of claimants thereto. The action shall be commenced by filing a petition in the district court.

§ 613. Description of property

The petition referred to in section 612 of this title shall set forth:

(1) a description of the property;

(2) the name of the person last possessed of the property;

(3) the name of the person, if any, claiming the property, or any portion thereof; and

(4) the facts and circumstances by virtue of which it is claimed that the property has escheated.

§ 614. Order requiring interested parties to appear

Upon the filing of the petition specified by section 612 of this title, the court shall order all persons interested in the estate to appear and show cause, if any there be, within 60 days from the date of the order, why the estate should not vest in the United States. The clerk of the court shall cause notice of the order to be posted in three public places in the Canal Zone for four successive weeks prior to the date set for the hearing. Upon the giving of the notice the court shall have complete jurisdiction over the estate, the property, and the person of everyone having or claiming an interest in the property, and shall have complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon.

§ 615. Custody of property

The property in estates specified by sections 612–614 of this title shall, in the discretion of the court, be sold in the manner provided by Part 3 of this title for the sale of property of a decedent's estate, and the proceeds deposited with the Canal Zone Government, to be held for a period of five years from the date of the judgment pursuant to section 617 of this title.

§ 616. Joinder of parties and actions

In a proceeding brought by the United States attorney pursuant to this chapter any two or more causes of action may be joined in the same proceeding and in the same petition without being separately stated. It is sufficient to allege in the petition that the decedent left no heirs to take the estate; and the failure of the heirs to appear and set up their claims in the proceeding, or in any proceeding for the administration of the estate, is sufficient proof upon which to base the judgment in the proceeding or the decree of distribution.

§ 617. Appearance, pleadings, and judgment

Persons named in the petition specified by section 612 of this title may appear and answer, and traverse or deny the facts stated therein at any time before the time for answering expires. Any other person claiming an interest in the estate may appear and be made a defendant, by motion for that purpose in open court within the time allowed for answering. If no person appears and answers within the time, judgment shall be rendered that the United States is the owner of the property claimed in the petition.

If a person appears and denies the title set up by the United States, or traverses a material fact set forth in the petition, the issue of fact shall be tried as issues of fact are tried in civil actions.

If, after the issues are tried, it appears from the facts found or admitted that the United States has good title to the property in the petition mentioned, or any part thereof, judgment shall be rendered that the United States is the owner and entitled to the possession thereof.

§ 618. Claim to escheated property; procedure, hearing and determination; limitation

(a) Within five years after judgment in a proceeding had under this chapter, a person not a party or privy to the proceeding may file a verified petition in the district court, showing his claim or right to the property, or the proceeds thereof.

(b) The petition specified by subsection (a) of this section, among other things, shall state:

(1) the full name and the place and date of birth of the decedent;

(2) whether or not the decedent was ever married, and, if so, where, when, and to whom;

(3) how, when, and where the marriage, if any, of the decedent was dissolved;

(4) whether or not the decedent was ever remarried, and, if so, where, when, and to whom;

(5) the full names and the dates of birth of lineal descendants and ascendants and of all other known heirs, and the names and places of residence of all who are then surviving; and

(6) such other information as may be required by the court.

If for any reason the petitioner is unable to set forth any of the matters or things required by this subsection, he shall clearly state the reason in his petition.

(c) At least 20 days before the hearing of the petition specified by this section, a copy of the petition shall be served on the United States attorney, who shall answer it. The court shall thereupon try the issue as issues are tried in civil actions, and if it is determined that the petitioner is entitled to the property, or the proceeds thereof, the court shall order the property, if it has not been sold, to be delivered to him; or, if the property has been sold and the proceeds paid to the Canal Zone Government, the court shall order the Government to pay the proceeds to the petitioner.

(d) All persons who fail to appear and file their petitions within the time limited by this chapter are forever barred.

§ 619. Disposition of proceeds

If a claim to escheated property or the proceeds thereof is not filed within the time specified in section 618 of this title, the proceeds shall be covered into the Treasury of the United States as miscellaneous receipts.

CHAPTER 35—SIMULTANEOUS DEATHS

Sec.

§ 651. Insufficient evidence of survivorship

Where the title to property or the devolution thereof depends upon priority of death and there is not sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

§ 652. Beneficiaries of another person's disposition of property

Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is not sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

§ 653. Joint tenants

Where there is not sufficient evidence that two joint tenants have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

§ 654. Insurance policies

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is not sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

§ 655. Husband and wife

Where a husband and wife have died, leaving community property, and there is not sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall be administered upon, distributed, or otherwise dealt with, as if the husband had survived and as if such one-half were his separate property and the other one-half thereof shall be administered upon, distributed, or otherwise dealt with, as if the wife had survived and as if such other one-half were her separate property, except as provided in section 654 of this title.

§ 656. Chapter not retroactive

This chapter does not apply to the distribution of the property of a person who has died before the effective date of this Code.

§ 657. Inapplicability of chapter if decedent provides different distribution

This chapter does not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter.

§ 658. Uniformity of interpretation

This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

§ 659. Short title

This chapter may be cited as the Uniform Simultaneous Death Act.

PART 3—ADMINISTRATION OF DECEDENTS' ESTATES

CHAPTER 51—GENERAL PROVISIONS

§ 901. Passage of title to decedent's property; possession; charges

When a person dies, the title to his property passes to the person to whom it is devised or bequeathed by his last will, or, in the absence of disposition by will, to the persons who succeed to his estate as provided by Part 2 of this title; but all his property is subject to the possession of the executor or administrator and to the control of the district court for the purposes of administration, sale or other disposition under the provisions of this Part, and, except as otherwise provided by this title, is chargeable with the expenses of administering his estate, the payment of his debts, and the allowance to the family.

§ 902. Jurisdiction and venue

(a) Except as otherwise provided by this section, wills shall be proved and letters testamentary or of administration granted and administration of decedents' estates had, in:

(1) the division of the district court in which the decedent was a resident at the time of his death, wherever he may have died;

(2) the division of the district court in which the decedent died, leaving estate therein, he not being a resident of the Canal Zone;

(3) any division of the district court in which the decedent leaves estate, he not being a resident of the Canal Zone at the time of his death, and having died out of the Canal Zone or without leaving estate in the division in which he died.

(b) In either of the cases specified by subsection (a)(3) of this section, when the estate is in more than one division, the division of the district court in which application for letters testamentary or of administration is first made has exclusive jurisdiction of the administration and settlement of the estate.

(c) All matters of probate handled by the public administrator may be conducted in the Balboa division of the district court, regardless of the residence of the decedent or the location of the estate.

§ 903. Conclusiveness of order granting letters

An order of the district court granting letters, when it becomes final, is, in the absence of fraud in its procurement, and except when based upon the erroneous assumption of death, a conclusive determination of the jurisdiction of the court, and may not be collaterally attacked.

§ 904. Disqualification of judge for interest, etc.

A will may not be admitted to probate, or letters testamentary or of administration granted, before a judge who is:

(1) interested as next of kin to the decedent;
(2) interested as a devisee or legatee under the will;
(3) named as an executor or trustee in the will;
(4) a witness to the will; or
(5) in any manner interested or disqualified from acting.

CHAPTER 53—PROBATE OF WILLS

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—LOST OR DESTROYED WILLS

SUBCHAPTER III—FOREIGN WILLS

Subchapter I—General Provisions

§ 931. Custodian to deliver will to court or executor; consequences of failure

Within 30 days after being informed that the maker of a will is dead, the custodian of the will shall deliver it to the division of the district court having jurisdiction of the estate, or to the executor named in the will. Failure to do so makes the person failing responsible for all damages sustained by anyone injured thereby.

§ 932. Enforcing production of wills and attendance of witnesses

The judge of the district court may at any time make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses. If it is alleged in a petition that someone has possession of a will of a decedent, and the court is satisfied that the

allegation is correct, an order shall be issued and served upon the person alleged to have possession of the will, requiring him to produce it at a time named in the order. If he has possession of the will and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to jail and confined therein until he produces it.

§ 933. Persons who may petition for probate

At any time after the death of the testator, an executor, devisee, or legatee named in his will, or any other person interested in the estate, may petition the division of the court having jurisdiction to have the will proved, whether the will:

(1) be in writing or nuncupative;
(2) be in possession of the petitioner or not;
(3) is lost or destroyed; or
(4) is beyond the jurisdiction of the Canal Zone.

§ 934. Executor's renouncement of right to letters by failure to petition

If the person named in a will as executor, for 30 days after he has knowledge of the death of a testator and that he is named as executor, fails to petition the proper division of the court for the probate of the will, and that letters testamentary be issued to him, he may be held to have renounced his right to letters, and the court may appoint any other competent person administrator, unless good cause for delay is shown.

§ 935. Proof of nuncupative will; limitations; time for reduction to writing; notice; subsequent proceedings

Proof of a nuncupative will may not be received unless:

(1) the will is offered within six months after the testamentary words were spoken; and

(2) the words, or the substance thereof were reduced to writing within 30 days after they were spoken, and the writing is filed with the petition for probate thereof.

Notice of the petition shall be given, any contest of the will made and conducted, and subsequent proceedings in administration had, as in the case of a written will.

§ 936. Essential contents of petition for probate; defects

A petition for the probate of a will shall show:

(1) the jurisdictional facts;

(2) whether the person named as executor consents to act, or renounces his right to letters testamentary;

(3) the names, ages, and residences of the heirs, legatees, and devisees of the decedent, so far as known to the petitioner;

(4) the character and estimated value of the property of the estate; and

(5) the name of the person for whom letters testamentary or of administration with the will annexed are prayed.

A defect of form or in the statement of jurisdictional facts actually existing does not make void the probate of a will.

§ 937. Notice of hearing; publication

When a petition for probate of a will is filed, and the will produced, the clerk of the court shall set the petition for hearing by the court not less than 10 nor more than 30 days from the production of the will. The clerk shall publish notice of the hearing in a newspaper of general circulation in the Canal Zone. If the notice is published in a weekly newspaper, it shall appear therein on at least three different days of publication. If it is published in a newspaper pub-

lished oftener than once a week, it shall be so published that there are at least 10 days from the first to the last day of publication, both the first and the last day being included.

§ 938. Notice to heirs and other interested parties

Copies of the notice of the time appointed for the probate of the will shall be addressed to the heirs of the testator and the devisees and legatees named in the will at their places of residence, if known to the petitioner, and deposited in the post office, at least 10 days before the hearing. If their places of residence are not known, the copies of notice may be addressed to them, and deposited in a post office in the Canal Zone. A copy of the notice shall in like manner be mailed to the person named as executor, if he is not the petitioner; also, to any person named as coexecutor not petitioning, if their places of residence are known. Proof of mailing the copies of the notice shall be made at the hearing. Personal service of copies of the notice at least 10 days before the day of hearing is equivalent to mailing.

§ 939. Hearing proof of will and proof of service of notice

At the time appointed for the hearing, or the time to which the hearing may have been postponed, the court, unless the parties appear, shall require proof that the notice has been given, which being made, the court shall hear testimony in proof of the will.

§ 940. Probate of wills not contested

(a) If no person appears to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if the evidence shows that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

(b) If it appears at the time fixed for the hearing that none of the subscribing witnesses resides in the Canal Zone, but that the deposition of one of them can be taken elsewhere, the court may direct it to be taken, and may authorize a photographic copy of the will to be made and to be presented to the witness on his examination, who may be asked the same questions with respect to it and the handwriting of himself, the testator, and the other witness, as would be pertinent and competent if the original will were present.

(c) If the subscribing witnesses are competent at the time of attesting the execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

(d) If neither the attendance in court nor the deposition of any of the subscribing witnesses can be procured, the court may admit the will to probate upon the testimony of any other witness as provided by section 1033 of this title.

§ 941. Probate of will detained outside Canal Zone

If it is alleged in a petition that a will of a person who at the time of his death was a resident of the Canal Zone is detained beyond the jurisdiction of the Zone, in a court of a State or foreign country, and that the will can not be produced for probate in the Zone, and the court is satisfied that the allegations are true, a copy of the will duly authenticated may be proved, allowed, and admitted to probate in the Zone in lieu of, and have the same force and effect as, the original will. The same proof is required to admit the will to probate in the Zone as would be required by this chapter if the original will were produced.

The court may authorize a photographic copy of the will to be presented to the subscribing witness upon his examination in court, or by deposition as provided by section 940 of this title, and the witness may be asked the same questions with respect to it, and the handwriting of himself, the testator, and the other witness, as would be pertinent and competent if the original will were present.

§ 942. Holographic wills

A holographic will may be proved in the same manner as other private writings.

§ 943. Record of clerk upon admission to probate

When the court admits a will to probate, the clerk shall record it in the minutes, with the notation: "Admitted to probate [giving date]."

Subchapter II—Lost or Destroyed Wills

§ 961. Duty of court as to proof; notice; reduction of testimony to writing

If a will is lost or destroyed, the court shall take proof of, and establish, the execution and validity of the will, upon notice given to all interested persons, as prescribed in regard to proof of wills in other cases. The testimony given shall be reduced to writing, and signed by the witnesses.

§ 962. Requisites of proof; fraud or public calamity; mentally incompetent person

A will may not be proved as a lost or destroyed will, unless it is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or by public calamity destroyed in the lifetime of the testator, without his knowledge, and unless its provisions are clearly and distinctly proved by at least two credible witnesses; but if the testator is declared mentally incompetent in the Canal Zone and after such a determination his will is destroyed by public calamity, and the testator is never restored to competency, then, after his death, his will may be probated as though it were in existence at the time of his death.

§ 963. Certification, recordation, and grant of letters

When a lost will is established, the provisions thereof shall be distinctly stated and certified by the judge, under his hand and seal of the court. The certificate shall be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration with the will annexed, shall be issued thereon in the same manner as upon wills produced and duly proved. The testimony shall be reduced to writing, signed, certified, and filed as in other cases, and shall have the same effect as evidence as that provided by section 1035 of this title.

§ 964. Restraining executor or administrator previously appointed pending petition

If, before or pending an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator, or letters testamentary of a previous will of the testator are granted, the court may restrain the executors or administrators, so appointed, from any acts or proceedings that would be injurious to the legatees or devisees claiming under the lost or destroyed will.

Subchapter III—Foreign Wills

§ 981. Allowance and recordation of foreign will; place

A will duly proved and allowed in a State of the United States, or in a foreign country, may be allowed and recorded in the division of the district court having jurisdiction as determined by section 902 of this title.

§ 982. Procedure; notice

The executor, or any person interested in a will described by section 981 of this title, may file a copy of the will and of the order

or decree admitting it to probate, or other evidence of its establishment or proof in accordance with the laws of the State or country, duly authenticated or proved, together with his petition for letters. Notice shall be given and the same proceedings had as in the case of an original petition for the probate of a will.

§ 983. Hearing; effect of probate of foreign will

If, on a hearing held pursuant to section 982 of this title, it appears from the authenticated order or decree referred to in that section, or if it is otherwise proved in a case in which there is no such order or decree, that the will has been admitted to probate in a State of the United States or foreign country, or established or proved in accordance with the laws thereof, and that it was valid according to the laws of the place in which the testator was domiciled at the time of his death, or according to the laws of the Canal Zone, it shall be admitted to probate in the Canal Zone, and have the same force and effect as a will first admitted to probate in the Canal Zone; and letters testamentary or of administration with the will annexed shall issue thereon to the petitioner.

CHAPTER 55—CONTESTS OF WILLS

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—CONTESTS BEFORE PROBATE

SUBCHAPTER III—CONTESTS AFTER PROBATE

Subchapter I—General Provisions

§ 1011. Who may appear and contest a will

Any person interested may appear and contest a will. Devisees, legatees, or heirs of an estate may contest the will through their guardians, or attorneys appointed by themselves or by the court for that purpose; but a contest made by an attorney appointed by the court does not bar a contest after probate by the party so represented, if commenced within the time provided by section 1061 of this title; nor does the nonappointment of an attorney by the court of itself invalidate the probate of a will.

Subchapter II—Contests Before Probate

§ 1031. Filing contest; motions; answer

If a person appears to contest the will, he shall file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the Canal Zone interested in the estate. Any one or more of the persons so served may, by motion, assert any defense or objection that a defendant may, by motion, make in a civil

action in the district court, in the form and manner prescribed therefor. If the motion is sustained, the court shall allow the contestant a reasonable time, not exceeding 10 days, within which to amend his written opposition. If the motion is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing, or otherwise obviating or avoiding, the objections.

§ 1032. Trial; parties; issues triable by jury; waiver of jury

(a) On the trial of a contest of a will, the contestant is the plaintiff and the petitioner for probate is the defendant.

(b) An issue of fact involving:

(1) the competency of the decedent to make a will;

(2) the freedom of the decedent, at the time of the execution of the will, from duress, menace, fraud, or undue influence;

(3) the due execution and attestation of the will; or

(4) any other question substantially affecting the validity of the will—

shall, on written request filed by either party at least 10 days prior to the day set for hearing, be tried by a jury.

(c) If a jury is not demanded, the court shall try and determine the issues joined.

§ 1033. Proof of execution of will; witnesses

If a will is contested, all the subscribing witnesses who are present in the Canal Zone, and who are of sound mind, shall be produced and examined; and the death, absence, or mental incompetency of any of them shall be satisfactorily shown to the court. If none of the subscribing witnesses resides in the Canal Zone at the time appointed for proving the will, and the evidence of none of them can be produced, the court may admit the testimony of other witnesses to prove the due execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

§ 1034. Verdict of jury; judgment

The jury, after hearing a proceeding under this subchapter, shall return a special verdict upon the issues submitted to them by the court, upon which the judgment of the court shall be rendered, either admitting the will to probate or rejecting it. In either case, the proofs of the subscribing witnesses shall be reduced to writing. If the will is admitted to probate, the judgment, will, and proofs shall be recorded.

§ 1035. Testimony as future evidence

The testimony of each witness in a proceeding under this subchapter, reduced to writing and signed by him, is good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness is dead, or has permanently removed from the Canal Zone.

§ 1036. Certificate of proof and facts

If, in a proceeding under this subchapter, the court is satisfied, upon the proof taken, or from the facts found by the jury, that the will was duly executed, and that the testator at the time of its execution was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, a certificate of the proof and the facts found, signed by the judge and attested by the seal of the court, shall be attached to the will.

§ 1037. Filing and recording will and certificate of proof

At the close of a proceeding under this subchapter in which probate is granted, the clerk shall file and record the will, and a certificate of proof thereof. When so filed and recorded, the will and certificate constitute part of the record in the proceeding. The clerk shall also file all testimony given in the proceeding.

Subchapter III—Contests After Probate

§ 1061. Contest within one year; petition

A person interested may, within one year after the probate of a will, contest the probate or validity of the will. For that purpose he shall file in the division of the court in which the will was proved a petition in writing, containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate be revoked.

§ 1062. Citation

Upon filing a petition pursuant to this subchapter, and within one year after the probate, a citation shall be issued to the executor of the will, or to the administrator with the will annexed, and to all the legatees and devisees mentioned in the will, and heirs residing in the Canal Zone, as far as known to the petitioner or to their guardians, if any of them is a minor or is legally incompetent, or to their personal representatives, if any of them is dead, requiring them to appear before the court on a day therein specified, to show cause why the probate of the will should not be revoked.

§ 1063. Proof of service; trial; revocation of probate

At the time appointed for showing cause, or at any time to which the hearing is postponed, proof having been made of service of the citation upon all of the persons named therein, the court shall proceed to try the issues of fact joined in the same manner as an original contest of a will. If the original probate was granted without a contest, a trial by jury shall be had, as in the case of a contest before probate, on written demand of either party, filed three days prior to the hearing. If, upon hearing the proofs of the parties, the jury finds, or, if no jury is had, the court decides, that the will is invalid or is not the last will of the testator, the probate shall be revoked.

§ 1064. Effect of revocation upon executor or administrator

Upon the revocation of the probate of a will, the powers of the executor or administrator with the will annexed shall cease; but he is not liable for any act done in good faith previous to the revocation.

§ 1065. Costs

If, in a proceeding under this subchapter, the will is not revoked, the costs shall be paid by the contestant. If the probate is revoked, the costs shall be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

§ 1066. Conclusiveness of probate; limitations; infants and persons of unsound mind

If the validity or the probate of a will is not contested within one year after the probate, the probate is conclusive; saving to infants and persons of unsound mind a like period of one year after their respective disabilities are removed.

§ 1067. Failure to contest as not precluding probate of another will

Failure to contest a will does not preclude the subsequent probate of another will of the decedent.

CHAPTER 57—EXECUTORS AND ADMINISTRATORS; APPOINTMENT; REMOVAL; SUSPENSIONS

SUBCHAPTER I—APPOINTMENT OF EXECUTORS AND ADMINISTRATORS WITH THE WILL ANNEXED

SUBCHAPTER II—APPOINTMENT OF ADMINISTRATORS

SUBCHAPTER III—PETITION FOR LETTERS; CONTESTS

SUBCHAPTER IV—SPECIAL ADMINISTRATORS

SUBCHAPTER V—FORM OF LETTERS

SUBCHAPTER VI—REVOCATION OF LETTERS

SUBCHAPTER VII—DEATH, DISABILITY AND SUBSTITUTION

SUBCHAPTER VIII—RESIGNATION, SUSPENSION AND REMOVAL

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS

Subchapter I—Appointment of Executors and Administrators With the Will Annexed

§ 1101. Competency to serve as executor; marriage

(a) A person is not competent to serve as executor or executrix who, at the time the will is admitted to probate, is:

(1) under the age of majority;

(2) convicted of an infamous crime; or

(3) adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

(b) Marriage does not disqualify a woman from serving as executrix.

§ 1102. Trust companies as executors

A corporation or association authorized to conduct the business of a trust company in the Canal Zone may be appointed to act as an executor, in like manner as an individual.

§ 1103. Executor indicated but not specifically named

When it appears, by the terms of a will, that it was the intention of the testator to commit the execution of the will and the administration of his estate to a person as executor, that person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

§ 1104. Invalidity of authority given executor to appoint

An authority to an executor to appoint an executor is void.

§ 1105. Absentee or minor named executor; interim appointment

When a person absent from the Canal Zone, or a minor, is named executor, and there is another executor who accepts the trust and qualifies, the latter may have letters testamentary and administer the estate until the return of the absentee or the majority of the minor, who may then be admitted as joint executor. If there is no other executor, letters of administration, with the will annexed, shall be granted; but the court may revoke them on the return of the absent executor or the arrival of the minor at the age of majority.

§ 1106. Executor of an executor; letters with will annexed

An executor of an executor may not, as such, be authorized to administer on the estate of the first testator. If an executor is not named in the will, or if the sole executor or all the executors, therein named, are dead or incompetent, or renounce, or fail to apply for letters or to appear and qualify, or die after the issuance of letters and before the completion of the administration, letters of administration with the will annexed shall be issued.

§ 1107. Objections to letters testamentary; petition for letters with will annexed; issuance of letters

A person interested in an estate or will may file objections in writing to granting letters testamentary to the persons named as executors, or any of them, and may, at the same time, file a petition for letters of administration with the will annexed. The court shall hear and determine the objections so filed. If an objection is not made, the court, when admitting a will to probate, shall issue letters thereon to the persons named therein as executors who are competent to discharge the trust and who have not renounced their right to letters.

§ 1108. Failure to appoint all named executors

When all the executors named in a will are not appointed by the court, those appointed have the same authority to act in every respect as effectually as all would have if appointed.

§ 1109. Powers before grant of letters

A person has no power as an executor, until he qualifies, except that, before letters are issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

§ 1110. Priority of appointment of administrators with will annexed

Persons are entitled to appointment as administrators with the will annexed in the same order of priority as in the appointment of administrators of intestate estates, except that, as to foreign wills, a person who is interested in the will has priority over one who is not.

§ 1111. Authority of administrators with will annexed; discretionary power

Administrators with the will annexed have the same authority over the estates that executors named in the will would have, and their acts are as effectual for all purposes; but if a power or authority conferred upon an executor is discretionary, and is not conferred by law, it is not conferred upon an administrator with the will annexed.

Subchapter II—Appointment of Administrators

§ 1131. Competency to serve as administrator; marriage

(a) A person is not competent to serve as administrator or administratrix who:

(1) is not a bona fide resident of the Canal Zone; and

(2) does not have the qualifications required of an executor or executrix.

(b) Marriage does not disqualify a woman from serving as administratrix.

§ 1132. Persons entitled to letters; order of priority

Administration of the estate of a person dying intestate shall be granted to one or more of the persons hereinafter mentioned, the relatives of the deceased being entitled to administer only when they are entitled to succeed to his estate or a portion thereof; and they are, respectively, entitled to letters in the following order:

(1) the surviving spouse, or a competent person whom he or she requests to have appointed;

(2) the children;

(3) the grandchildren;

(4) the parents;

(5) the brothers and sisters;

(6) the next of kin entitled to share in the estate;

(7) the relatives of a previously deceased spouse, when they are entitled to succeed to a portion of the estate pursuant to section 549 or 550 of this title;
(8) the public administrator;
(9) the creditors; and
(10) any person legally competent.

§ 1133. Surviving partner

The surviving partner of a decedent may not be appointed administrator of the estate if a person interested in the estate objects to his appointment.

§ 1134. Relatives of whole blood as preferred

Of several persons claiming and equally entitled to administer, relatives of the whole blood shall be preferred to those of the half blood.

§ 1135. Persons equally entitled to letters; creditors

When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters the court, at the request of another creditor, may grant letters to any other person legally competent.

§ 1136. Minors and incompetents; discretion of court

If a person otherwise entitled to administration is a minor, or an incompetent person, letters may be granted, to his or her guardian, or any other person entitled to letters of administration.

§ 1137. Failure of persons having priority to claim letters

Letters of administration shall be granted to any competent applicant, when persons having priority fail to claim letters for themselves.

§ 1138. Letters to persons other than those entitled

Letters of administration may be granted to one or more competent persons, although not otherwise entitled to them, at the written request of the person entitled, filed in the court. When the person entitled is a nonresident of the Canal Zone, affidavits, taken ex parte before an officer authorized by the laws of the Canal Zone to take acknowledgments and administer oaths out of the Canal Zone, may be received as prima facie evidence of the identity of the party, if free from suspicion, and the fact is established to the satisfaction of the court.

§ 1139. Trust companies as administrators

A corporation or association authorized to conduct the business of a trust company in the Canal Zone may be appointed to act as an administrator, in like manner as an individual.

Subchapter III—Petition for Letters; Contests

§ 1161. Form and contents of petition; filing; defects

(a) A petition for letters of administration shall be in writing, signed by the applicant or his counsel, and filed with the clerk of the court, and shall state the:
(1) jurisdictional facts;
(2) names, ages and post-office addresses of the heirs of the decedent, as far as known to the applicant; and
(3) character and estimated value of the property of the estate.

(b) A defect of form or in the statement of jurisdictional facts actually existing does not make void an order appointing an administrator or any of the subsequent proceedings.

§ 1162. When letters of administration may be granted

Letters of administration may be granted by the court at any time appointed for the hearing of the application, or at any time to which the hearing is continued or postponed.

§ 1163. Setting petition for hearing; notice

When a petition praying for letters of administration is filed, the clerk of the court shall set the petition for hearing by the court, and, at least 10 days before the hearing, give notice thereof by causing a notice to be posted at the courthouse, giving the name of the decedent, the name of the applicant, and the time at which the application will be heard. The clerk shall cause similar notice to be mailed to the heirs of the decedent named in the petition, at least 10 days before the hearing, addressed to them at their respective post-office addresses, as set forth in the petition, otherwise at the place where the proceedings are pending.

§ 1164. Contesting application

A person interested may contest a petition for letters of administration by filing written grounds of opposition thereto, challenging the competency of the applicant, or may assert his own right to letters. In the latter case he shall file a petition and give the notice required for an original petition, and the court shall hear the two petitions together.

§ 1165. Hearing on petition; order

On the hearing of a petition or contest pursuant to this subchapter, upon proof that notice has been given as herein required, the court shall hear the allegations and proofs of the parties, and order the issuing of letters of administration to the party best entitled thereto.

§ 1166. Evidence of notice

An entry in the records of the court, that the required proof was made and notice given, is evidence of the fact of the notice.

§ 1167. Facts to be proved; witnesses

Before letters of administration are granted on the estate of a person who is represented to have died intestate, the fact of his dying intestate shall be proved by the testimony of the applicant or others. The court may also examine any other person concerning the time, place, and manner of his death, the place of his residence at the time, the value and character of his property, and whether or not the decedent left a will, and may compel any person to attend as a witness for that purpose.

Subchapter IV—Special Administrators

§ 1201. Appointment of special administrator; grounds; public administrator

When:

(1) there is delay in granting letters testamentary or of administration; or

(2) letters are granted irregularly; or

(3) a sufficient bond is not filed as required; or

(4) an application is not made for letters; or

(5) an executor or administrator dies, or is suspended or removed—

the court, if the circumstances of the estate of the decedent require the immediate appointment of a personal representative, shall appoint a special administrator to take charge of the estate in whatever division it may be found, and to exercise such powers as may be necessary for the preservation of the estate; or the court may direct the public administrator to take charge of the estate.

§ 1202. Same; notice; preference

The appointment of a special administrator under this subchapter may be made at any time upon such notice to such of the persons interested in the estate as the court deems reasonable. In making the appointment, the court shall give preference to the person entitled to letters testamentary or of administration.

§ 1203. Bond; oath; letters

A special administrator, other than the public administrator, shall give bond in such sum as the court directs, with sureties to the satisfaction of the court, conditioned for the faithful performance of his duties; and he shall take the usual oath, and have the oath indorsed on his letters. Thereupon, the clerk shall issue special letters of administration to him.

§ 1204. Powers and duties of special administrator

(a) A special administrator shall:

(1) collect and preserve for the executor or administrator all the goods, chattels, debts, and effects of the decedent, and all incomes, rents, issues, profits, claims, and demands of the estate; and

(2) take charge and the management of, enter upon, and preserve the real estate from damage, waste, and injury.

(b) For the purposes of carrying out subsection (a) of this section, and for all necessary purposes, a special administrator may:

(1) commence and maintain or defend suits and other legal proceedings as an administrator;

(2) sell such perishable property as the court orders to be sold; and

(3) exercise such other powers as are conferred upon him by his appointment—

but, except when a special administrator is appointed with the powers, duties, and obligations of a general administrator, as hereinafter provided, he is not liable to an action by a creditor on a claim against the decedent.

§ 1205. Powers and duties when appointed pending will contest or other proceedings

A special administrator appointed pending determination of a contest of a will instituted prior to the probate thereof, or pending an appeal from an order appointing, suspending, or removing an executor or administrator, has the same powers, duties, and obligations as a general administrator, and the letters of administration issued to him shall recite that he is appointed with the powers of a general administrator.

§ 1206. Payment of secured charges on property

If it appears by the verified petition of a special administrator, or other person interested in an estate in the charge of a special administrator, that any of the property of the estate is subject to a mortgage, lien, or deed of trust, to secure the payment of money, and that any amount so secured, either principal or interest, is past due and unpaid; that the holder of the security threatens or is about to enforce or foreclose it and that the property exceeds in value the amount of the entire obligation thereon, and an order is asked directly or permitting the special administrator to pay all or any part of the amount so secured, the court shall fix a time for the hearing of the petition and shall direct notice of not less than 10 days to be given by posting in three public places and by personal service on all parties who have appeared or their attorneys. At the time so appointed, if the allegations of the petition are proved to the satisfaction of the court and it appears to

be for the best interests of the estate, the court may order the special administrator to pay interest or other portions or the whole of the secured debt, and may direct the special administrator to take proceedings to secure funds for the purpose. The order for payment of interest may also direct that interest not yet accrued be paid as it becomes due, and the order shall remain in effect and cover such future interest until and unless thereafter for good cause it is set aside or modified by the court upon petition and notice similar to that hereinabove provided.

§ 1207. Effect of grant of letters testamentary or of administration

When letters testamentary or of administration on the estate of a decedent are granted, the powers of a special administrator appointed pursuant to this subchapter cease. The special administrator shall forthwith deliver to the executor or administrator all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

§ 1208. Verified account; commissions and allowances; attorneys' fees

The special administrator shall render a verified account of his proceedings in like manner as other administrators. His commissions and the fees of his attorney shall be fixed by the court; but the total commissions paid and extra allowances made to the special administrator and executor, or to the special administrator and general administrator of an estate, may not, together, exceed the sums provided for in this title as commissions and extra allowances for the services of executors or administrators; and the total fees paid to the attorneys both of the special administrator and executor, or of the special administrator and general administrator, may not, together, exceed the sums provided by this title as compensation for the ordinary and extraordinary services of attorneys for executors or administrators.

§ 1209. Division of commissions and allowances, and of attorneys' fees

When the same person does not act as both special administrator and executor, or as both special administrator and general administrator, the commissions and allowances referred to in section 1208 of this title shall be divided between the special administrator and the executor, or between the special administrator and the general administrator, in such proportion as the court deems just and reasonable; and when the same attorney does not act for both the special administrator and the executor, or for the special administrator and the general administrator, the fees referred to in section 1208 of this title shall be divided between the attorneys in such proportion as the court deems just and reasonable.

§ 1210. Attorney's fees for extraordinary services

At any time after six months from the issuance of special letters of administration, or upon the earlier settlement of the final account of the special administrator, and upon such notice to the special administrator and to the persons interested in the estate as the court requires, an attorney who has rendered extraordinary services to the special administrator may apply to the court for compensation for the extraordinary services; and on the hearing the court shall make an order requiring the special administrator to pay the attorney out of the estate such compensation as the court deems proper, and the payment shall be made forthwith.

Subchapter V—Form of Letters

§ 1231. Signature of clerk; seal of court

Letters testamentary, or of administration with the will annexed, or of administration, or of special administration, shall be signed by the clerk of the court, under the seal of the court.

§ 1232. Form of letters testamentary

Letters testamentary shall be substantially in the following form:

Canal Zone, ——— division

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the ——— division of the district court, C. D., who is named therein as such, is hereby appointed executor.

Witness, G. H., clerk of the district court, with the seal of the court affixed the ——— day of ———, A.D. 19—.

[SEAL]

By order of the court:

G. H., Clerk.

§ 1233. Form of letters of administration with the will annexed

Letters of administration, with the will annexed, shall be substantially in the following form:

Canal Zone, ——— division

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the ——— division of the district court, and there being no executor named in the will (or as the case may be), C. D. is hereby appointed administrator with the will annexed.

Witness, G. H., clerk of the district court, with the seal of the court affixed, the ——— day of ———, A.D. 19—.

[SEAL]

By order of the court:

G. H., Clerk.

§ 1234. Form of letters of administration, or of special administration

Letters of administration, or of special administration, shall be substantially in the following form:

Canal Zone, ——— division

C. D. is hereby appointed administrator (or special administrator) of the estate of A. B., deceased.

Witness, G. H., clerk of the district court, with the seal thereof affixed, the ——— day of ———, A.D. 19—.

[SEAL]

By order of the court:

G. H., Clerk.

Subchapter VI—Revocation of Letters

§ 1251. Revocation of letters of administration; petition

When letters of administration have been granted to a person other than the surviving spouse, child, grandchild, parent, brother, or sister of the intestate, any one of them who is competent and had a prior right to letters, or any competent person at the written request of any one of them who is competent and had such a prior right, may obtain the revocation of the letters, and be entitled to the administration, by presenting to the court a petition praying the revocation, and that letters of administration be issued to him.

§ 1252. Notice; citation; hearing; order

When a petition is filed pursuant to section 1251 of this title, the clerk shall give notice as in the case of an original application, and shall issue a citation to the administrator to appear and answer the petition at the time appointed for the hearing. At the time appointed, upon proof that the citation has been duly served and notice given as required in this section, the court shall hear the allegations and proofs of the parties. If the right of the applicant is established, and he is competent, letters of administration shall be granted to him and the letters of the former administrator revoked.

§ 1253. Assertion of prior right by surviving spouse or certain relatives

The surviving spouse, when letters of administration have been granted to a child, grandchild, parent, brother, or sister of the intestate; or any of such relatives, when letters have been granted to another of them, may assert his prior right, and obtain letters of administration, and have the letters before granted revoked in the manner prescribed by section 1251 and 1252 of this title.

§ 1254. Court's discretion to refuse letters

The court may refuse to grant letters of administration, as provided by this subchapter, to a person or to the nominee of a person who had actual notice of the first application and an opportunity to contest it.

Subchapter VII—Death, Disability and Substitution

§ 1271. Revocation of letters upon subsequent probate; accounting; powers of new appointee

Upon the admission to probate of a will after a grant of letters of administration on the ground of intestacy, or upon the admission to probate of a later will than the one before admitted to probate, the pre-existing grant of letters testamentary or of administration shall be revoked, and the administrator or executor whose grant of authority is thus terminated shall render an account of his administration within such time as the court directs. The newly appointed executor or administrator with the will annexed may demand, sue for, recover, and collect all the property of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the previous administrator before the revocation of his letters of administration.

§ 1272. Death or disqualification of one of several executors or administrators

If one of several executors or administrators, to whom letters are granted, dies, becomes mentally incompetent, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust; or if the letters testamentary or of administration are revoked or annulled, with respect to any one executor or administrator, the remaining executor or administrator shall proceed to complete the execution of the will or administration.

§ 1273. Death or disqualification of all executors or administrators; bond of new appointees

If all the executors or administrators of an estate die or become incapable, or the power and authority of all of them is revoked, the court shall issue letters of administration, with the will annexed or otherwise, to the person or persons next entitled thereto, in the same order and manner as is directed in relation to original letters of administration. The administrators so appointed shall give bond in the like penalty, with like sureties and conditions, as required of administrators, and shall have the like power and authority.

Subchapter VIII—Resignation, Suspension and Removal

§ 1291. Resignation of executor or administrator and appointment of successor; liability

An executor or administrator may, at any time, by a writing filed in the district court, resign his appointment, having first settled his accounts and delivered up all the estate to the person whom the court appoints to receive it. If, however, by reason of delays from the settlement and delivery up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested therein require, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of the executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, is not discharged, released, or affected by the appointment or resignation.

§ 1292. Suspension of powers; grounds; citation; notice

When the district judge has reason to believe from his own knowledge, or from credible information, that an executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate, or is incompetent to act, or has removed or is about to remove from the Canal Zone, or has wrongfully neglected the estate, or has long neglected to perform any act as executor or administrator, the judge shall, by an order entered upon the minutes of the court, direct the executor or administrator to be cited to appear and show cause why his letters should not be revoked, and may also suspend the powers of the executor or administrator, until the matter is investigated. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the Canal Zone, notice may be given him of the pendency of the proceedings by publication, in such manner as the court directs, and the court may proceed upon the notice as if the citation had been personally served.

§ 1293. Same; appearance and allegations of interested parties; procedure

At a hearing pursuant to section 1292 of this title, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed; to which the executor or administrator may, by motion, assert any defense or objection that a defendant may, by motion, make in a civil action in the district court, in the form and manner prescribed therefor. If the motion is sustained, the court shall allow the person so appearing not more than 10 days within which to amend his written allegations. If the motion is overruled, the executor or administrator shall answer the allegations, traversing, or otherwise obviating them. The court shall hear and determine the issues raised.

§ 1294. Same; hearing; revocation of letters; compelling attendance and testimony

If the executor or administrator fails to appear in obedience to the citation referred to in section 1292 of this title, or, if he appears, and the court is satisfied from the evidence, that there exists cause for his removal, the court shall revoke his letters. The court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and, upon his refusal so to do, may commit him until he obeys, or may revoke his letters, or both.

§ 1295. Revocation for embezzlement, waste or mismanagement

If, upon the settlement of an account of an executor or administrator, it appears that he has embezzled, wasted or mismanaged the estate, the court shall revoke his letters.

§ 1296. Revocation for contempt

When an executor or administrator is committed for contempt in disobeying a lawful order of the court, and has remained in custody for 30 days without obeying the order, or purging himself otherwise of the contempt, the court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint another person entitled thereto to succeed him.

§ 1297. Validity of acts prior to revocation

All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, are as valid, to all intents and purposes, as if the executor or administrator had continued lawfully to execute the duties of his trust.

Subchapter IX—Miscellaneous Provisions

§ 1321. Acts of remaining executors or administrators where one or more absent or disqualified

Where there are two executors or administrators, the act of one alone is effectual, if the other is absent from the Canal Zone, or laboring under a legal disability from serving, or if he has given his coexecutor or coadministrator authority, in writing, to act for both. Where there are more than two executors or administrators, the act of a majority is valid.

§ 1322. Transcript of court minutes as evidence

A transcript from the records of the court, showing the appointment of a person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of his court, that the person has given bond and been qualified, and that letters testamentary or of administration have been issued to him and have not been revoked, has the same effect in evidence as the letters themselves.

CHAPTER 59—OATHS AND BONDS

SUBCHAPTER I—OATHS

SUBCHAPTER II—BONDS

Subchapter I—Oaths

§ 1351. Oath of executor or administrator; recording letters

Before letters testamentary or of administration are issued to the executor or administrator, he shall take and subscribe an oath before an officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator. The oath shall be attached to the letters. Letters testamentary, and of administration, with the affidavits and certificates thereon, shall be forthwith recorded by the clerk of the court, in books to be kept by him in his office for that purpose.

§ 1352. Oaths and affidavits of trust companies

If it is required that an executor or administrator shall qualify by taking and subscribing an oath, or an affidavit is required, it is a sufficient qualification by a corporation or association receiving an appointment as executor or administrator if the oath is taken and subscribed, or the affidavit is made, by the president, vice-president, secretary, manager, trust officer, or assistant trust officer thereof.

Subchapter II—Bonds

§ 1371. Bond of executor or administrator; conditions

A person to whom letters testamentary or of administration are directed to issue, shall, before receiving them, execute a bond to the Government of the Canal Zone, with two or more sufficient sureties, to be approved by the district court. In form the bond shall be joint and several, and the penalty shall be in such reasonable sum as the court directs; and the bond shall be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

§ 1372. Requiring bond notwithstanding provision of will

When it is provided in a will that a bond may not be required of the executor, the court, nevertheless, for good cause, may require one to be given as in other cases, either before or at any time after the issuance of letters.

§ 1373. Bonds by several executors or administrators

When two or more persons are appointed executors or administrators, the court shall require and take a separate bond from each of them.

§ 1374. Justification of sureties

Where bonds or undertakings are required to be given pursuant to this title, the sureties shall justify thereon in the same manner and in like amounts as required by section 431 of Title 3, and the certificate thereof shall be attached to and filed with the bond or undertaking. The bonds and undertakings may not be filed until approved by the court. Upon filing, the clerk shall thereupon enter in an appropriate book the date and amount of the bond or undertaking and the name or names of the surety or sureties thereon. If the bond or undertaking is lost, the entries so made shall be prima facie evidence of the due execution of the bond or undertaking as required by law.

§ 1375. Same; citation; examination; additional security

Before the court approves a bond required under this title, or after its approval, it may, of its own motion, or upon the motion of a person interested in the estate, supported by affidavit that the sureties, or one or more of them, are not worth as much as they have justified to, order a citation to issue requiring them to appear before it at a

designated time and place, to be examined concerning their property and its value. At the same time, the court shall cause a notice to be issued to the executor or administrator requiring his appearance on the return of the citation. On its return the court may examine the sureties and such witnesses as may be produced, concerning the property of the sureties and its value; and if, upon the examination, it is satisfied that the bond is insufficient, it shall require sufficient additional security.

§ 1376. Insufficiency of sureties or bond; additional security

A person interested in an estate may, by verified petition, represent to the court that the sureties of the executor or administrator thereof have become, or are becoming, insolvent, or that they have removed, or are about to remove, from the Canal Zone, or that from any other cause the bond is insufficient, and ask that further security be required; or if it comes to the knowledge of the court that the bond is, from any cause, insufficient, the court may, of its own motion, without an application, require further security.

§ 1377. Inquiry as to sufficiency; citation; hearing; order

If the court is satisfied from a petition filed pursuant to section 1376 of this title, or from its own information, that the question of sufficiency of the sureties or bond of an executor or administrator requires investigation, it shall cause a citation to be issued to the executor or administrator requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation shall be served personally on the executor or administrator, at least five days before the return day. If he has absconded, or can not be found, it may be served by leaving a copy of it at his place of residence, or by such publication as the court orders. On the return of the citation, or at such other time as the court appoints, it shall proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is, from any cause, insufficient, the court shall make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form within a reasonable time, not less than five days.

§ 1378. Failure to comply with order for additional or sufficient security

If sufficient or additional security is not given within the time fixed by the court's order pursuant to section 1377 of this title, the right of the executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, shall be appointed to the administration. If letters have already been issued to the executor or administrator, they shall be revoked, and his authority shall thereupon cease.

§ 1379. Suspension of powers pending hearing

When a petition is presented praying that an executor or administrator be required to give further security, or to give bond, where, by the terms of the will, a bond was not originally required, and it is alleged, on oath, that the executor or administrator is wasting the property of the estate, the court, by order, may suspend his powers until the matter can be heard and determined.

§ 1380. Application for release of surety; citation; service

When a surety of an executor or an administrator desires to be released from responsibility on account of future acts, he may make application to the court for relief. The court shall cite the executor or administrator to appear at a designated time and place and give other security. The citation shall be served personally, or, if the

executor or administrator has absconded, left, or removed from the Canal Zone, or if he can not be found after due diligence and inquiry, it may be served in the manner provided by section 1377 of this title.

§ 1381. Same; neglect or refusal to give new sureties

If the executor or administrator neglects or refuses to give new sureties, to the satisfaction of the court, on the return of the citation issued pursuant to section 1380 of this title, or within such reasonable time as the court allows, unless the surety making the application consents to a longer extension of time, the court, by order, shall revoke his letters.

§ 1382. Same; discharge of sureties if new sureties given

If, in a proceeding pursuant to section 1380 of this title, new sureties are given to the satisfaction of the court, it may thereupon make an order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default, or misconduct of the executor or administrator.

§ 1383. Applications to be determined at any time

The applications authorized by sections 1376 and 1380 of this title may be heard and determined at any time. All orders made therein shall be entered upon the records of the court.

§ 1384. Successive actions on bond

The bond of an executor or administrator is not void upon the first recovery, but may be sued and recovered upon from time to time, by a person aggrieved, in his own name, until the whole penalty is exhausted.

CHAPTER 61—POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS

Sec.

§ 1411. Possession of estate

The executor or administrator shall take into his possession all the estate of the decedent, real and personal, and collect all debts due to the decedent or to the estate. For the purpose of bringing suits to quiet title, or for partition of the estate, the possession of the executors or administrators is the possession of the heirs or devisees; but in such cases, the possession by the heirs or devisees is subject to the possession of the executor or administrator for the purposes of administration, as provided in this title.

§ 1412. Partnership property; settlement; accounting

When a partnership exists between the decedent, at the time of his death, and another person, the surviving partner has the right to continue in possession of the partnership, and to settle its business, but the interest of the decedent in the partnership shall be included in

the inventory, and be appraised as other property. The surviving partner shall settle the affairs of the partnership without delay, and account with the executor or administrator, and pay over such balances as may from time to time be payable to him, in right of the decedent. Upon the application of the executor or administrator, the court may, if it appears necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the decendent could have maintained.

§ 1413. Operation of business of decedent

After notice to all persons interested in an estate, given in such manner as the court directs, the court may authorize the executor or administrator to continue the operation of the decedent's business to such an extent and subject to such restrictions as the court considers to be for the best interest of the estate and those interested therein.

§ 1414. Actions by and against executors and administrators

Actions for the recovery of property, real or personal, or for the possession thereof, or to quiet title thereto, or to enforce a lien thereon, or to determine an adverse claim thereon, and all actions founded upon contracts, or upon a liability for physical injury, death, or injury to property, may be maintained by and against executors and administrators in all cases in which the cause of action, whether arising before or after death, is one that would not abate upon the death of their respective testators or intestates.

§ 1415. Actions for waste, destruction, taking, conversion, or trespass

Executors and administrators may maintain an action against a person who has wasted, destroyed, taken, or carried away, or converted to his own use, the property of the decedent, in his lifetime, or committed a trespass on the real estate of the decedent in his lifetime; and a person or his personal representatives may maintain an action against the executor or administrator of a decedent who in his lifetime has wasted, destroyed, taken, or carried away, or converted to his own use, the property of such person, or committed a trespass on his real estate. This section does not apply to an action founded upon a wrong resulting in physical injury or death of a person.

§ 1416. Actions on bond of former executor or administrator

An executor or administrator may, in his own name, maintain actions on the bond of a former executor or administrator of the same estate, for the use and benefit of all parties interested in the estate.

§ 1417. Unqualified executors as parties

In actions by or against executors, it is not necessary to join as parties those to whom letters were ordered to be issued, but who have not qualified.

§ 1418. Compounding or compromising with debtor

If a debtor of the decedent is unable to pay all his debts, the executor or administrator, with the approval of the court, may compound with him and give him a discharge, upon receiving a fair and just dividend of his effects. The court may also authorize a compromise when it appears to be just, and for the best interest of the estate.

§ 1419. Recovery of fraudulently conveyed property

If a decedent, in his lifetime, conveyed real or personal property, or rights or interests therein, with intent to defraud his creditors, or to avoid an obligation due another, or made a conveyance

that by law is void as against creditors, or made a gift of property in view of death, and there is a deficiency of assets in the hands of the executor or administrator, the latter, on application of a creditor, shall commence and prosecute to final judgment an action for the recovery of the property for the benefit of the creditors.

§ 1420. Same; costs; sale of property recovered; proceeds

A creditor making application pursuant to section 1419 of this title shall pay such part of the costs and expenses of the action, or give such security to the executor or administrator therefor, as the court directs. Property so recovered shall be sold for the payment of debts, in the same manner as if the decedent had died seised or possessed thereof, upon obtaining an order therefor from the court; and the proceeds shall be appropriated in payment of the debts of the decedent in the same manner as other property in the hands of the executor or administrator. The remainder of the proceeds, after the debts of the decedent have been paid, shall be paid to the person from whom the property was recovered.

§ 1421. Custody and management of property; recovery of possession; joinder in possessory or title actions

The executor or administrator is entitled to the possession of all real and personal property of the decedent, and to receive the rents and profits of the real property until the estate is settled or until delivered over by the order of the court to the heirs or devisees; and shall keep in good tenantable repair all houses, buildings, and fixtures thereon which are under his control. After the time to present claims has expired, he is not entitled to recover the possession of any property of the estate from an heir who has succeeded to the property in his possession, or from a devisee or legatee to whom the property has been devised or bequeathed, or from an assignee thereof, unless he proves that the recovery is necessary for the payment of debts or legacies, or of expenses of administration already accrued, or for distribution to another heir, devisee or legatee entitled thereto. The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real property, or for the purpose of quieting title thereto, against anyone except the executor or administrator; but they are not required to do so.

§ 1422. Delivery of real property to heirs or devisees

When the time to present claims has expired, the executor or administrator shall deliver possession of the real property to the heirs or devisees, unless the court determines that the receipt of the income from the property for a longer period is necessary, or that the sale of the property probably will be necessary, for the payment of the debts of the decedent.

§ 1423. Purchase of claims against estate

An administrator or executor may not purchase a claim against the estate he represents; and if he pays a claim for less than its nominal value he is only entitled to charge in his account the amount he actually paid.

§ 1424. Deposit of funds

The court may order an executor or administrator to deposit funds of an estate coming into his hands, in a bank or banks or other depositary, to be designated by the court, in his name with the designation of his fiduciary capacity. The court may direct him to deposit any or all the funds in an interest-bearing account. This section does not relieve an executor or administrator from any duty otherwise imposed by law.

§ 1425. Investment of moneys of estate pending settlement

Pending the settlement of an estate, on the petition of a person interested therein, and upon good cause shown therefor, the court may order any money in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States or in federally guaranteed savings and loan associations or in such other securities as the court approves and allows.

The clerk shall set the petition for hearing by the court and cause a notice of the time and place of hearing thereof to be posted at the courthouse of the division where the proceedings are pending, at least 10 days before the day of hearing, giving the name of the estate, the name of the petitioner and the nature of the application, referring to the petition for further particulars.

At least 10 days before the time set for the hearing of the petition, the petitioner shall cause notice of the time and place of hearing thereof to be mailed to the executor or administrator, when he is not the petitioner, to any coexecutor or coadministrator not petitioning, and to all persons (or to their attorneys, if they have appeared by attorney), who have requested notice or who have given notice of appearance in the estate in person or by attorney, as heir, devisee, legatee or creditor, or as otherwise interested, addressed to them at their respective post-office addresses given in their requests for special notice, if any, otherwise at their respective offices or places of residence, if known, and, if not, at the division where the proceedings are pending, or to be personally served upon them.

Proof of the giving of notice shall be made at the hearing; and if it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order, and the order, when it becomes final, is conclusive upon all persons.

CHAPTER 63—INVENTORY, APPRAISEMENT, AND COLLECTION OF PROPERTY

SUBCHAPTER I—INVENTORY, APPRAISEMENT, AND POSSESSION OF ESTATE

SUBCHAPTER II—EMBEZZLEMENT AND SURRENDER OF PROPERTY

Subchapter I—Inventory, Appraisement, and Possession of Estate

§ 1461. Time for returning; contents

(a) Within 30 days after his appointment, or within such further period as the court, for reasonable cause, allows, the executor or administrator shall make and return to the court a true inventory, and, if the court directs, an appraisement of all the estate of the decedent which has come to his possession or knowledge.

(b) The inventory shall:

(1) contain a statement of all the estate, real and personal, of the decedent;

(2) contain a statement of all debts, bonds, mortgages, deeds of trust, notes, and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each debt or security, the date, the sum originally payable, the indorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, may be collected on each debt or security;

(3) contain a statement of the interest of the decedent in any partnership of which he was a member, to be appraised as a single item;

(4) contain an account of all moneys belonging to the decedent which have come to the hands of the executor or administrator, and, if none, a statement of that fact; and

(5) show, as far as it can be ascertained by the executor or administrator, what portion of the property is community property, and what portion is the separate property of the decedent.

§ 1462. Testator's claims against executor; inclusion in inventory

The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him. The claim shall be included in the inventory, and the executor is liable for it, as for so much money in his hands, when the debt or demand becomes due.

§ 1463. Same; bequest to executor; nature and effect

The discharge or bequest in a will of a debt or demand of the testator against the executor named, or any other person, is not valid against the creditors of the decedent, but is a specific bequest of the debt or demand. It shall be included in the inventory, and, if necessary, applied in the payment of the debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

§ 1464. Oath to inventory

The executor or administrator shall take and subscribe an oath, before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his possession or knowledge, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath shall be indorsed upon or annexed to the inventory.

§ 1465. Appointment of appraisers; incompetency of certain persons

(a) To make an appraisement, the court shall appoint three disinterested persons, any two of whom may act.

(b) A clerk or deputy of the court, or a person related by consanguinity or affinity to, or connected by marriage with, or being a partner or employee of, the judge of the court, may not be appointed, and is not competent, to act as appraiser in an estate, or matter or proceeding pending before the judge or in his court.

§ 1466. Oath of appraisers; appraisement procedure

Before proceeding to the execution of their duty, the appraisers shall take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property exhibited to them, according to the best of their knowledge and ability. They shall appraise the property by setting down each item sepa-

rately, with the value thereof in dollars and cents in figures, opposite the respective items.

§ 1467. Compensation of appraisers; verified account

An appraiser shall receive from each estate he appraises, as compensation for his services, such sum as the court fixes. He shall file, with the inventory, a verified account of his services and disbursements.

§ 1468. Failure to return inventory

If an executor or administrator neglects or refuses to return the inventory within the time prescribed by section 1461 of this title, or by the court under authority of that section, the court may, upon notice, revoke his letters, and he is liable on his bond for any injury to the estate or a person interested therein, arising from his neglect or refusal.

§ 1469. After-discovered property

When property not mentioned in an inventory that is made and returned, comes to the possession or knowledge of an executor or administrator, he shall cause it to be appraised in the manner prescribed in this chapter, and an inventory thereof to be returned within two months after the discovery. The making of the inventory may be enforced, after notice, by attachment or removal from office.

Subchapter II—Embezzlement and Surrender of Property

§ 1491. Double liability for embezzling property

If a person embezzles, conceals, smuggles, or fraudulently disposes of any property of a decedent, he is chargeable therewith, and liable to an action by the executor or administrator of the estate for double the value of the property so embezzled, concealed, smuggled, or fraudulently disposed of, to be recovered for the benefit of the estate.

§ 1492. Citation and examination of suspected embezzler, etc., expenses

Upon complaint made under oath by an executor, administrator, or other person interested in the estate of a decedent, that a person is suspected of having concealed, embezzled, smuggled, or fraudulently disposed of any property of the decedent, or has in his possession or knowledge any deed, conveyance, bond, contract, or other writing, which contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to real or personal estate, or a claim or demand, or a lost will, the court may cite the suspected person to appear before the court, and may examine him on oath upon the matter of the complaint. If he appears and is found innocent, his necessary expenses shall be allowed him out of the estate.

§ 1493. Enforcement of examination of suspected embezzler, etc.; compelling disclosure; interrogatories; witnesses

If a person cited pursuant to section 1492 of this title refuses to appear and submit to an examination, or to answer such interrogatories as may be put to him, concerning the matters of the complaint, he may, by warrant from the court, be committed to jail and confined therein until he submits to the order of the court or is discharged according to law. If, upon the examination, it appears that he has concealed, embezzled, smuggled, or fraudulently disposed of any property of the decedent, or that he has in his possession or knowledge any of the papers or documents referred to in section 1492 of this title, the court may make an order requiring him to disclose his knowledge thereof

to the executor or administrator; and he may be committed to jail and confined therein until the order is complied with, or he is discharged according to law. All interrogatories and answers shall be in writing, signed by the party examined, and filed in the court. In addition to the examination of the party, witnesses may be produced and examined on either side.

§ 1494. Requiring persons intrusted with estate to account

Upon complaint made under oath by an executor or administrator, the court may cite a person who has been intrusted with any part of the estate of the decedent to appear before the court, and require him to render a full account, on oath, of any moneys, accounts, or other property or papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of his proceedings thereon. If the person so cited refuses to appear and render the account, the court may proceed against him as provided in section 1493 of this title.

CHAPTER 65—DISPOSITION OF ESTATES WITHOUT ADMINISTRATION

SUBCHAPTER I—TRANSFER OF PERSONAL PROPERTY NOT EXCEEDING CERTAIN AMOUNTS

Sec.

SUBCHAPTER II—SETTING ASIDE ESTATES NOT EXCEEDING $3,000 IN VALUE

Subchapter I—Transfer of Personal Property Not Exceeding Certain Amounts

§ 1521. Personal property not exceeding $100; summary probate; affidavit of right

When a decedent does not leave real property, or interest therein or lien thereon, in the Canal Zone, and the total value of the decedent's property in the Canal Zone, over and above any amounts due to the decedent for services in the Armed Forces of the United States, does not exceed $100, the surviving spouse, the children, lawful issue of deceased children, the parent, the brother or sister of the decedent, the lawful issue of a deceased brother or sister, or the guardian of the estate of a minor or incompetent person bearing such relationship to the decedent, if that person has a right to succeed to the property of the decedent, or is the sole beneficiary under the last will and testament of the decedent, may, without procuring letters of administration, or awaiting the probate of the will,

(1) collect any money due the decedent,

(2) receive the property of the decedent, and

(3) have transferred to him any evidences of interest, indebtedness or right

upon furnishing to the person, representative, corporation, officer or body owing the money, having custody of the property or acting as registrar or transfer agent of the evidences of interest, indebtedness or right, an affidavit showing the right of the affiant or affiants to collect the money, receive the property, or have the evidences transferred.

§ 1522. Surviving spouse's right to $500 from bank deposits; affidavit

Whether a person dies testate or intestate, and irrespective of the character of his or her property, the spouse of the decedent, if entitled by succession or by the last will and testament of the decedent to any money of the decedent on deposit in a bank, may collect the money, not to exceed the total sum of $500, without procuring letters testamentary or of administration, upon furnishing the bank with an affidavit showing the right of the affiant to receive the money.

§ 1523. Affidavit of right; effect of receipt

The receipt of the affiant as provided by section 1522 of this title constitutes sufficient acquittance for any payment of money or delivery of property made pursuant to this subchapter and discharges the person, representative, corporation, officer or body so paying or delivering it from any further liability with reference thereto, without the necessity of inquiring into the truth of the facts stated in the affidavit. But the payment or transfer does not preclude administration when necessary to enforce payment of the decedent's debts.

§ 1524. Same; claim against estate in probate; procedure

If the money or property claimed pursuant to this subchapter is that of a deceased heir or legatee of a person whose estate is in probate, the personal representative of the person whose estate is in probate shall first present the affidavit to the division of the court in which the estate is being probated and the court shall direct him to pay the money or deliver the property to the affiant or affiants to the extent that the decree of distribution determines that the heir or legatee was entitled thereto under the will or the laws of succession.

Subchapter II—Setting Aside Estates Not Exceeding $3,000 in Value

§ 1541. Authority to set aside estate

When a decedent leaves a surviving spouse or minor child or minor children, and the net value of the whole estate, over and above all liens and encumbrances at the date of death and not including the property excepted from administration pursuant to section 522 of this title, does not exceed the sum of $3,000, it may be set aside to the surviving spouse, if there is one, and if there is none, then to the minor child or minor children of the decedent.

§ 1542. Petition to set aside estate; allegations; time; verification; contents

(a) Allegations showing that this subchapter is applicable, together with a prayer that the estate be set aside as provided in this subchapter, may be included alternatively in the petition for probate of the will or for letters of administration; or the allegations and prayer may be presented by a separate petition filed in the court by the personal representative of the decedent, or the surviving spouse, or the guardian of the minor child or minor children, filed at any time before the hearing on the petition for probate of the will or for letters of administration, or after the filing of the inventory.

(b) The petition for probate of the will or for letters of administration, in which the allegations and prayer are included alternatively, as provided by subsection (a) of this section, or a separate petition, as therein provided, shall be verified; and the allegations shall include a specific description, and an estimate of the value, of all the decedent's property, a list of liens and encumbrances at the date of death, and a designation of property excepted from administration pursuant to section 522 of this title.

§ 1543. Statement in notice, if allegations included in petition for probate or letters

If the allegations and prayer as provided by section 1542 of this title are included in the petition for probate of the will or for letters of administration, the notice of hearing shall include a statement that a prayer for setting aside the estate to the surviving spouse or minor child or minor children, as the case may be, is included in the petition.

§ 1544. Fixing time of hearing; notice; proceedings under separate petition

If a separate petition is filed as provided by section 1542 of this title, the clerk shall fix a day for the hearing thereof and shall give notice for the period and in the manner provided by section 1583 of this title. If the hearing of the original petition for probate of the will or for letters of administration is set for a day more than 10 days after the filing of the separate petition, the latter shall be set for hearing at the same time as the former; if not, the separate petition shall be set for hearing at least 10 days after the date on which it is filed, and if the original petition has not been heard, it shall be continued until the date for the separate petition and heard at the same time.

§ 1545. Decree of assignment; title; restriction on right

(a) If, upon the hearing of a petition provided for by this subchapter, the court finds that the net value of the estate, over and above all liens and encumbrances at the date of the death of the decedent and not including the property excepted from administration under section 522 of this title, does not exceed the sum of $3,000, as of the date of death of the decedent, that the expenses of the last illness, funeral charges, and expenses of administration have been paid, and that subsection (b) of this section does not apply to the particular case, it shall, by decree for that purpose, assign to the surviving spouse of the decedent, if there is a surviving spouse, or, if there is no surviving spouse, then to the minor child or minor children of the decedent, if any, the whole of the estate, subject to whatever mortgages, liens, or encumbrances there may be upon the estate at the time of the death of the decedent. The title thereto shall vest absolutely in the surviving spouse, if there is a surviving spouse, or if there is no surviving spouse, in the minor child or minor children, subject to whatever mortgages, liens, or encumbrances there may be upon the estate at the time of the death of the decedent, and there shall be no further proceedings in the administration, unless further estate is discovered.

(b) A surviving spouse or minor child is not entitled to an assignment under this subchapter, if the spouse or child has other estate, including the total value of any property held by either in joint tenancy with the decedent and the value of any property excepted from administration pursuant to section 522 of this title, the net value of which, over and above all liens and encumbrances, exceeds the sum of $5,000.

§ 1546. Denying assignment and acting on petition for probate or letters

If the court finds that the net value of the estate exceeds $3,000, or that the surviving spouse or minor child has other estate of $5,000 in value, or that there is neither a surviving spouse nor minor child, it shall act upon the petition for probate or for letters of administration in the same manner as though a petition to set aside the estate had not been included, and the estate shall then be administered in the usual manner.

CHAPTER 67—SUPPORT OF THE FAMILY

Sec.

§ 1581. Possession of certain property pending inventory; support allowance

When a decedent leaves a widow or minor children, the widow or children, until letters are granted and the inventory is returned, may remain in possession of all the wearing apparel of the family, and of all the household furniture of the decedent. They are also entitled to a reasonable provision for their support, to be allowed by the court.

§ 1582. Setting apart property exempt from execution

Upon the return of the inventory referred to in section 1581 of this title, or at any subsequent time during the administration, the court may, on petition therefor, set apart for the use of the surviving spouse, or, in case of the spouse's death, to the minor children of the decedent, all the property exempt from execution.

§ 1583. Same; setting petition for hearing; notice

When the petition referred to in section 1582 of this title is filed, the clerk of the court shall set the petition for hearing by the court and cause notices to be posted in at least three public places in the division, one of which shall be at the place where the court is held, containing the name of the decedent, the name of the petitioner, the nature of the application, and the time at which the petition will be heard. The notice shall be given at least 10 days before the hearing, and a copy thereof shall be mailed at least 10 days before the day appointed for the hearing to the executor or administrator, if he is not the petitioner, and to any person named as coexecutor or coadministrator not petitioning, and to the attorneys of all persons who have appeared or given notice of appearance, by attorneys, in the estate as heirs, legatees, devisees, next of kin, or creditors, or as otherwise interested, addressed to them at their places of residence, or office, if known, and if not known, then to the place where the proceedings are pending. Proof of the posting and mailing shall be made at the hearing.

§ 1584. Extra allowance

If the property set apart is insufficient for the support of the widow and children, or either, the court shall take such reasonable allowance out of the estate as is necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, may not be longer than one year after granting letters testamentary or of administration.

§ 1585. Payment of allowance

An allowance made by the court in accordance with the provisions of this chapter shall be paid in preference to all other charges, except funeral expenses and the expenses of the last illness of the decedent and expenses of administration; and the allowance, whenever made, may, in the discretion of the court, take effect from the death of the decedent.

§ 1586. Apportionment of property set apart

Property set apart to the use of the family in accordance with this chapter, if the decedent left a surviving spouse and no minor child, is the property of the spouse. If the decedent left also a minor child or minor children, one-half of the property belongs to the surviving spouse, and the remainder to the child, or in equal shares to the children, if there are more than one. If there is no surviving spouse, the whole belongs to the minor child or minor children.

CHAPTER 69—CLAIMS AGAINST THE ESTATE

SUBCHAPTER I—PRESENTATION OF CLAIMS

SUBCHAPTER II—RULES GOVERNING PAYMENT OF CLAIMS

Subchapter I—Presentation of Claims

§ 1621. Notice to creditors; effect of death, etc., of executor or administrator; time for filing claims

(a) An executor or administrator shall, immediately after his letters are issued, cause to be published in a newspaper of general circulation in the Canal Zone, a notice to the creditors of the decedent, requiring all persons having claims against the decedent to file them, with the necessary vouchers, in the office of the clerk of the court, or to present them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business to be specified in the notice. The notice shall be published not less than once a week for four successive weeks. If the executor or administrator dies, resigns, or is removed, before the time expressed in the notice, his successor shall give notice only for the unexpired time allowed for the filing or presentation of claims.

(b) The court may dispense with publication of the notice required by subsection (a) of this section, and direct that notice be

given by posting in three public places in the Canal Zone for a period of four successive weeks.

(c) The time expressed in the notice required by this section shall be 10 months after it is first published or posted, when the estate exceeds in value the sum of $20,000, and 4 months when it does not.

§ 1622. Removal for neglecting to give notice

If an executor or administrator neglects for two months after his appointment to give notice to creditors, as prescribed by this subchapter, the court shall revoke his letters, and appoint another person in his stead, equally or the next in order entitled to the appointment.

§ 1623. Filing copy of notice; affidavit; decree

Within 30 days after the first publication of notice to creditors, the executor or administrator shall file or cause to be filed in the court a copy of the notice, accompanied by an affidavit setting forth the date of the first publication thereof and the name of the newspaper in which it is printed, or the dates and places of posting of the notice, if the posting of notices is directed. The court, upon the affidavit or other testimony to its satisfaction, shall issue an order or decree showing that notice to creditors has been given, and directing that the order or decree be entered in the records of the court.

§ 1624. Executor's or administrator's claim; presentation; allowance or rejection; action

If the executor or administrator is a creditor of the decedent, he shall file his claim, authenticated by affidavit, with the clerk of the court. The clerk shall present it for allowance or rejection to the judge. Its allowance by the judge is sufficient evidence of its correctness, and it shall be paid as other claims in due course of administration. If the judge rejects the claim, action thereon may be had against the estate by the claimant, and summons shall be served upon the judge, who may appoint an attorney, at the expense of the estate, to defend the action. If the claimant fails to recover, he shall pay all costs, including the defendant's reasonable attorney's fees, to be fixed by the court.

§ 1625. Affidavits in support of claims; claims not due; contingent claims; vouchers

(a) Every claim that is due, when filed or presented, shall be supported by the affidavit of the claimant, or by a person in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the claim, to the knowledge of the affiant. If the claim is not due when filed or presented, or is contingent, the particulars of the claim shall be stated. When the affidavit is made by a person other than the claimant, he shall set forth in the affidavit the reason therefor. The oath may be taken before any officer authorized to administer oaths.

(b) The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the claimant leaves an original voucher in the hands of the executor or administrator, or suffers it to be filed with the clerk, he may withdraw it, when a copy thereof has been already, or is then, attached to his claim.

§ 1626. Claim founded on written instrument; copy; secured claim

(a) Where a claim is founded on a written instrument, the original need not be filed or presented, but a verified copy of the instrument with all indorsements shall be attached to the claim. The original instrument shall be exhibited to the executor or administrator or judge, upon demand, unless it is lost or destroyed, in which case

the claimant shall accompany his claim, when filed or presented, by his affidavit, containing a copy or particular description of the instrument, and stating its loss or destruction.

(b) Where the claim, or any part thereof, is secured by a mortgage or other lien which has been recorded in the office of the registrar of property, it is sufficient to describe the mortgage or lien, and refer to the date, volume, and page of its record.

§ 1627. Claims not filed on time are barred; exception

(a) Claims arising upon contracts, whether they are due, not due, or contingent, and claims for funeral expenses and expenses of the last sickness shall be filed or presented within the time limited in the notice, and, except as provided by subsection (b) of this section, a claim not so filed or presented is barred forever.

A brief description of every claim filed shall be entered by the clerk in the appropriate book, showing the name of the claimant, the amount and character of the claim, the rate of interest, if any, and the date of filing.

(b) A claim specified by subsection (a) of this section may be filed or presented at any time before a decree of distribution is entered, if it is made to appear by the affidavit of the claimant that, by reason of being out of the Canal Zone, he had not notice as provided by this subchapter.

§ 1628. Record of claims filed

The clerk of the court shall enter in the appropriate book a brief description of every claim filed, showing the name of the claimant, the amount and character of the claim, the rate of interest, if any, and the date of filing.

§ 1629. Claims barred by limitations; examination of claimants; suspension of limitations pending administration

A claim may not be allowed by the executor or administrator, or by the judge, if it is barred by the statute of limitations. When a claim is presented to the judge for his allowance, he may examine the claimant and others, on oath, and hear legal evidence touching the validity of the claim. A claim against an estate which has been allowed is not affected by the statute of limitations, pending the proceedings for the settlement of the estate.

§ 1630. Claim in action pending at decedent's death

If an action is pending against the decedent at the time of his death, the plaintiff shall, in the manner provided by this subchapter, file his claim with the clerk, or present it to the executor or administrator for allowance or rejection, authenticated as required in other cases. A recovery may not be had in the action unless proof is made of the filing or presentation.

§ 1631. Claims filed with clerk; notice to executor or administrator; allowance or rejection

When a claim, accompanied by the affidavit required by this subchapter, is filed with the clerk of the court before being presented to the executor or administrator, the clerk shall immediately send written notice thereof to the executor or administrator, or his attorney. The clerk shall show in the notice the name of the claimant and the amount of the claim, and he may deliver it personally or mail it. The executor or administrator shall, in writing, allow or reject the claim, and shall file the allowance or rejection with the clerk. If he allows the claim, the clerk, immediately after the filing of the allowance, shall present the claim and the allowance to the judge, and at the same time shall indorse on the claim the date of presentation. The judge shall indorse upon the claim so filed his allowance or rejection, with the date thereof.

§ 1632. Claims presented to executor or administrator; allowance or rejection

When a claim, accompanied by the affidavit required by this subchapter, is presented to the executor or administrator before filing, he shall indorse thereon his allowance or rejection, with the date thereof. If he allows the claim, it shall be presented to the judge for approval. The judge shall, in like manner, indorse upon the claim his approval or rejection. If the claim is approved, it shall be filed with the clerk within 30 days thereafter.

§ 1633. Failure to act on claim; presentation by notary; acting on timely claim after time

(a) If, where a claim has been filed without presentation, the executor or administrator refuses or neglects to file his allowance or rejection for 10 days after the claim has been filed, or if, where a claim has been presented before filing, the executor or administrator refuses or neglects to indorse his allowance or rejection for 10 days after the claim has been presented to him, or if the judge refuses or neglects to indorse his approval or rejection for 10 days after the claim has been presented to him, the refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection on the tenth day. If the claim is presented before filing by a notary, the certificate of the notary, under seal, is prima facie evidence of the presentation and the date thereof.

(b) If a claim is filed with the clerk, or presented to the executor or administrator, before the expiration of the time limited for the filing or presentation of claims, the claim is filed or presented in time, though acted upon by the executor or administrator, and by the judge, after the expiration of the time for filing or presenting it.

§ 1634. Status of allowed claims; contest of validity

Every claim allowed by an executor or administrator and approved by the judge shall be ranked among the acknowledged debts of the estate, to be paid in due course of administration; but the validity thereof may be contested by a person in interest, at any time prior to the settlement of the account of the executor or administrator in which it is first reported as an allowed and approved claim, unless established by a judgment against the executor or administrator.

§ 1635. Record of claims allowed

The clerk of the court shall enter in the appropriate book the date of allowance of each claim, together with the amount allowed.

§ 1636. Notice of rejection; action by claimant; time

If a claim is rejected either by the executor or administrator, or the judge, written notice of the rejection shall be given by the executor or administrator to the holder of the claim or to the person filing or presenting it, and the holder may bring suit in the proper court against the executor or administrator within three months after the date of service of the notice if the claim is then due or within two months after it becomes due, otherwise the claim shall be forever barred.

If it appears to the satisfaction of the court that the residence of the claimant is not known, the court shall by its order require the notice to be served on the claimant by filing with the clerk.

The time during which there is a vacancy in the administration is not included in the limitations prescribed in this section for bringing action on the rejected claim.

§ 1637. Filing or presenting claim as prerequisite to action; exception

(a) Except as provided by subsection (b) of this section, a holder of a claim against an estate may not maintain an action thereon, unless the claim is first filed with the clerk, or presented to the executor or administrator.

(b) An action may be brought by the holder of a mortgage or lien to enforce it against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint, but counsel fees may not be recovered in the action unless the claim was first filed with the clerk, or presented to the executor or administrator.

§ 1638. Partial allowance

The executor or administrator may allow a claim in part, in which case he shall state in his allowance the amount he is willing to allow. If the creditor refuses to accept the amount allowed in satisfaction of his claim, he may not recover costs in an action therefor brought against the executor or administrator, unless he recovers a greater amount than that allowed.

§ 1639. Reference; hearing and report; powers of master and court; effect

If the executor or administrator doubts the correctness of a claim presented to him or filed with the clerk, he may enter into an agreement in writing with the claimant to refer the matter in controversy to a disinterested person, to be approved by the court. Upon filing the agreement and approval of the court with the clerk, the clerk shall enter an order referring the matter in controversy to the person so selected, or, if the parties consent, a reference to a master may be had in the court. The master shall hear and determine the matter, and make his report thereon to the court. The same proceedings shall be had in all respects, and the master shall have the same powers, be entitled to the same compensation and subject to the same control, as in other cases of reference. The court may remove the master, appoint another in his place, set aside or confirm his report and adjudge costs, as in actions against executors or administrators, and the judgment of the court thereon is as valid and effectual, in all respects, as if it had been rendered in a suit commenced by ordinary process; but the report of the master, if confirmed, merely establishes or rejects the claim, as if it had been allowed or rejected by the executor or administrator and judge.

§ 1640. Liability of executor or administrator for costs

When a judgment is recovered, with costs, against an executor or administrator, he shall be individually liable for the costs, but they shall be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

Subchapter II—Rules Governing Payment of Claims

§ 1661. Effect of judgment against executor or administrator

A judgment rendered against an executor or administrator, upon a claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and the judge; and the judgment shall be that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the original docket of the judgment shall be filed among the papers of

the estate in court. An execution may not issue upon the judgment, and the judgment does not create a lien upon the property of the estate, or give to the judgment creditor a priority of payment.

§ 1662. Judgment against decedent; execution; filing as claim; levy before death; redemption

When a judgment has been rendered for or against the testator or intestate in his lifetime, an execution may not issue thereon after his death, except as provided by section 546 of Title 5. A judgment against the decedent for the recovery of money shall be filed with the clerk, or presented to the executor or administrator, in the same manner as other claims. If execution is actually levied upon any property of the decedent before his death, the property may be sold for the satisfaction thereof; and the officer making the sale shall account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime, may redeem any real estate of the decedent from a sale under foreclosure, or execution, in like manner and with like effect as if the judgment debtor were still living.

§ 1663. Interest

A rate of interest greater than that allowed on judgments obtained in the district court may not be allowed upon a claim after its allowance by the executor or administrator and approval by the judge; and if the estate is insolvent, a greater rate of interest may not be paid upon a debt, from the time of the first publication of notice to creditors, than is allowed by law upon judgments. If a debt of the decedent bears interest, whether or not filed or presented, the executor or administrator may, by order of the court, pay the amount then accumulated and unpaid or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether or not the claim is then due; and interest shall thereupon cease to accrue upon the amount so paid.

§ 1664. Writing as prerequisite to personal liability of executor or administrator

An executor or administrator is not chargeable upon a special promise to answer in damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or a memorandum or note thereof, is in writing and signed by the executor or administrator, or by another person specially authorized by him in writing.

§ 1665. Claimant not found; deposit with Government; receipt as voucher; final disposition if amount not claimed

(a) When an estate is in all other respects ready to be closed, and it is made to appear to the satisfaction of the court, by affidavit or by evidence taken in open court, that an allowed and approved claim has not been and can not be paid because the claimant can not be found, the court shall make an order fixing the amount of the claim, with interest, if any, and directing the executor or administrator to deposit the amount with the Canal Zone Government. The officer of the Canal Zone Government who receives the deposit shall give a receipt for it and shall be liable upon his official bond therefor. The executor or administrator shall at once make the deposit in accordance with the order of court and shall forthwith proceed to close up and settle the estate. Upon the final settlement of his accounts, the receipt of the officer of the Canal Zone Government shall be deemed and received as a proper voucher for the payment of the claim, and shall have the same force and effect as if executed by the claimant.

(b) A person claiming to be entitled to any amount deposited under this section may, within five years after the deposit, petition the court

for an order directing payment to the claimant. A copy of the petition shall be served on the Canal Zone Government and thereafter the amount may not be covered into the Treasury of the United States, as directed by subsection (c) of this section, until so ordered by the court.

(c) If no one claims the amount, or if a claim is made and disallowed and the court so directs, the amount deposited devolves to the United States and shall be covered into the Treasury as miscellaneous receipts.

CHAPTER 71—RESORT TO ASSETS; SALES

Sec.

§ 1701. Order of resort to estate for debts

The property of a testator, except as otherwise specially provided in this title, shall be resorted to for the payment of debts, in the following order:

(1) property which is expressly appropriated by the will for the payment of the debts;

(2) property not disposed of by the will;

(3) property which is devised or bequeathed to a residuary legatee;

(4) property which is not specifically devised or bequeathed; and

(5) all other property ratably.

§ 1702. Order of sales for payment of debts

In making orders and sales for the payment of debts or family allowance, those articles that are not necessary for the support and subsistence of the family of the decedent, or are not specially bequeathed, shall be first sold.

§ 1703. Order of resort to estate for legacies

The property of a testator, except as otherwise specially provided in this title, shall be resorted to for the payment of legacies, in the following order:

(1) the property which is expressly appropriated by the will for the payment of the legacies;

(2) property not disposed of by the will;

(3) property which is devised or bequeathed to a residuary legatee; and

(4) property which is specifically devised or bequeathed.

§ 1704. Legacies, how charged with debts

Legacies to spouse or kindred of any class are chargeable only after legacies to persons not related to the testator.

§ 1705. Order of abatement of legacies

Unless a different intention is expressed in the will, abatement takes place in any class only as between legacies of that class.

§ 1706. Sale of property to pay debts, legacies, family allowance, or expenses; selection

(a) In selling property to pay debts, legacies, family allowance or expenses, there is no priority as between personal and real property. When a sale of property of the estate is necessary for any such purpose, or when it is for the advantage, benefit, and best interests of the estate and those interested therein that property of the estate be sold, the executor or administrator may sell the property, using his discretion as to which property to sell first, except as provided by sections 1701–1703 of this title.

(b) The executor or administrator in making a sale pursuant to subsection (a) of this section may sell the entire interest of the estate in the property or any lesser interest or estate therein.

§ 1707. Confirmation of sales

All sales of property shall be reported under oath to and be confirmed by the court, before the title to the property passes.

§ 1708. Sale of perishable and depreciating property, and of personal property necessary to pay family allowance

At any time after receiving letters, the executor, administrator, or special administrator may sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and as much other personal property as may be necessary to provide the allowance made to the family of the decedent pending the receipt of other sufficient funds, and title shall pass without confirmation; but the executor, administrator, or special administrator is responsible for the property unless, after making a sworn return, and on a proper showing, the court approves the sale.

§ 1709. Sale of personal property at public auction or private sale; notice

The sale of personal property may be made at public auction or private sale, for cash, and, except in the case of perishable property, after public notice given for at least 10 days by notices posted in three public places in the Canal Zone, or by publication in a newspaper of general circulation in the Canal Zone, or both, as the executor or administrator determines, containing the time and place of sale, and a brief description of the property to be sold. Public sales shall be made at the courthouse door, or at another public place, or at the residence of the decedent; but a sale may not be made of any personal property which is not present at the time of the sale, unless the court otherwise orders.

§ 1710. Partnership and pledged property interests; choses in action; duty of court

Partnership interests or interests belonging to an estate by virtue of a partnership formerly existing, interest in personal property pledged, and choses in action, may be sold in the same manner as other personal property, when it appears to be for the best interest of the estate. Before confirming the sale of a partnership interest, whether made to the surviving partner or to any other person, the court shall inquire into the condition of the partnership affairs, and shall examine the surviving partner, if in the Canal Zone and able to be present in court.

CHAPTER 73—NOTES, MORTGAGES, CONVEYANCES AND TRANSFERS

SUBCHAPTER I—BORROWING MONEY AND MORTGAGING PERSONAL PROPERTY

SUBCHAPTER II—CONVEYANCES AND TRANSFERS TO COMPLETE CONTRACTS

Subchapter I—Borrowing Money and Mortgaging Personal Property

§ 1741. Authorization to borrow money or mortgage personal property

When it appears to be to the advantage of an estate under administration to borrow money upon a note or notes, either unsecured, or to be secured by a chattel mortgage or other lien upon the personal property of the decedent, or any part thereof, in order to pay the debts of the decedent, legacies, or expenses or charges of administration, or to pay, reduce, extend or renew a mortgage or lien already subsisting upon such personal property of the estate or a part thereof, and as often as occasion therefor arises in the administration of the estate, the court may, by order, authorize and direct the executor or administrator to borrow the money and to execute the note or notes, and, in the proper case, to execute the chattel mortgage or to give other security by way of pledge or other lien on the personal property. To obtain an order under this section, the proceedings to be taken and the effect thereof are as provided in this subchapter.

§ 1742. Petition; setting for hearing; notice

A verified petition for an order pursuant to section 1741 of this title may be filed with the clerk of the court by the executor or administrator, or a person interested in the estate, showing:

(1) the particular purpose for which the order is sought;

(2) the necessity for, or the advantage to accrue from, the order;

(3) the amount of money proposed to be raised;

(4) the rate of interest, if any, to be paid;

(5) the length of time the note or notes are to run; and

(6) a general description of the property proposed to be mortgaged or subjected to other lien.

The clerk shall set the petition for hearing by the court and give notice thereof, including the posting of the notice, for the period and in the manner provided by section 1583 of this title.

§ 1743. Hearing; witnesses; order

(a) At the time appointed by section 1742 of this title, the court, upon proof that notice of the hearing has been given, shall proceed to hear the petition and any objections thereto that may have been filed or presented. The court may compel the attendance of, and

the giving of testimony by, witnesses, in the same manner, and with like effect, as in other cases.

(b) If, after a hearing, the court is satisfied that it will be to the advantage of the estate, it shall make an order authorizing and directing the executor or administrator to borrow the money and to execute the note or notes, and, in a proper case, to execute the chattel mortgage, or to give other security by way of pledge or other lien, on personal property of the estate. The court, in its order, may:

(1) direct that a lesser amount than that named in the petition be borrowed;

(2) prescribe the maximum rate of interest and period of the loan;

(3) require that the interest and the whole or any part of the principal be paid, from time to time, out of the whole estate or any part thereof.

§ 1744. Execution of notes and instruments of security

(a) If the order issued pursuant to section 1743 of this title directs the execution of a chattel mortgage, pledge, or other lien, the executor or administrator shall execute and deliver a promissory note or notes for the amount and period specified in the order, and at not more than the maximum rate of interest specified in the order, and shall execute the mortgage, pledge, or other lien, setting forth therein that it is made by authority of the order, and giving the date of the order.

(b) If the order issued pursuant to section 1743 of this title directs the negotiating of an unsecured loan, the executor or administrator shall execute and deliver a promissory note or notes, without security, for the amount and period specified in the order, and at not more than the maximum rate of interest specified in the order.

(c) Instruments executed and delivered under this section shall be signed by the executor or administrator, as such, and shall create no personal liability against the person so signing.

§ 1745. Effectiveness of obligations created under this subchapter

(a) A chattel mortgage, pledge, or other lien made and delivered under this subchapter is effectual to mortgage, pledge, or subject to lien all the right, title, and interest which the decedent had in the property described therein at the time of his death or prior thereto, and any right, title, or interest in the property acquired by the estate of the decedent by operation of law or otherwise, after his death.

(b) Notes signed and delivered in the negotiation of an unsecured loan under this subchapter are effectual to create a valid obligation and debt against the estate of the decedent, and are payable out of the funds of the estate.

§ 1746. Effect of irregularities

(a) An irregularity in proceedings under this subchapter with respect to the borrowing of money upon a note or notes secured by a chattel mortgage, pledge, or other lien, does not impair or invalidate the proceedings or the notes and mortgage, pledge, or other lien given in the pursuance thereof, and, except as provided by subsection (b) of this section, the mortgagee, his heirs and assigns, possess the same right and remedies on the note or notes and mortgage, pledge, or other lien as if it had been made by the decedent prior to his death.

(b) Upon a foreclosure, if the proceeds of the encumbered property are insufficient to pay the note or notes, and mortgage, pledge, or other lien, a judgment or claim for any deficiency of the proceeds to satisfy the obligation, or the costs or expenses of sale, may not be had or allowed, except in cases where the note or notes, mortgage, pledge, or other lien were given to pay, reduce, extend, or renew a mortgage or

lien subsisting on the property, or a part thereof, at the time of the death of the decedent, and the indebtedness secured by the mortgage or lien so subsisting was an allowed and approved claim against the estate, in which case the part of the indebtedness remaining unsatisfied shall be classed and paid with other demands against the estate, as provided by sections 1881–1887 of this title, with respect to mortgages and other liens subsisting at the time of death.

Subchapter II—Conveyances and Transfers to Complete Contracts

§ 1771. Authorization to complete contracts for sale or transfer

When a person who is bound by contract in writing to convey any real estate, or to transfer any personal property, dies before making conveyance or transfer, and in all cases when the decedent, if living, might be compelled to make the conveyance or transfer, the court having jurisdiction of the probate proceedings of the estate of the decedent, may make a decree authorizing and directing the executor or administrator of the decedent to convey or transfer the real estate or personal property to the person entitled thereto.

§ 1772. Filing petition; setting time and place of hearing; notice

The executor or administrator, or a person claiming to be entitled to a conveyance or transfer, as referred to in section 1771 of this title, may file with the clerk of the court a verified petition, setting forth the facts upon which the claim is based. Thereupon, the clerk shall set the time and place for hearing of the petition by the court. Notice thereof shall be served on the executor or administrator personally, when he is not the petitioner, and shall be published at least once a week for four successive weeks before the hearing, in a newspaper of general circulation in the Canal Zone.

§ 1773. Hearing; objections; orders; compliance

(a) At the time and place appointed for a hearing under this subchapter, or at such other time to which the hearing may be postponed, upon satisfactory proof by affidavit or otherwise, of the publication of the notice, the court shall proceed to hear the petition, and all persons interested in the estate may appear and contest it, by filing their objections in writing, and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

(b) If, after a full hearing upon the petition and objections and examination of the facts and circumstances of the claim, the court is satisfied that the conveyance of the real estate described in the petition to the party entitled thereto should be made, it shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the party entitled thereto.

(c) The executor or administrator shall execute the conveyance or transfer according to the directions contained in the order; and the order is prima facie evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance or transfer.

§ 1774. Rights of petitioner after dismissal

If, upon a hearing under this subchapter, the right of the petitioner to have a specific performance of the contract is found to be doubtful, the court shall dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months after the dismissal, proceed by action to enforce a specific performance thereof.

§ 1775. Effect of conveyance or transfer

Every conveyance or transfer made in pursuance of a decree as provided by this subchapter, passes title to the property contracted for, as fully as if the contracting party himself was still living, and executed the conveyance or transfer.

§ 1776. Effect of recording copy of order

A copy of a decree for a conveyance or transfer as provided in this subchapter, certified and recorded in the office of the registrar of property, gives the person entitled to the conveyance or transfer a right to the possession of the property contracted for, and to hold the property according to the terms of the intended conveyance or transfer, in like manner as if the property had been conveyed or transferred in pursuance of the decree.

§ 1777. Enforcement of order by other process

The recording of a decree, as provided by section 1776 of this title, does not prevent the court making the decree from enforcing it by other process.

§ 1778. Death of party entitled to conveyance or transfer

If the person entitled to the conveyance or transfer dies before the commencement of the proceedings therefor under this subchapter, or before the completion of the conveyance or transfer, a person entitled to succeed to his rights in the contract, or the executor or administrator of the decedent, may, for the benefit of the person so entitled, commence the proceedings or prosecute any proceedings already commenced, and the conveyance or transfer shall be so made as to vest the property in the person or persons entitled thereto, or in the executor or administrator, for their benefit.

§ 1779. Surrender of possession

The decree provided for in this subchapter may direct the possession of the property therein described to be surrendered to the person entitle thereto, upon his producing a certified copy of the decree, when, by the terms of the contract, possession is to be surrendered.

CHAPTER 75—COMPENSATION AND ACCOUNTING

SUBCHAPTER I—COMMISSIONS AND ALLOWANCES

SUBCHAPTER II—ATTORNEYS' FEES

SUBCHAPTER III—RENDERING OF EXHIBITS AND ACCOUNTS

SUBCHAPTER IV—PAYMENT OF DEBTS, EXPENSES, AND CHARGES

Subchapter I—Commissions and Allowances

§ 1811. Allowance of expenses and compensation; renunciation

The executor or administrator shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services the compensation provided by this chapter; but when the decedent, by his will, makes other provision for the compensation of the executor, that shall be a full compensation for his services, unless by a written instrument, filed in the court, he renounces all claims for compensation provided for in the will.

§ 1812. Compensation; apportionment

(a) The executor, when no compensation is provided by the will or he renounces all claim thereto, or the administrator, shall receive commissions upon the amount of estate accounted for by him, as follows:

(1) first $1,000, at the rate of 7 percent;
(2) next $9,000, at the rate of 5 percent;
(3) next $40,000, at the rate of 3 percent;
(4) next $100,000, at the rate of 2 percent;
(5) next $350,000, at the rate of 1½ percent; and
(6) all above $500,000, at the rate of 1 percent.

(b) When the property of the estate is distributed in kind, and involves no labor beyond its custody and distribution, the commission shall be computed on all the estate above the value of $50,000 at one-half of the rates fixed in this section.

(c) If there are two or more executors or administrators, the compensation shall be apportioned among them by the court according to the services actually rendered by each.

(d) When the executor or administrator is an attorney, he shall not be allowed to charge against the estate any professional fees, as such, for services rendered by himself.

§ 1813. Additional compensation for extraordinary services

Such further allowances may be made as the court deems just and reasonable for any extraordinary services by the executor or administrator, but the total amount of such extra allowances may not exceed one-half of the amount of commissions allowed by section 1812 of this title.

§ 1814. Invalidity of contracts for higher compensation

A contract between an executor or an administrator and an heir, devisee, or legatee, for a higher compensation than that allowed by this chapter, is void.

§ 1815. Allowance upon commissions

At any time during the administration, and upon such notice to the persons interested in the estate as the court requires, an executor or administrator may apply to the court for an allowance to himself upon his commissions. On the hearing of the application the court shall make an order allowing him such portion of his commissions as the court deems proper. The portion so allowed may be thereupon charged against the estate.

Subchapter II—Attorneys' Fees

§ 1831. Attorneys' fees for ordinary or extraordinary services

(a) Attorneys for executors and administrators shall be allowed out of the estate as fees for conducting the ordinary probate proceedings such sum as the court deems reasonable which may not be in excess of the amounts allowed by subchapter I of this chapter as compensation for executors and administrators for their own services.

(b) Such further allowance may be made as the court deems just and reasonable for extraordinary services such as sales or mortgages of real estate, contested or litigated claims against the estate, litigation in regard to the property of the estate, and such other litigation as may be necessary for the executor or administrator to prosecute or defend.

§ 1832. Allowance to attorney upon fees

At any time during the administration, and upon such notice to the executor or administrator and to the persons interested in the estate as the court requires, an attorney who has rendered services to an executor or administrator may apply to the court for an allowance to himself upon his compensation. On the hearing of the application the court shall make an order requiring the executor or administrator to pay the attorney out of the estate such compensation on account of services rendered by the attorney up to the date of the order as the court deems proper, and the payment shall be made forthwith.

Subchapter III—Rendering of Exhibits and Accounts

§ 1851. Charges and credits of executor or administrator

(a) Except as provided by this section, an executor or administrator is chargeable in his account with the whole of the estate of the decedent which may come into his possession at the value of the appraisement contained in the inventory, and with all the interest, profit, and income of the estate.

(b) An executor or administrator is not accountable for a debt due to the decedent which remains uncollected without his fault.

(c) An executor or administrator is not liable for the act or negligence of a coexecutor or coadministrator, except for collusion or gross negligence.

(d) An executor or administrator may not make profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the estate. He shall account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made.

§ 1852. Accounting required by court; enforcement

(a) When required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator shall render and file with the clerk a verified account showing:

(1) the amount of money received and expended by him;

(2) the claims filed or presented against the estate, giving the name of each claimant, the nature of the claim, when it became due or will become due, and whether it was allowed or rejected by him, or not yet acted upon; and

(3) all other matters necessary to show the condition of the estate.

(b) If an executor or administrator neglects or refuses to appear and render an account, after having been duly cited, an attachment may be issued against him and the accounting compelled, or his letters may be revoked, in the discretion of the court.

§ 1853. Accounting after period for presenting claims; final account; enforcement

(a) Within 30 days after the time to file or present claims against the estate has expired, the executor or administrator shall render a full and verified account and report of his administration, which shall include all the matters referred to in section 1852 of this title.

(b) The executor or administrator shall render a final account, and pray settlement of his administration, when there are sufficient funds in his hands for the payment of all debts and the estate is in a proper condition to be closed.

(c) If an executor or administrator fails to present his account, the court shall compel the accounting by attachment. Any person interested in the estate may apply for and obtain an attachment. An attachment may not issue unless a citation has first been issued, served, and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

§ 1854. Accounting after authority revoked or ceases

When the authority of an executor or administrator ceases or is revoked for any reason, he may be cited to account before the court, at the instance of the person succeeding to the administration of the estate, in like manner as he might have been cited by any person interested in the estate while he was executor or administrator.

§ 1855. Revocation of letters

If the executor or administrator resides out of the Canal Zone, or absconds, or conceals himself, so that the citation can not be personally served, and neglects to render an account within the time prescribed by this subchapter, or if he neglects to render an account within 30 days after being committed where an attachment has been executed, his letter shall be revoked.

§ 1856. Vouchers; production; withdrawal

In rendering his account, the executor or administrator shall produce and file vouchers for all charges, debts, claims, and expenses which he has paid, which shall remain in the court. When a voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher is lost, or for other good reason can not be produced on the settlement, the payment may be proved by the oath of a competent witness.

§ 1857. Setting day for settlement of account; notice; final settlement

(a) When an account is rendered for settlement, the clerk of the court shall appoint a day for the settlement thereof, and thereupon cause notices to be posted in at least three public places in the Canal Zone, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account. If, upon the final hearing at the time of settlement, the court deems the notice insufficient from any cause, it may order such further notice to be given as it deems proper.

(b) If the account referred to in subsection (a) of this section is for a final settlement and a petition for the final distribution of the estate is filed with the account, the notice of settlement shall state those facts, which notice shall be given by posting or publication for at least 10 days prior to the day of settlement. On the settlement of the account, distribution and partition of the estate to all entitled thereto may be immediately had without further notice or proceedings.

§ 1858. Exceptions to account; hearing; referees

(a) On the day appointed, or any subsequent day to which the hearing may be postponed by the court, a person interested in the estate may appear and file written exceptions to the account, and contest it.

(b) Upon the hearing, the executor or administrator may be examined on oath touching the account and the property and effects of the decedent, and the disposition thereof.

(c) All matters, including allowed claims not passed upon on the settlement of any former account, or on making a decree of sale, may be contested for cause shown.

(d) The hearing and allegations of the respective parties may be postponed from time to time, when necessary.

(e) The court may appoint one or more masters to examine the accounts, and make report thereon, subject to confirmation; and may allow a reasonable compensation to the masters to be paid out of the estate of the decedent.

§ 1859. Jury trial of contested claims

When an allowed claim is contested by any person entitled to contest it, either the contestant or the claimant is entitled to a trial by jury of the issues of fact presented by the contest. At the request of either party, the court shall call a jury and submit the issues to them. After receiving the verdict, the court shall enter an order disposing of the contest in accordance therewith.

§ 1860. Debts paid without verified claims

If it appears that debts of the decedent have been paid without verified claims having been filed or presented and allowed and approved, and it is proved by competent evidence to the satisfaction of the court that the debts were justly due, were paid in good faith, that the amount paid was the true amount of the indebtedness over and above all payments or setoffs, and that the estate is solvent, the court shall allow the sums so paid in settling the account.

§ 1861. Failure to produce vouchers; lost vouchers; expenditures less than $20

(a) If it appears by the oath to the account, and is proven by competent evidence to the satisfaction of the court, that a voucher for a disbursement has been lost or destroyed; that it is impossible to obtain a duplicate thereof; that the item was paid in good faith and for the best interests of the estate; and that the item was a legal charge against the estate, the executor or administrator shall be allowed the item.

(b) On the settlement of his account, an executor or administrator may be allowed any item of expenditure not exceeding $20, for which a voucher is not produced, if the item is supported by his uncontradicted oath positive to the fact of payment, specifying when, where, and to whom it was made; but such allowances in the whole may not exceed $500 against any one estate.

§ 1862. Settlement of account as conclusive

The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons interested in the estate, saving, however, to all persons laboring under legal disability, the right to move for cause to reopen and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution; and in an action brought by any such person, the allowance and settlement of the account is prima facie evidence of its correctness.

§ 1863. Proof of notice of settlement of account

The account may not be allowed by the court until it is first proved that notice has been given as required by this chapter, and the decree shall show that the proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

§ 1864. Accounts of deceased executor or administrator

If an executor or administrator dies, his accounts may be presented by his personal representative to, and settled by, the court in which the estate of which he was executor or administrator was being administered. Upon petition of the successor of the deceased executor or administrator, the court may compel the personal representative of the deceased executor or administrator to render an account of the administration of his testator or intestate, and the court shall settle the account as in other cases.

Subchapter IV—Payment of Debts, Expenses, and Charges

§ 1881. Order of payment of debts, expenses, and charges

(a) The debts of the decedent, the expenses of administration, and the charges against the estate shall be paid in the following order:

(1) expenses of administration;

(2) funeral expenses;

(3) expenses of the last sickness;

(4) family allowance;

(5) debts due to the United States;

(6) mortgages and other liens, in the order of their priority, as far as they may be paid out of the proceeds of the encumbered property;

(7) judgments rendered against the decedent in his lifetime, in the order of their date;

(8) all other demands against the estate.

(b) The preference given in subsection (a) of this section to a mortgage or lien extends only to the proceeds of the property subject to the mortgage or lien. If the proceeds of the property are insufficient to pay the mortgage or lien, the part remaining unsatisfied shall be classed with general demands against the estate.

§ 1882. Time for payment generally

As soon as he has sufficient funds in his hands, the executor or administrator shall pay the funeral expenses, the expenses of the last sickness, and the family allowance. He may retain in his hands the necessary expenses of administration. He is not obliged to pay any other debt or any legacy until, as prescribed by this subchapter, the payment has been ordered by the court.

§ 1883. Order for payment of debts; dividends; discharge if estate exhausted

(a) Upon the settlement of an account of the executor or administrator rendered pursuant to section 1853(a) of this title after the time to file or present claims has expired, the court shall order the payment of the debts, as the circumstances of the estate permit.

(b) If there are not sufficient funds in the hands of the executor or administrator to pay all the debts, the court shall specify in the decree the sum to be paid to each creditor. A creditor of one class may not receive any payment until all those of the preceding class are fully paid. If the estate is insufficient to pay all the debts of a class, each creditor of that class shall be paid a dividend in proportion to his claim.

(c) If the property of the estate is exhausted by the payment ordered, the account shall be considered as a final account, and the

executor or administrator is entitled to his discharge on producing and filing the necessary vouchers and proofs showing that the payments have been made, and that he has fully complied with the decree.

§ 1884. Future, contingent, or disputed claims

Where there is a claim not due, or a contingent or disputed claim against the estate, the amount thereof, or such part as the holder would be entitled to if the claim were due, established, or absolute, shall be paid into court, and there remain, to be paid over to the party when he becomes entitled thereto; or, if he fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If a creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section may not be made when the estate is insolvent, unless a pro rata distribution is ordered.

§ 1885. Personal liability after decree for payment; execution

When a decree is made for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on the decree, as upon a judgment, in favor of each creditor, and the same proceeding may be had under the execution as under execution in other cases. The executor or administrator is liable therefor on his bond to each creditor.

§ 1886. Claims omitted from account

When the accounts of the executor or administrator have been settled, and an order made for the payment of debts and distribution of the estate, a creditor whose claim was not included in the order for payment may not call upon the creditors who have been paid, or upon the heirs, devisees, or legatees to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to the creditors prescribed by law, the creditor may recover on the bond of the executor or administrator the amount for which his claim would properly have been allowed. This section does not apply to a creditor whose claim was not due 10 months before the day of settlement, or whose claim was contingent and did not become absolute 10 months before that day.

§ 1887. Closing or continuing administration after first distribution

If all the debts have been paid by the first distribution, the court shall direct the payment of legacies and the distribution of the estate among the persons entitled, as provided by chapter 77 of this title; but if there are debts remaining unpaid, or if, for other reasons, the estate is not in a condition to be closed, the court shall give such extension of time as may be reasonable for a final settlement of the estate.

CHAPTER 77—DISTRIBUTION AND DISCHARGE

SUBCHAPTER I—PRELIMINARY DISTRIBUTION

SUBCHAPTER II—FINAL DISTRIBUTION

SUBCHAPTER III—ADVANCEMENTS AND ADEMPTIONS

SUBCHAPTER IV—DISCHARGE

Subchapter I—Preliminary Distribution

§ 1921. Petition for payment of legacies or shares

(a) At any time after four months from the issuing of letters testamentary or of administration, an heir, devisee, or legatee, or an assignee, grantee, or successor in interest thereof, may petition the court for the legacy or share of the estate to which he is entitled, or any portion thereof, to be given to him upon his giving bond, with security, for the payment of his proportion of the debts of the estate.

(b) Notice of the application shall be given to the executor or administrator, personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

(c) The executor or administrator, or any person interested in the estate, may appear at the time named and resist the application.

§ 1922. Hearing; order; bond

(a) If it appears at the hearing that the estate is but little indebted, and that the share of the petitioner may be allowed to him without loss to the creditors of the estate, the court shall make an order requiring the executor or administrator to deliver to the petitioner the whole portion of the estate to which he may be entitled, or only such part thereof as the court may designate, upon receiving a bond executed by the petitioner, in a sum fixed by the court and with sureties approved by the court, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled. If the time for filing or presenting claims has expired, and all claims that have been allowed have been paid or are secured by mortgage upon real estate sufficient to pay them, and the court is satisfied that no injury can result to the estate, the court may dispense with the bond.

(b) In the execution of the order, if a partition is necessary between two or more of the parties interested, it shall be made in the manner prescribed by chapter 81 of this title.

(c) The costs of the proceedings shall be paid by the petitioner, or if there are more than one, shall be apportioned equally among them.

§ 1923. Order for payment of bond; action on bond

When a bond has been executed and delivered pursuant to section 1922 of this title, and the settlement of the estate requires the payment of part of the money thereby secured, the executor or administrator shall petition the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing, if satisfied of the necessity of the payment,

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the court shall make an order accordingly, designating the amount and giving a time within which it shall be paid. If the money is not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

§ 1924. Ratable distribution

(a) When the time for filing or presenting claims has expired, and all claims that have been allowed have been paid, or are secured by a mortgage upon real estate sufficient to pay them, and the estate is not in a condition to be finally closed and distributed, the executor or administrator may petition the court for ratable payment of the legacies, or ratable distribution of the estate to all the heirs, legatees, devisees, or their assignees, grantees, or successors in interest.

(b) Notice of the application shall be given to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

(c) Any person interested in the estate may appear at the time named and resist the application.

(d) If it appears at the hearing that the allegations of the petition are true, and the court is satisfied that no injury can result to the estate by granting the petition, the court shall make an order directing the executor or administrator to deliver to the heirs, legatees, devisees, or to their assigns, grantees, or successors in interest, the whole portion of the estate to which they may be entitled or such portion of the estate as the court may designate.

(e) In the execution of the order, if a partition is necessary between two or more of the parties interested, it shall be made in the manner prescribed by chapter 81 of this title.

(f) The costs of the proceedings under this section shall be paid by the estate, except that if a partition is necessary, the costs of the partition shall be apportioned among the parties interested in the partition.

Subchapter II—Final Distribution

§ 1951. Final distribution generally

Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, devisee (or his assignee, grantee, or successor in interest), the court shall proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto.

§ 1952. Petition; notice of hearing; contest; partition

(a) The order or decree pursuant to section 1951 of this title may be made on the petition of the executor or administrator, or of any person interested in the estate.

(b) When the petition is filed the clerk of the court shall set the petition for hearing by the court, and cause a notice to be posted at the courthouse where the court is held, setting forth the name of the estate, the executor or administrator, and the time appointed for the hearing of the petition. If, upon the hearing of the petition, the court deems the notice insufficient from any cause, it may order such further notice to be given as it deems proper.

(c) At the time fixed for the hearing, or to which the hearing may be postponed, any person interested in the estate may appear and contest the petition by filing written objections thereto.

(d) If partition is applied for, the decree of distribution does not divest the court of jurisdiction to order partition, unless the estate is finally closed.

§ 1953. Decree of distribution; finality

In the order or decree of distribution, the court shall name the persons and the proportions or parts to which each shall be entitled, and they may demand, sue for, and recover their respective shares from the executor or administrator, or any person having the same in possession. The order or decree is conclusive as to the rights of heirs, legatees, or devisees.

§ 1954. Supplementary account of executor or administrator

A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final account, shall be reported and filed at the time of making the distribution. A settlement thereof, together with an estimate of the expenses of closing the estate, shall be made by the court and include in the order or decree, or the court may order notice of the settlement of the supplementary account, and refer the same as in other causes of the settlement of accounts.

§ 1955. Death of unmarried minor heir, devisee, or legatee

If an heir, devisee, or legatee who is issue of the decedent dies intestate while under age and not having been married, before the close of the administration, administration on the estate of the deceased heir, devisee, or legatee is not necessary, but his share of his ancestor's estate shall be distributed directly to heirs at law.

§ 1956. Death of heir, devisee, or legatee before distribution

If an heir, legatee, or devisee of an estate dies before the distribution to him of any part of the estate, the property to which he might be entitled, if living, becomes a part of his estate and it may be distributed to the representative of his estate for the purpose of administration therein, with the same effect as if distributed to him while living.

§ 1957. Testamentary limitation of time for administration

When a testator, by his will, has limited the time for administration upon his estate, the limitation is directory only, and does not limit the power of the executor or of the court to continue the administration beyond the time limited where this is necessary or convenient.

§ 1958. Estates of nonresidents; delivery of property to State of residence

(a) Upon application for distribution after final settlement of the accounts of administration, if the decedent was a nonresident of the Canal Zone, leaving a will which has been duly proved or allowed in the State of his residence, and an authenticated copy thereof has been admitted to probate in the Canal Zone, or if he died intestate, and an administrator has been duly appointed and qualified in the State of his residence, and it is necessary in order that the estate, or any part thereof, may be distributed according to the will, or if the court is satisfied that it is for the best interests of the estate, that the estate in the Canal Zone should be delivered to the executor or administrator in the State of the decedent's residence, the court may order the delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. Sales of real estate, ordered by virtue of this section, shall be made in the same manner as other sales of real estate of decedents by order of the court.

(b) The delivery, in accordance with the order of the court under this section, is a full discharge of the executor or administrator with the will annexed or administrator in the Canal Zone in relation to all property embraced in the order, which binds and concludes all parties in interest.

Subchapter III—Advancements and Ademptions

§ 1981. Gifts before death

A gift before death shall be considered as an ademption of a bequest or devise of the property given; but a gift before death may not be taken as an advancement to an heir or as an ademption of a general legacy unless such intention is expressed by the donor in the grant or otherwise in writing, or unless the donee acknowledges it in writing to be such.

§ 1982. Advancement as part of estate; deduction from share

(a) Property given by the decedent in his lifetime as an advancement to an heir is a part of the estate of the decedent for the purposes of division and distribution thereof among his heirs, and shall be taken by the heir toward his share of the estate of the decedent.

(b) If the amount of the advancement exceeds the share of the heir receiving it, he shall be excluded from further portion in the division and distribution of the estate, but he may not be required to refund any part of the advancement. If the amount so received is less than his share, he is entitled to as much more as will give him his full share of the estate of the decedent.

§ 1983. Value of advancement

If the value of the property advanced is expressed in the grant, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it shall be held as of that value in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

§ 1984. Death of heir before decedent

If an heir receiving an advancement dies before the decedent, leaving heirs, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

§ 1985. Determination of questions as to advancements

All questions as to advancements made, or alleged to have been made, by the decedent to his heirs, may be heard and determined by the court, and shall be specified in the decree assigning and distributing the estate. The final judgment or decree of the court is binding on all parties interested in the estate.

Subchapter IV—Discharge

§ 2001. Distributee who can not be found, refuses to accept, or is minor or incompetent

(a) When property consisting wholly or partly of money is distributed by a judgment or decree of the court as provided in this chapter to a person who:

(1) can not be found and whose place of residence is unknown;

(2) refuses to accept the property or to give a proper voucher therefor; or

(3) is a minor or incompetent person and has no legal guardian to receive the property or person authorized to receipt therefor—

the executor or administrator shall deposit the money, in the name of the distributee, with the Canal Zone Government. The officer of the Canal Zone Government who receives the deposit shall give a receipt for it and shall be liable on his official bond therefor. The receipt

shall be deemed and received by the court as a voucher in favor of the executor or administrator, with the same force and effect as if executed by the assignee or distributee.

(b) A person claiming to be entitled to an amount deposited under this section may, within five years after the deposit, petition the court for an order directing payment to him. A copy of the petition shall be served on the Canal Zone Government and thereafter the amount may not be covered into the Treasury of the United States, as directed by subsection (c) of this section until so ordered by the court.

(c) If no one claims the amount, or if a claim is made and disallowed and the court so directs, the amount deposited devolves to the United States and shall be covered into the Treasury as miscellaneous receipts.

§ 2002. Agent for nonresident distributee

(a) When property is assigned or distributed, by a judgment or decree of the court as provided in this chapter, to a person residing out of and having no agent in the Canal Zone, and it is necessary that a person should be authorized to take charge of the property for the benefit of the absent person, the court may appoint an agent for that purpose and authorize him to take charge of the property, as well as to act for the absent person in the distribution.

(b) The agent shall execute a bond to the Government of the Canal Zone, to be approved by the court, conditioned that he shall faithfully manage and account for the property. The court may allow him a reasonable sum out of the profits of the property for his services and expenses.

(c) When personal property remains in the hands of the agent unclaimed for a year and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court, and the proceeds after deducting the expenses of the sale, allowed by the court, shall be paid to the Canal Zone Government. When the payment is made, the agent shall take from the officer to whom it is made a receipt, which he shall file in the court. Where an agent has money in his hands as such agent, and it appears to the court upon the settlement of his account as agent that the balance remaining in his hands should be paid to the Canal Zone Government, the court may direct the payment and upon the agent's filing the proper receipt showing the payment the court shall enter an order discharging the agent and his sureties from all liability therefor. All such funds shall be held and disposed of by the Canal Zone Government in the manner provided by section 2001 of this title.

(d) The agent shall render to the court an annual account, showing:

(1) the value and character of the property received by him, what portion thereof is still on hand, what sold, and for what;

(2) the income derived therefrom; and

(3) expenses incurred in the care, protection, and management thereof, and whether paid or unpaid.

(e) When filed the court may examine witnesses and take proofs in regard to the account; and if satisfied that it will be for the benefit and advantage of the persons interested therein the court may order sale to be made of the whole or such parts of the real or personal property as appears to be proper, and the proceeds to be deposited with the Canal Zone Government.

(f) The agent is liable on his bond for the preservation of the property while in his hands, and for the payment of the proceeds of the sale as required in this section, and may be sued thereon by any person interested.

(g) When a person appears and claims the money paid to the Canal Zone Government, the court making the distribution shall in-

quire into the claim, and, being first satisfied of his right thereto, shall grant him a certificate to that effect, under its seal. Upon the presentation of the certificate, the Canal Zone Government shall pay the amount thereof to the claimant.

§ 2003. Specific legacy for life only; inventory

Where a specific legacy is for life only, the first legatee shall sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that it is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

§ 2004. Final settlement, decree, and discharge

When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered, under the order of the court, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court shall make a judgment or decree discharging him from all liability to be incurred thereafter.

§ 2005. Letters after final settlement; after discovered property

The final settlement of an estate, as provided in this chapter, does not prevent a subsequent issue of letters testamentary or of administration, or of administration with the will annexed, if other property of the estate is discovered, or if it becomes necessary or proper for any cause that letters should be again issued.

CHAPTER 79—DETERMINATION OF HEIRSHIP

SUBCHAPTER I—DETERMINATION OF HEIRSHIP IN ADMINISTRATION OF ESTATE

SUBCHAPTER II—SEPARATE PROCEEDING TO DETERMINE HEIRSHIP

Subchapter I—Determination of Heirship in Administration of Estate

§ 2041. Petition to determine heirship; notice

(a) At any time prior to the decree of final distribution, the executor or administrator, or any person claiming to be heir to the deceased, or entitled to distribution in whole or in part of the estate, may file a petition, praying the court to ascertain and declare the rights of all persons to the estate and all interests therein, and to whom distribution thereof should be made.

(b) Upon the filing of the petition, the court shall make an order directing service of notice to all persons interested in the estate to appear and show cause, on a day to be therein named, not less than 60 days nor more than 4 months from the date of the order. The notice shall set forth the name of the deceased, the name of the executor or administrator, the names of all persons who may have appeared claiming an interest in the estate in the course of the administration up to the time of the making of the order, and

such other persons as the court directs, and also a description of the real estate whereof the deceased died seised or possessed, so far as known, described with certainty to a common intent. The notice shall require all these persons, and all persons named or not named having or claiming an interest in the estate of the deceased, at the time and place specified in the order, to appear and exhibit to the court their respective claims of heirship, ownership, or interest in the estate.

(c) The notice shall be served in the same manner as a summons in a civil action. Upon proof of service, by affidavit or otherwise, to the satisfaction of the court, the court thereupon acquires jurisdiction to ascertain and determine the heirship, ownership, and interest of all parties in and to the property of the deceased, and the determination is final and conclusive in the administration of the estate, and the title and ownership of the property. The court shall enter an order or decree establishing proof of the service of the notice.

§ 2042. Filing of appearance; default

Persons appearing within the time limited in the order provided by section 2041 of this title shall file their written appearance in person or through their authorized attorney, the attorney filing at the same time written evidence of his authority to appear. Entry of the appearance shall be made in the records of the court. After the expiration of the time limited for appearing, the court shall enter an order adjudging the default of persons who have not appeared.

§ 2043. Pleadings; trial

(a) Within 20 days after the date of the order or decree of the court establishing proof of service of the notice referred to in section 2041 of this title, a person so appearing may file his complaint, setting forth the facts constituting his claim to heirship, ownership, or interest in the estate, with such reasonable particularity as the court may require. He shall serve a copy of the complaint upon each of the parties or their attorneys who have entered their written appearance, if they reside within the Canal Zone; and, if any of them does not reside within the Canal Zone, service of copies of the complaint shall be made upon the clerk of court for them, and the clerk shall forthwith mail the copies to the address of each such party or attorney who has left with the clerk his address.

(b) Within 20 days after the service of the complaint, the parties may plead thereto, and thereafter the same proceedings shall be had upon the complaint as in an ordinary civil action; and the issues of law and of fact arising in the proceedings shall be disposed of in like manner as issues of law and fact in civil actions; and the provisions regulating the mode of procedure for the trial of civil actions are applicable thereto.

(c) The party filing the petition, if he files a complaint, and, if not, the party first filing a complaint shall, in all subsequent proceedings, be treated as the plaintiff therein, and all other parties so appearing shall be treated as the defendants, and all the defendants shall set forth in their respective answers the facts constituting their claim of heirship, ownership, or interest in the estate, with such particularity as the court may require, and serve a copy thereof on the plaintiff.

(d) Evidence in support of all issues may be taken orally or by deposition, in the same manner as in civil actions. Notice of the taking of depositions shall be served only upon the parties, or the attorneys of the parties, who have appeared in the proceeding.

§ 2044. Decree determining rights; conclusiveness; costs

The court shall enter a default of persons failing to appear, plead, or prosecute or defend their rights as aforesaid. Upon the

trial of the issues arising upon the pleadings, the court shall determine the heirship to the deceased, the ownership of his estate, and the interest of each respective claimant thereto or therein, and persons entitled to distribution thereof. The final determination of the court thereupon is final and conclusive in the distribution of the estate, and in regard to the title to all the property of the estate of the deceased.

The cost of the proceedings under this subchapter shall be apportioned in the discretion of the court.

§ 2045. Attorney for minors

In a proceeding under this subchapter, the court may appoint an attorney for a minor not having a guardian.

§ 2046. Determination of heirship at final distribution

This subchapter does not exclude the right upon final distribution of an estate to contest the questions of heirship, title, or interest in the estate so distributed, where they have not been determined under this subchapter; but, where these questions have been litigated under the provisions of this subchapter, the determination thereof as provided in this subchapter is conclusive in the distribution of the estate.

Subchapter II—Separate Proceeding to Determine Heirship

§ 2071. Establishment of identity of heirs

When title to real or personal property, or any interest therein, becomes vested, other than by the laws of succession, in the heirs, heirs of the body, issue, or children of any person, without other description or means of identification of the persons embraced in the description, any person interested in the property as an heir, heir of the body, issue, or child, or the successor in interest of an heir, heir of the body, issue, or child, or the legal representatives of any of such persons or of their successors in interest, may file a verified petition in the district court in and for the division where the property or any part thereof is situated, setting forth briefly:

(1) the deraignment of title of petitioner;

(2) a description of the property affected;

(3) the names, ages, and residences, if known, of the heirs, heirs of the body, issue, or children whose identity is sought to be determined, and if any of them is dead or his residence is unknown, stating these facts; and

(4) a request that a decree be entered determining and establishing the identity of the persons embraced in that general description.

§ 2072. Notice of hearing

Notice of the time and place for the hearing of the petition shall be given by the clerk by posting notices thereof in three or more public places in the Canal Zone at least 10 days prior to the date fixed by the clerk for the hearing.

§ 2073. Answer; hearing; decree

(a) At any time before the date fixed for the hearing, any person interested in the property may answer the petition and deny any of the matters contained therein.

(b) At the time fixed for the hearing or any time thereafter fixed by the court, the court shall hear the proofs offered by the petitioner, and by any person answering the petition and shall make a decree conformable to the proofs. The decree shall have the same force and effect as decrees entered in accordance with the other provisions of this title.

CHAPTER 81—PARTITION BEFORE DISTRIBUTION

Sec.

§ 2101. Partition of undivided property; commissioners

When the estate, real or personal, assigned by the decree of distribution to two or more heirs, devisees, or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the court, who shall be duly sworn to the faithful discharge of their duties. A certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, shall be issued to the commissioners as their warrant, and their oath shall be indorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority and is governed by the same rules as if three were appointed.

§ 2102. Petition; notice

The partition may be ordered and had in the district court on the petition of any person interested. Before commissioners are appointed or partition ordered by the court as directed in this chapter, notice thereof shall be given to all persons interested who reside in the Canal Zone, or to their guardians, and to the agents, attorneys, or guardians, if any in the Canal Zone, of persons who reside out of the Canal Zone, either personally or by public notice, as the court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given at any time before the order or decree of distribution, but the commissioners may not be appointed until the order or decree is made distributing the estate.

§ 2103. Assignment of shares

Partition or distribution of the estate may be made as provided in this chapter, although one or more of the original heirs, legatees, or devisees may have conveyed their shares to other persons, and the shares shall be assigned to the person holding the same, in the same manner as they otherwise would have been to the heirs, legatees, or devisees.

§ 2104. Description of shares

When both distribution and partition are made, the several shares in the real and personal estate shall be set out to each individual in proportion to his right, by metes and bounds, or description, so that the shares can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

§ 2105. Indivisible property

When the real estate can not be divided without prejudice or inconvenience to the owners, the court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger. The parties accepting the whole shall pay

to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or in the case of the minority of a party, then to the satisfaction of his guardian; and the true value of the estate shall be ascertained and reported by the commissioners. When the commissioners are of the opinion that the real estate can not be divided without prejudice or inconvenience to the owners, they shall so report to the court and recommend that the whole be assigned as herein provided, and shall find and report the true value of the real estate. On filing the report of the commissioners, and on making or securing the payment provided, the court, if it appears just and proper, shall confirm the report, and thereupon the assignment is complete, and the title to the whole of the real estate vests in the person to whom the same is so assigned.

§ 2106. Payments for equality of partition

When a tract of land or tenement is of greater value than any one's share in the estate to be divided, and can not be divided without injury to it, it may be set off by the commissioners appointed to make partition to any of the parties who will accept it, giving preference as prescribed by section 2105 of this title. The party accepting shall pay or secure to the others such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but the partition may not be established by the court until the sums awarded are paid to the parties entitled to them, or secured to their satisfaction.

§ 2107. Sale of property

When it appears to the court, from the commissioners' report, that it can not otherwise be fairly divided and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commissioner appointed for that purpose, and the proceeds distributed. The sale shall be conducted, reported, and confirmed in the same manner and under the same requirements provided by chapter 71 of this title.

§ 2108. Notice of partition; proceedings of commissioners

Before a partition is made or an estate divided, as provided in this chapter, notice shall be given by the commissioners to all persons interested in the partition, or their guardians, agents, or attorneys, of the time and place when and where they will proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

§ 2109. Commissioners' report; decree of partition

The commissioners shall report their proceedings, and the partition agreed upon by them, to the court, in writing. The court may, for sufficient reasons, set aside the report and commit it to the same commissioners, or appoint others. When the report is finally confirmed, a certified copy of the judgment, or decree of partition made thereon, attested by the clerk under the seal of the court, shall be recorded in the office of the registrar of property.

§ 2110. Partition unnecessary unless requested

When the court makes a judgment or decree assigning the residue of an estate to one or more persons entitled to it, it is not necessary to appoint commissioners to make partition or distribution thereof, unless the parties to whom the assignment is decreed, or some of them, request that the partition be made.

CHAPTER 83—PUBLIC ADMINISTRATOR

Sec.

§ 2141. Appointment of public administrator

There shall be in the Canal Zone a public administrator appointed by the Governor.

§ 2142. Estates to be administered

The public administrator shall take charge of the estates of persons dying within the Canal Zone, or who, dying elsewhere, leave estates in the Canal Zone, as follows:

(1) estates of decedents for which no administrators or executors are appointed, and which, in consequence thereof, may be wasted, uncared for, or lost;

(2) estates of decedents who have no known heirs;

(3) estates ordered into his hands by the court;

(4) estates upon which letters of administration or letters testamentary have been issued to him by the court.

§ 2143. Small estates; disposition by public administrator without administration

When the public administrator files with the clerk of the district court a statement that the value of an estate, of which he has taken charge, is less than $1,000, there shall be no regular administration on the estate unless additional estate is found or discovered; and the public administrator may, after the payment of the expenses of the last illness of the deceased, and the funeral charges, pay out and deliver the estate to the surviving spouse of the decedent, if there is a surviving spouse, or, if there is no surviving spouse, then to the minor child or children of the decedent, if any, or, if there is neither a surviving spouse nor minor child, then to such creditors, heirs, or other persons as may appear in the judgment of the public administrator to be legally entitled thereto, and the title to the estate shall vest absolutely in the person or persons to whom it is paid out and delivered as provided in this section.

The provisions of this section apply whether or not there is in existence a will of the decedent.

§ 2144. Burial expenses and expenses of last illness

(a) When the public administrator takes possession of the estate of a deceased person, as provided in section 2142 of this title, and the method of the defrayal of the expense of the burial of the deceased is not otherwise provided for by law or by the rules, agreement, or death benefits of an order or lodge to which the deceased may at the time of his death belong, or with which he may have been affiliated, the public administrator may, in order to defray the proper expenses of the burial of the body of the deceased and the expenses of the last illness, apply to the district court for an order permitting the public administrator summarily to sell any personal property belonging to the deceased, and to withdraw any money that the deceased may have on deposit with any bank, and to collect any indebtedness or claim that may be owing to or due the deceased.

(b) Notice of the application need not be given and no fee shall be charged by the clerk of the court or the public administrator for the filing of the application, or for any duty or service of the clerk or public administrator or his attorney connected therewith.

(c) Upon the sale of the personal property of the deceased, or the collection of any money, claim, or indebtedness by the public administrator under the order, the public administrator shall use the proceeds for the expenses of the burial of the deceased, and the expenses of the last illness.

(d) The public administrator shall file with the clerk of the court a statement showing the property of the deceased that came into his hands and the disposition of the property of the deceased, and shall file with the clerk vouchers showing what disposition was made of the property or of the proceeds thereof.

§ 2145. Estates of persons not United States citizens

If a deceased intestate, whose estate is being administered by the public administrator, was other than a citizen of the United States and left no heirs in the Canal Zone or the Republic of Panama entitled to receive the estate, the proceeds and residue thereof may be delivered to the diplomatic or consular representative, accredited to the Canal Zone or the Republic of Panama, of the country of which the deceased was a citizen or subject, for delivery by the representative to the heirs of the deceased. If the deceased was a citizen of the Republic of Panama, the residue of his estate may be delivered to his heirs in the Republic of Panama or to the authorities of the Republic of Panama lawfully designated to receive it.

§ 2146. Procurement of letters by public administrator; bond and oath

When a public administrator takes charge of an estate, of which he is entitled to take charge without letters of administration being issued, or under order of the court, he shall, with all convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of the administrator's bond and oath.

§ 2147. Administration of estates generally; application of other provisions

(a) The public administrator shall make and return a perfect inventory of all estates taken into his possession, and administer and account for them according to the provisions of this title, subject to the control and directions of the court.

(b) The public administrator shall institute all suits and prosecutions necessary to recover the property, debts, papers, and other estate of the decedent.

(c) The court may, at any time, order the public administrator to account for and deliver all the money and property of an estate in his hands to the heirs, or to the executors or administrators regularly appointed.

(d) When direction is not given in this chapter for the government or guidance of a public administrator in the discharge of his duties, or for the administration of an estate in his hands, the provisions of this title govern, except that wherever notice is required to be given, the notice may, in the discretion of the court, be waived or be given by posting.

§ 2148. Delivery to regularly appointed executor or administrator

If, at any time, letters testamentary or of administration are regularly granted to another person on an estate of which the public administrator has charge, he shall, under the order of the court, account for, pay, and deliver to the executor or administrator thus appointed, all the money, property, papers, and estate of every kind in his possession or under his control.

§ 2149. Compensation and allowances of public administrator; disposition of fees

(a) Subject to subsection (b) of this section, the public administrator shall receive the same compensation and allowances as are allowed in this title to other administrators.

(b) The commissions to be charged by the public administrator shall be as are allowed in this title to other administrators, except that a commission may not be charged where it appears that the total assets of the estate do not exceed $1,000 in value. The public administrator shall pay over all such fees to, and they shall constitute a revenue of, the Canal Zone Government.

§ 2150. Interest in expenditures

The public administrator may not be interested in expenditures of any kind made on account of an estate he administers; nor may he be associated, in business or otherwise, with anyone who is so interested.

§ 2151. Administration of oaths

The public administrator may administer oaths in regard to all matters touching the discharge of his duties, or the administration of estates in his hands.

§ 2152. Notice of death of stranger

Whenever a stranger, or person without known heirs, dies intestate in the house or premises of another, the possessor of the premises, or anyone knowing the facts, shall give immediate notice thereof to the public administrator; and, in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the public administrator, or any party interested.

§ 2153. Notice by civil officers of property of decedent

All civil officers shall inform the public administrator of all property known to them, belonging to a decedent, which is liable to loss, injury, or waste, and which, by reason thereof, ought to be in the possession of the public administrator.

CHAPTER 85—NOTICES, ORDERS, AND PROCEDURE

SUBCHAPTER I—NOTICES

SUBCHAPTER II—ORDERS

SUBCHAPTER III—PROCEDURE GENERALLY

Subchapter I—Notices

§ 2181. Requests for special notice of proceedings

(a) At any time after the issuance of letters testamentary or of administration upon the estate of a decedent, a person interested in the estate, whether as heir, devisee, legatee, or creditor, or his attorney, may serve upon the executor or administrator or upon the attorney for the executor or administrator, and file with the clerk of the court wherein administration of the estate is pending, a written request, stating his post-office address and stating that he desires special notice of any or all of the following matters, steps, or proceedings in the administration of the estate:

(1) filing of petitions for sales, leases, or mortgages and confirmation of sales of any property of the estate;

(2) filing of accounts;

(3) filing of petitions for distribution;

(4) filing of petitions for partition of any property of the estate.

(b) Thereafter a brief notice of the filing of any such petitions, or accounts, except petitions for sale of perishable property or other personal property which will incur expense or loss by keeping, shall be addressed to the person making the request, or his attorney, at his stated post-office address, and deposited in the post office with the postage thereon prepaid, within two days after the filing of the petition or account; or personal service of the notice may be made on the person making the request or his attorney, within two days, and the personal service is equivalent to deposit in the post office. Proof of mailing or of personal service shall be filed with the clerk before the hearing of the petition or account.

(c) If upon the hearing it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order or judgment, and the judgment shall be final and conclusive upon all persons.

§ 2182. Personal notice by citation; contents

(a) When personal notice is required, and a mode of giving it is not prescribed by this title, it shall be given by citation.

(b) The citation shall be directed to the person to be cited, signed by the clerk, issued under the seal of the court, and shall contain:

(1) the title of the proceeding;

(2) a brief statement of the nature of the proceeding; and

(3) a direction that the person cited appear at a time and place specified.

§ 2183. Issuance and service of citation

(a) The citation may be issued by the clerk upon the application of any party, without an order of the court, except in cases in which an order is expressly required by law.

(b) The citation shall be served in the same manner as a summons in a civil action.

(c) When no other time is specially prescribed by law, the citation shall be served at least five days before the return day thereof.

§ 2184. Service on guardian; powers and duties of guardian

Whenever an infant or incompetent person has a guardian of his estate residing in the Canal Zone, personal service upon the guardian of any process, notice, or order of the court concerning the estate of a deceased person, in which the ward is interested, is equivalent to service upon the ward, and it is the duty of the guardian to attend to the interests of the ward in the matter. The guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might waive.

§ 2185. Publication; frequency

When a publication is ordered, the publication shall be made daily, or otherwise as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this title. The court may, however, order a less number of publications during the period.

Subchapter II—Orders

§ 2211. Contents of orders and decrees

Orders and decrees made by the court in probate proceedings need not recite the existence of facts, or the performance of acts, upon which the jurisdiction of the court may depend, but shall contain the matters ordered or adjudged, except as otherwise provided in this title.

§ 2212. Entry and filing

All orders and decrees of the court shall be entered at length in the records of the court, or shall be signed by the judge and filed; but decrees of distribution shall always be so entered at length.

Subchapter III—Procedure Generally

§ 2231. Trial of issues; judgments

(a) All issues of fact joined in probate proceedings shall be tried in conformity with the requirements of the law and rules of court governing civil actions. The party affirming is plaintiff, and the one denying or avoiding is defendant.

(b) When a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried.

(c) If a jury is not demanded, the court shall try the issue joined, make findings of fact and conclusions of law, and direct the entry of the appropriate judgment, as in civil actions.

(d) Judgment on the issue joined, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions.

§ 2232. New trials in probate proceedings

A motion for a new trial in probate proceedings may be made only in:

(1) cases of contests of wills, either before or after probate;

(2) proceedings to determine heirship and interests in estates; and

(3) cases where the issues of fact, of which a new trial is sought, were of such character as to entitle the parties to have them tried by a jury, whether or not they were so tried.

§ 2233. Costs

When not otherwise prescribed by this title, the district court may order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. Execution for the costs may issue out of the district court.

§ 2234. United States as party; notice; actions on bonds; exceptions to accounts

When compensation, pension, insurance, or other allowance is made or awarded to estates of decedents by the United States Government or an agency thereof, the agency making or awarding the compensation, pension, insurance, or allowance shall have the same right as provided in this title for interested parties, heirs at law, and relatives, to:

(1) request notice of proceedings;
(2) commence and prosecute actions on the bonds of executors or administrators; and
(3) file exceptions in writing to accounts of executors or administrators and contest the accounts.

§ 2235. Application of procedure in civil actions

Except as otherwise provided by this title, the provisions of law and rules of court governing civil actions are applicable to and constitute the rules of practice in the proceedings mentioned in this title.

PART 4—ESTATES OF MISSING PERSONS

CHAPTER 101—TRUSTEES OF ESTATES OF PERSONS MISSING OVER 90 DAYS

§ 2501. Petition for appointment of trustee

When a resident of the Canal Zone, who owns or is entitled to the possession of real or personal property situated therein, is missing, or his whereabouts unknown, for 90 days, and a verified petition is presented to the division of the district court of which he is a resident by his spouse or any of his family or friends, representing that his whereabouts has been, for such time, and still is, unknown, and that his estate requires attention, supervision, and care of ownership, the court shall order the petition to be filed, and appoint a day for its hearing, not less than 10 days from the date of the order.

§ 2502. Publication of notice of hearing

The clerk of the court shall thereupon publish, for at least 10 days prior to the day so appointed, a notice in a newspaper of general circulation in the Canal Zone, stating that the petition will be heard at the courtroom of the court at the time appointed for the hearing. The court may direct further notice of the application to be given in such manner and to such persons at it deems proper.

§ 2503. Hearing; appointment of trustee

At the time fixed for the hearing, or at any subsequent time to which the hearing may be postponed, the court shall hear the petition and the evidence offered in support of or in opposition thereto. If satisfied that the allegations of the petition are true, and that the person remains missing, and his whereabouts unknown, the court shall appoint a suitable person to take charge and possession of the estate, and manage and control it under the direction of the court.

§ 2504. Preferences in appointment of trustee

In appointing a trustee, the court shall prefer the wife of the missing person, or her nominee, and, in the absence of a wife, a person

who is willing to act, and who would be entitled to participate in the distribution of the missing person's estate if he were dead.

§ 2505. Trustee's bond

A trustee appointed pursuant to this chapter shall give bond in the amount and as provided for by section 1371 of this title.

§ 2506. Trustee's powers and duties; family allowance

(a) The trustee shall take possession of the real and personal estate in the Canal Zone of the missing person, and collect and receive the rents, income, and proceeds thereof, collect all indebtedness owing to him, and pay the expenses thereof out of the trust funds, and pay such indebtedness of the missing person as may be authorized by the court.

(b) The court may direct the trustee to pay to the persons constituting the family of the missing person such sums of money for family expenses and support from the income of the estate as it may, from time to time, determine.

§ 2507. Accounting by trustee; removal

From time to time when directed by the court, the trustee shall account to and with the court for all his acts as trustee. At any time, upon good cause shown, the court may remove the trustee and appoint another in his place.

§ 2508. Sale or encumbrance of property; petition; order

The trustee may sell any or all of the personal or real property or mortgage any of the personal property of the missing person when it is considered by the court as being to the best interest of the estate and of all parties concerned including the heirs at law or legatees, and for that purpose shall file a petition with the court asking for an order directing and authorizing the sale or mortgage.

§ 2509. Same; notice of hearing

The petition shall be set for hearing not sooner than 10 days after the filing of the petition and notice thereof shall be given by the clerk of the court by posting a notice at the place where the court is held. Notice shall also be given by registered or certified mail to each of the persons who would be heirs at law of the missing person, if he were dead, and, if it appears that the missing person left a will, to each legatee mentioned therein, at their respective places of address, a return card being requested with each notice. If the address of a person is unknown the notice shall be sent by registered or certified mail addressed to the person at the post office of the place where the proceedings are pending, and an affidavit of the trustee filed showing that the address is unknown, and stating what efforts he has made to learn it.

§ 2510. Same; hearing; order

On the day of hearing the petition, proof shall be offered in behalf thereof showing the reasons for the making of the sale or mortgage. If the court finds that it will be for the best interests of all persons concerned in the estate of the missing person to have the sale or mortgage made, it shall order the trustee to sell any or all the property, real, personal, or both, or to mortgage any of the personal property, in the manner provided by this title for sales or mortgages of property of deceased persons. All the provisions of law regarding a sale or mortgage of property of deceased persons govern the sale or mortgage of property of missing persons under this section, including the provisions concerning confirmation of the sales by the court; except that a sale of real property may not take place before the expiration of eight months from the date of the appointment and qualification of the trustee.

§ 2511. Return of missing person; accounting

In the event the missing person returns, the court, upon his application or upon its own motion, shall require the trustee to render and file a verified account of the administration of the trust, and sections 1851–1864 of this title apply to the accounting.

§ 2512. Same; delivery of property

Upon the settling of the account of the trustee the court shall order the property of the missing person remaining in the hands of the trustee to be delivered to the owner thereof.

§ 2513. Delivery by trustee to executor or administrator after seven years

If, during the existence of a trust provided for in this chapter, administration of the estate of the missing person is had pursuant to chapter 103 of this title, the court shall require an accounting as provided by section 2511 of this title and shall order the property of the missing person remaining in the hands of the trustee to be delivered to the administrator or executor of the estate.

CHAPTER 103—ADMINISTRATION OF ESTATES OF PERSONS MISSING OVER SEVEN YEARS

Sec.

§ 2541. Missing person defined; administration as though dead

When a person owning property in the Canal Zone has been absent from his last known place of residence for the continuous period of seven years, with his whereabouts for that period unknown to the persons most likely to know thereof, he shall be deemed to be a missing person, and all his property in the Canal Zone may be administered, as though he were dead, in the same manner as provided for the administration of deceased persons by this title, subject to the conditions, restrictions and limitations prescribed by this chapter.

§ 2542. Jurisdiction; title of proceedings

(a) If the missing person was a resident of the Canal Zone at the time of his disappearance, the division of the district court of his residence has jurisdiction in the premises; if he was a nonresident, the division where any of his property is located has jurisdiction.

(b) Proceedings commenced and prosecuted under this chapter shall be entitled in the court, and "In the matter of the estate of . . . . . ., a missing person."

§ 2543. Petition; date of hearing

(a) When a verified petition is presented by the spouse or any of the family or friends of a missing person, representing that his whereabouts has been for a period of seven years and still is un-

known and that he left an estate which requires administration, the clerk of the court shall appoint a day for hearing the petition, not less than three months from the date of filing.

(b) The petition may be for administration or probate of the last will, as the case may be, of the missing person and shall be verified to the best of the knowledge and belief of the petitioner. The petition shall set forth a statement of the facts required as in the case of the administration of estates of deceased persons, and shall, in addition thereto, contain allegations as to the last known place of residence of the missing person, and when he disappeared therefrom; the fact that he has not been heard from by the persons most likely to hear, naming them and their relationship, for a period of seven years, and the fact that his whereabouts is unknown to those persons and to the petitioner.

§ 2544. Notice of hearing; publication; mailing

Notice of hearing the petition for administration or probate of the last will of the missing person shall be published in the form of similar notices of hearing in the administration of estates of deceased persons, once each week for eight successive weeks, the first publication to be at least three calendar months prior to the date set for the hearing of the petition. In addition, within 20 days after the filing of the petition, copies of the notice shall be sent by registered or certified mail to each person named in the petition as heir-at-law, next of kin, devisee and legatee, and to the last known address of the missing person; and proof by affidavit of the publication and mailing shall be filed at or prior to the hearing.

§ 2545. Hearing; appointment of executor or administrator; findings

At the time fixed for the hearing, or at any subsequent time to which the hearing is postponed, the court shall hear the petition and the evidence in support of or in opposition thereto, and, if satisfied that the allegations thereof are true, and that the person has remained missing, and his whereabouts unknown, continuously for a period of seven years, shall thereupon appoint a qualified person as executor or administrator as in the manner provided for the estates of deceased persons. If the court grants the order, it shall determine the time when the person left his last place of residence and abode and became missing and that his whereabouts has not been known continuously for a period of at least seven years. Upon the hearing, the court may consider the testimony of any witness likely to know the last place of residence and whereabouts of the alleged missing person, and may likewise receive in evidence and consider the affidavits and depositions of other competent witnesses and give the evidence such weight as it deems proper.

§ 2546. Suspension of disposition; exceptions

Except for the purposes of paying taxes, assessments, liens, insurance premiums, allowing claims for debts contracted by the missing person before his disappearance or to prevent the depreciation of property on account of neglect, or waste, or specifically perform contracts made by the missing person before his disappearance, a sale, mortgage or other disposition or distribution of the property of the missing person may not be had until the lapse of one year after the appointment and qualification of the executor or administrator.

§ 2547. Suspension of distribution; bond of distributee

Distribution of the property of the estate to the heirs, devisees, or legatees of the missing person may not be made in any event until after the lapse of the period of one year after the appointment and

qualification of the executor or administrator; nor until after the lapse of three years after the appointment and qualification of the executor or administrator, unless the distributee or assignee executes and delivers to the representative of the estate a surety company bond in a penal sum not less than the value of the property distributed and for such additional amount as the court may prescribe. The bond is subject to approval by the court, and shall be conditioned for the return of the property or the value thereof to the representative of the estate in case the missing person is adjudicated, in the manner set forth in this chapter, to be still living since the commencement of the seven-year period, and also conditioned to save the representative harmless from the damages and expenses of suits brought by the missing person or anyone succeeding to his or her rights, by reason of the distribution having been made during the period of three years.

§ 2548. Claim to be missing person; petition; issue of identity

If a person files a verified petition, within the period of three years after the appointment and qualification of a representative, claiming to be the missing person and also causes a copy thereof to be served personally or by registered or certified mail upon the legal representative and upon each of the heirs, legatees, and devisees, an issue shall thereupon be presented to the court to determine the identity of the claimant which issue shall be tried and determined by the court. The court may upon application or of its own motion require the claimant to give security to be approved by the court for all costs and expenses involved in the hearing and ultimate determination thereof, in case the issue is decided against the claimant.

§ 2549. Same; contents of petition

The verified petition of the claimant shall set forth the facts and circumstances of his disappearance and continued absence, and other facts and circumstances upon which he relies for his identification.

§ 2550. Vacation of administration proceedings; delivery of property to claimant

If the issue is determined in favor of the claimant, and it is determined that the missing person is still living, an order shall be made vacating all of the proceedings for administration, except those providing for the payment of taxes, assessments, liens, insurance premiums, allowed claims, the specific performance of contracts, preservation of the property, and any sale, encumbrance or other disposition of the property made in compliance with an order of the court; and thereupon the residue of the estate, less fees, costs and expenses thus far incurred, shall be surrendered and delivered to the claimant.

§ 2551. Determination of death; petition; order

If another person appears and files a verified petition, within the three-year period, claiming that the missing person died subsequently to the commencement of the seven-year period, and the claimant is entitled to the property or any portion thereof, as successor in interest to the rights of the absent person because of his death; and if the claimant also causes a copy of the petition to be served either personally or by registered or certified mail upon the legal representative of

the estate and upon each of the heirs, legatees, and devisees, an issue shall thereupon be tried and determined by the court as to the truth of the petition. The court may upon application or on its own motion require the claimant to give security to be approved by the court for costs and expenses involved in the hearing and ultimate determination thereof, in case the issue is decided against the claimant.

If the issue is determined in favor of the claimant, the court shall make and enter such order as the circumstances require.

§ 2552. Conclusive presumption of death; final distribution

If no person makes a claim during the three-year period, either to be the missing person, or to have succeeded to the rights of the missing person since the commencement of the seven-year period by reason of the death of the missing person, a conclusive presumption arises that the missing person died prior to the filing of the petition for administration or the probate of his will; and the estate shall be finally distributed accordingly, as far as the distribution has not already been accomplished; and by order of the court the estate shall be closed and the liability of the representative and his sureties to claimants ended, and the liability of distributees ended, and all bonds given by them cancelled. If in any case the period of absence as set forth in section 2541 of this title has exceeded 10 years at the time of filing the petition for the appointment of an administrator or probate of the will, the estate may be finally distributed and closed at the end of one year, without a bond being given, with like effect as provided for in this chapter at the expiration of the three-year period.

§ 2553. Limitation of actions

After the expiration of the periods of time provided for the final distribution of the estate, and after the missing person has been absent and missing for the period of 10 years as provided in this chapter, the statute of limitations shall be deemed to have run against all claimants; and no action, suit, petition or proceeding may be brought by the missing person or persons claiming under him or otherwise claiming an interest in the estate, against the executor or administrator or against a surety on a bond or against any of the distributees, to recover any part or portion of the estate.

§ 2554. Property and estates governed by chapter

This chapter applies to the property and estates of all missing persons as defined in this chapter, who have been missing and absent from their last known place of residence for the continuous period of seven years, whether the absence commenced before the effective date of this Code and has been completed, or is still running, or shall commence to run after the effective date of this Code.

§ 2555. Manner of administration and distribution of estate

The administrator or executor to whom letters are issued as provided in this chapter shall administer and distribute the estate of the missing person in the same general manner, method of procedure and with the same force and effect as provided by this title for the administration and settlement of the estates of deceased persons, except as otherwise modified, limited or directed by this chapter.

PART 5—GUARDIAN AND WARD

CHAPTER 121—RELATIONSHIP OF GUARDIAN AND WARD

§ 2801. Definition of relationship; applicability of trust law; control by court

A guardian is a person appointed to take care of the person or property, or of both the person and property, of another. The latter is a ward. The relation of guardian and ward is confidential and subject to the provisions of law relating to trusts. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

§ 2802. General or special guardians

Guardians are either general or special. A general guardian is a guardian of the person or of all the property of the ward within the Canal Zone, or of both. Every other guardian is a special guardian.

§ 2803. Appointment of guardian of person and estate of child by will or deed

Either parent of a legitimate child living or likely to be born may, by will or deed, appoint a guardian of the person or estate, or both, of the child, to take effect upon the death of the parent appointing:

(1) with the written consent of the other parent; or
(2) if the other parent is dead or incapable of consent.

If the child is illegitimate, the mother may make the appointment.

§ 2804. Appointment of guardian of person and estate of incompetent by will or deed

Either parent of an unmarried incompetent person, or of an incompetent person whose marriage has been annulled or dissolved by death or divorce, may, by will or deed, appoint a guardian of the person or estate, or both, of the incompetent, to take effect upon the death of the person appointing:

(1) with the written consent of the other parent; or
(2) if the other parent is dead or incapable of consent.

If the incompetent person is married, the spouse may make the appointment.

§ 2805. Appointment of general guardian by court; multiple guardians; bonds; deposit of moneys of small estates; confirmation of other appointments

(a) The district court shall appoint a general guardian of the person or estate, or both, of minors and incompetent persons, when necessary or convenient, and when a guardian has not been appointed for the purpose by will or deed. The court may appoint more than one guardian and shall require either a separate bond from each or a joint and several bond. Where two or more guardians are appointed as coguardians, each shall be governed and liable in all respects as a sole guardian.

(b) If the estate does not exceed $10,000 in value, the court may require that the money in the estate be deposited in a bank or trust company or be invested in an account in an insured savings and loan association, subject to withdrawal only upon the order of the court. In such cases, a bond is not required of the guardian.

(c) When requested to do so, the court shall confirm an appointment made by will or deed, upon the same procedure and notice as in the case of appointment by the court.

§ 2806. Testamentary guardians; qualification, powers, duties, and bond

A testamentary guardian shall qualify and has the same powers and shall perform the same duties with regard to the person and estate of his ward as guardians appointed by the court, except as far as his powers and duties are legally modified, enlarged, or changed by the will by which he was appointed, and except that the guardian need not give bond unless directed to do so by the court.

§ 2807. Rules for awarding custody or appointment of guardian of minor

(a) In awarding the custody of a minor, or in appointing a general guardian, the court or officer shall be guided by what appears to be for the best interest of the child in respect to its temporal, mental and moral welfare. If the child is of a sufficient age to form an intelligent preference, the court may consider the preference in determining the question.

(b) If the minor resides in the Canal Zone and is over 14 years of age, he may nominate his own guardian, either of his own accord or within 10 days after being cited by the court; and the nominee shall be appointed if approved by the court. When a guardian has been appointed for a minor under 14 years of age, the minor, at any time after he attains that age, may nominate his own guardian, subject to the approval of the court.

§ 2808. Order of preference in awarding custody of minor

Of persons equally entitled in other respects to the custody of a minor, preference shall be given, as follows:

(1) to a parent;

(2) to one who was indicated by the wishes of a deceased parent;

(3) to one who already stands in the position of a trustee of a fund to be applied to the child's support;

(4) to a relative.

§ 2809. Parents adversely claiming custody or guardianship

As between parents claiming the custody or guardianship adversely to each other, neither has priority. Other things being equal, the custody or guardianship should be given:

(1) if the child is of tender years, to the mother; or

(2) if the child is of an age to require education and preparation for labor and business, to the father.

§ 2810. Abandonment as forfeiture of right to guardianship

A parent who knowingly or willfully abandons, or having the ability to do so, fails to maintain, his minor child under 14 years of age, forfeits all right to the guardianship.

§ 2811. Marriage of guardian

The marriage of a guardian does not extinguish or affect his authority as a guardian.

§ 2812. Trust companies as guardians

A corporation or association authorized to conduct the business of a trust company in the Canal Zone may be appointed to act as a guardian of the estate, in like manner as an individual. The appointment as guardian applies to the estate only, and not to the person.

CHAPTER 123—WHEN GUARDIANSHIP NOT NECESSARY

§ 2851. Small estates of minors

If a minor has no guardian of his estate, money belonging to the minor not exceeding $100 or other property belonging to the minor not exceeding $100 in value may be paid or delivered to a parent of the minor entitled to his custody to hold for the minor, upon written assurance verified by the oath of the parent that the total estate of the minor does not exceed $500 in value. The written receipt of the parent shall be an acquittance of the person making the payment of money or delivery of property.

§ 2852. Compromise of minors' claims

(a) If a minor has a disputed claim for money against a third person, the father, and if the father is dead or legally incompetent or has deserted or abandoned the minor, then the mother shall have the right to compromise the claim, but before the compromise is valid or has any effect it shall be approved by the division of the district court where the minor resides, upon a verified petition in writing, filed with the court.

(b) If the court approves the compromise, the district court may direct the money to be paid to the father or mother of the minor, with or without the filing of a bond, or it may require a general guardian or guardian ad litem to be appointed and the money to be paid to the guardian or guardian ad litem with or without a bond as in the discretion of the court seems to the best interests of the minor.

(c) The clerk of the district court may not charge a fee for filing the petition for leave to compromise or for placing it upon the calendar to be heard by the court.

§ 2853. Accounting by parent

The parent receiving money under the provisions of this chapter shall account to the minor for the money when the minor reaches the age of majority.

§ 2854. Married minors

A guardian of the person of a married minor may not be appointed solely by reason of minority. A guardian of the estate of a married female who has reached the age of 18 years may not be appointed solely by reason of her age.

CHAPTER 125—APPOINTMENT OF GUARDIANS FOR MINORS

Sec.

§ 2881. Jurisdiction to appoint; petition; several minors; bond

(a) When it appears necessary or convenient, the division of the district court of which a minor is an inhabitant or resident, or in which a minor who resides outside the Canal Zone has estate, may appoint a guardian for his person or estate, or both.

(b) The appointment may be made on the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if 14 years of age or over.

(c) The court may issue letters of guardianship of the person or estate, or both, of more than one minor upon the same application. When there is an application for more than one minor, the court may permit a joint or separate bond in the multiple application.

§ 2882. Notice of proceedings

Before making the appointment, the court shall cause such notice as it deems reasonable to be given to the person having the care of the minor, and to such relatives of the minor residing in the Canal Zone as it deems proper. In all cases notice shall be given to the parents of the minor or proof made to the court that their addresses are unknown, or that for some other reason the notice can not be given.

§ 2883. Temporary custody pending hearing; warrant

(a) When it appears to the court, either from a verified petition or from affidavits, that the welfare of the minor will be imperiled if he is allowed to remain in the custody of the person then having his care, the court may make an order providing for his temporary custody until a hearing can be had on the petition.

(b) When it appears to the court that there is reason to believe that the minor will be carried out of the jurisdiction of the court, or will suffer an irreparable injury before compliance with an order providing for his temporary custody can be enforced, the court may at the time of making the order providing for his temporary custody cause a warrant to be issued, reciting the facts, and directed to the marshal, commanding him to take the minor from the custody of the person in whose care the minor then is and place him in custody in accordance with the order of the court.

§ 2884. Public administrator as guardian of estates of minors

(a) The district court may appoint the public administrator guardian of the estate of any minor.

(b) The public administrator shall comply with all the provisions of this Part with respect to the guardianship of estates of minors by other persons, except that:

(1) his official bond and oath shall satisfy the requirements with respect to a guardian's bond and oath; and

(2) when notice is required to be given, the notice may, in the court's discretion, be waived or given by posting.

CHAPTER 127—APPOINTMENT OF GUARDIANS FOR INCOMPETENT PERSONS

Sec.

§ 2921. Incompetent person defined

As used in this Part, "incompetent", "mentally incompetent", or "incapable" means that a person is, by reason of old age, mental illness or other disease, or from any other cause, unable, when unassisted, properly to manage and take care of himself or his property, and by reason thereof would be likely to be deceived or imposed upon by artful or designing persons.

§ 2922. Petition for appointment of guardian of incompetent person; notice; attendance at hearing

(a) A relative or friend may file a verified petition in the district court alleging that a person is incompetent, and setting forth the names and residences, as far as they are known to the petitioner, of the relatives of the alleged incompetent person within the second degree residing within or without the Canal Zone. The clerk shall set the petition for hearing by the court and issue a citation directed to the alleged incompetent person setting forth the time and place of hearing so fixed by him.

(b) If the alleged incompetent person is within the Canal Zone the citation and a copy of the petition shall be personally served on him in the same manner as provided by law for the service of a summons. If he is not within the Canal Zone the citation and a copy of the petition shall be delivered to him, personally. In all cases service shall be made on the alleged incompetent person at least 10 days before the time of hearing unless the time is shortened by the court for good cause shown.

(c) Notice of the nature of the proceedings and of the time and place of the hearing shall be mailed by the petitioner to each of the relatives of the alleged incompetent person named in the petition at least 15 days before the time of hearing unless the time is shortened by the court for good cause shown. The court may order that similar notice be given to other persons in such manner as the court may direct. A relative or friend of the alleged incompetent person may appear and oppose the petition.

(d) If the alleged incompetent person is within the Canal Zone and is able to attend he shall be produced at the hearing, and if he is not able to attend by reason of physical inability or by reason that his presence in court would retard or impair his recovery or would increase his mental debility, the inability or harmful effect shall be evidenced by the affidavit of a licensed physician or surgeon, or other duly licensed medical practitioner, unless the alleged incompetent person is a patient at a hospital in the Canal Zone in which case the affidavit shall be by the medical superintendent or acting medical superintendent of the hospital.

(e) If the alleged incompetent person is not within the Canal Zone and if the court determines that his attendance at the hearing is necessary in the interest of justice, the court may order him to be produced at the hearing upon penalty of dismissing the petition if he is not produced. If such an order is made and it is contended that the alleged incompetent person is not able to attend by reason of physical inability or by reason that his presence in court would retard or im-

pair his recovery or would increase his mental debility, the inability or harmful effect shall be evidenced by the affidavit of a licensed physician or surgeon, or other licensed medical practitioner, unless the alleged incompetent person is a patient at a hospital in which case the affidavit shall be by the medical director or medical superintendent or acting medical director or medical superintendent of the hospital.

(f) Affidavits provided by this section are prima facie evidence of the facts contained therein.

§ 2923. Appointment of guardian after hearing; preferences

(a) After hearing and examination upon the petition, if it appears to the court that the person in question is incapable of taking care of himself and managing his property, the court shall appoint a guardian of his person or estate, or both, with the powers and duties specified in this Part.

(b) In awarding letters of guardianship of the person or estate, or both, of an incompetent person, the court shall appoint as guardian such person as may have been designated by will or deed pursuant to section 2804 of this title unless good cause to the contrary is shown.

§ 2924. Public administrator as guardian of estates of incompetent persons

(a) The district court may appoint the public administrator guardian of the estate of an incompetent person.

(b) The public administrator shall comply with all the provisions of this Part with respect to the guardianship of estates of incompetent persons by other persons, except that:

(1) his official bond and oath shall satisfy the requirements with respect to a guardian's bond and oath; and

(2) when notice is required to be given, the notice may, in the court's discretion, be waived or given by posting.

§ 2925. Restoration to capacity

(a) A person who has been declared incompetent, or his guardian, or a relative within the third degree, or a friend, may petition the division of the district court in which he was declared incompetent, to have the fact of his restoration to capacity judicially determined. The petition shall be verified, and shall state that the person is then competent.

(b) Upon receiving the petition, the court shall appoint a day for a hearing before the court. If the petitioner requests it, the court shall order an investigation before a jury, which shall be summoned and impaneled in the same manner as juries in civil actions. The court shall cause notice of the trial to be given to the guardian of the person so declared incompetent, if there is a guardian, and to the person's spouse, if any, and to his or her father or mother, if living in the Canal Zone.

(c) On the trial, the guardian or relative of the person so declared incompetent, and, in the discretion of the court, any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, as in civil cases, and may be called and examined by the court on its own motion.

(d) If it is found that the person is of sound mind, and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship, if he is not a minor, shall cease.

CHAPTER 129—OATHS, BONDS, AND LETTERS

Sec.

§ 2961. Oaths and bonds; issuance of letters

(a) Before an order appointing a guardian takes effect, and before letters issue, the court shall require the person appointed to take an oath and give a bond.

(b) The guardian shall take an oath, which shall be indorsed upon or attached to his letters, that he will perform the duties of his office as guardian according to law.

(c) The guardian shall give a bond to the ward, with sufficient sureties approved by the court, conditioned that the guardian will faithfully execute the duties of his trust according to law. The bond shall be in such sum as the court may order, but not less than twice the value of the personal property and the probable value of the annual rents, issues, and profits of property belonging to the ward. When the bond is given by an authorized surety company, however, the court may fix the amount of the bond at not less than the value of the personal property and the probable value of the annual rents, issues, and profits of property belonging to the ward.

(d) Sections 1374 and 1375 of this title and sections 431 and 432 of Title 3 apply to guardians appointed by the court, guardians' bonds, and the sureties thereon.

(e) Upon taking the oath and filing the approved bond, letters of guardianship shall issue to the person appointed. The letters of guardianship shall be substantially in the same form as letters of administration.

§ 2962. New bonds; discharge of sureties

When the court deems it necessary, it may require a new bond to be given by a guardian; and when it appears that injury can not result therefrom to those interested in the estate the court may discharge the existing sureties from further liability, after such notice as the court directs.

§ 2963. Release of sureties

Sections 1380–1382 of this title apply to guardians, guardians' bonds, and the sureties thereon.

§ 2964. Bonds; filing; actions

Every bond given by a guardian shall be filed and preserved in the office of the clerk of the district court, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward, or of any person interested in the estate.

§ 2965. Limitation of actions on guardians' bonds

An action may not be maintained against the sureties on a bond given by a guardian, unless it is commenced within three years from the discharge or removal of the guardian; but if at the time of the discharge the person entitled to bring the action is under a legal disability to sue, the action may be commenced at any time within three years after the disability is removed.

§ 2966. Recording letters of guardianship

Letters of guardianship issued under this Part, with the affidavits and certificates thereon, shall be recorded by the clerk of the court having jurisdiction of the persons and estates of the wards.

§ 2967. Oaths and affidavits of trust companies

If it is required that a guardian of the estate shall qualify by taking and subscribing an oath, or an affidavit is required, it is a sufficient qualification by a corporation or association receiving an appointment as guardian of the estate if the oath is taken and subscribed, or the affidavit is made, by the president, vice president, secretary, manager, trust officer, or assistant trust officer thereof.

CHAPTER 131—POWERS AND DUTIES OF GUARDIANS

Sec.

§ 3001. General powers; duration

(a) Until legally discharged or until the guardianship terminates as provided by chapter 141 of this title, the guardian of a minor has the care and custody of the person and the care of the education of the ward, and the management of his estate, unless he is appointed guardian only of the person of the ward, in which case the guardian shall look to the support, health, and education of the ward.

(b) Until legally discharged or until the guardianship terminates as provided by chapter 141 of this title, the guardian of an incompetent person has the care and custody of the person of the ward, or the management of all his estate, or both, according to the order of appointment.

(c) The guardian of a minor or incompetent person may fix the residence of the ward at any place in the Canal Zone, but not elsewhere without the permission of the court.

§ 3002. Payment and collection of debts; compromise of claims; representation of ward

(a) The guardian shall pay the ward's just debts out of the ward's personal estate and the income of his real estate, if sufficient; if not, then out of his real estate upon selling or mortgaging it and disposing of the proceeds in the manner provided by chapter 133 of this title.

(b) The guardian shall demand, sue for, and collect all debts due to the ward, or, with the approval of the court, he may give the debtor a discharge upon such terms as may appear to the court to be for the best interest of the estate of the ward.

(c) The guardian shall appear for and represent the ward in all legal suits and proceedings, unless another person is appointed for that purpose.

§ 3003. Management of estate; application of income; credit for advancements

(a) The guardian of an estate shall manage it frugally and without waste, and apply the income, as far as may be necessary, to the comfortable and suitable support, maintenance, and education of the ward and his family, if any; and if the income is insufficient for that purpose, the guardian may sell or mortgage the real or personal property, as provided by chapter 133 of this title, and shall apply the proceeds of the sale or mortgage, as far as may be necessary, for the support, maintenance, and education of the ward and his family, if any.

(b) When a guardian has advanced, for the suitable support, maintenance, or education of his ward, an amount not disproportionate to the value of his estate or his condition of life, and this is made to appear to the satisfaction of the court by proper vouchers and proofs, the guardian shall be allowed credit therefor in his settlements.

§ 3004. Support, maintenance, or education; enforcement against guardian; payments to third persons

(a) When a guardian fails, neglects, or refuses to furnish suitable and necessary support, maintenance, and education for his ward, the court may order him to do so, and enforce the order by proper process.

(b) When a third person, at the request of a ward, supplies a ward with suitable and necessary support, maintenance, or education, and it is shown to have been done after refusal or neglect of the guardian to supply it, the court may direct the guardian to pay therefor out of the estate, and enforce the payment by due process.

§ 3005. Minor having father living; support, maintenance, and education

If a minor having a father living has property, the income of which is sufficient for his support, maintenance, and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the support, maintenance, and education of the minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and as directed by the court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

§ 3006. Incompetent wife; care or support

If the husband is unable to provide suitably for the care or support of a wife over whose estate a guardian has been appointed by reason of incompetency, the expense of providing the care or support, may, to the extent necessary, be charged against and defrayed out of the estate, as previously directed by the court or as subsequently approved by the court in settling the accounts of the guardian of the estate; for this purpose the guardian may sell or mortgage estate of the ward as provided in this title.

§ 3007. Partition; powers of guardian

(a) after obtaining authority from the court having jurisdiction of the estate, a guardian may:

(1) join in and assent to a partition of the real or personal estate of his ward, whenever such an assent may be given by any person; or

(2) consent to a partition of the real or personal estate of his ward without action, agree upon the share to be set off to the ward, and execute a release in behalf of his ward to the owners of the shares, of the parts to which they may be respectively entitled.

(b) The order of court granting authority under subsection (a) of this section shall be made only after a hearing in open court upon petition of the guardian after notice of at least 10 days, mailed by the clerk of the court to all known relatives of the ward residing in the Canal Zone.

§ 3008. Attorneys' fees; judgments for minors

(a) Contracts for attorneys' fees made by or for the benefit of minors are void, and when a judgment is recovered by or on behalf of a minor, the attorneys' fees chargeable against the minor shall be fixed by the court in which the judgment is rendered.

(b) If a judgment recovered by or on behalf of a minor is for money, and there is no general guardian, one shall be appointed by the court, and the entire amount of the judgment shall be paid to and shall be cared for by the general guardian, under the control of the court, except that where a minor has brought an action by a guardian ad litem and has recovered a money judgment not exceeding $500, exclusive of costs, and the guardian ad litem is a parent or blood relative of the minor, then, with the approval of the court that rendered the judgment, the whole amount of the judgment may be paid directly to the guardian ad litem without a bond being required therefor.

(c) In any of the cases provided for in this section, the court may direct the amount fixed as attorneys' fees to be paid directly to the attorney, and the balance to be paid to the guardian ad litem of the minor, or to the general guardian if a general guardian has been appointed or is required by the court.

§ 3009. Additional conditions imposed by court

When a person is appointed guardian of a minor, the court may, with his consent, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education, and welfare of the minor and for the care and custody of his property. The performance of these conditions shall be a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond shall be responsible.

CHAPTER 133—SALES, MORTGAGES, AND CONVEYANCES

Sec.

§ 3041. Sale or mortgage of property

Subject to confirmation by the court, a guardian may sell the real or personal estate or mortgage the real estate of his ward if:

(1) the income of the estate is insufficient to support and maintain the ward and his family, or to support, maintain, and educate a minor ward, or to pay for the care, treatment, and support of a ward who is confined in a hospital as defined in section 1631 of Title 5;

(2) the personal estate and the income of the real estate are insufficient to pay the ward's just debts; or

(3) it is for the advantage, benefit, and best interests of the estate of the ward or of such members of his family as he is legally bound to support and maintain.

§ 3042. Borrowing money and mortgaging personal property

(a) When it appears to be to the advantage of an estate of a minor or incompetent person under guardianship to borrow money upon a note or notes, either unsecured, or to be secured by a chattel mortgage or other lien upon the personal property of the ward, or any part thereof, in any of the cases specified in section 3041 of this title, or in order to pay, reduce, extend, or renew a mortgage or lien already subsisting upon the personal property of the ward or a part thereof, and as often as occasion therefor arises in the course of the guardianship, the court may, by order, authorize and direct the guardian to borrow the money and to execute the note or notes, and, in the proper case, to execute the chattel mortgage or to give other security by way of pledge or other lien on the personal property.

(b) Except as provided in this subsection, the proceedings to be taken to obtain an order under this section and the effect thereof shall be the same as provided by sections 1742–1744 of this title with respect to the estate of a decedent and the executor or administrator thereof. The notice of hearing of the petition by the guardian or a person interested in the estate under section 1742 of this title shall be given by the clerk by posting and by mailing to the nearest relatives of the ward residing in the Canal Zone, and to other persons interested in the estate, for the period and in the manner provided by section 1583 of this title.

(c) A chattel mortgage, pledge, or other lien made and delivered under this section is effectual to mortgage, pledge, or subject to lien all the right, title and interest which the ward has in the property described therein.

(d) Notes signed and delivered in the negotiation of an unsecured loan under this section are effectual to create a valid obligation and debt against the ward, and shall be payable out of the funds of his estate.

(e) An irregularity in proceedings under this section with respect to the borrowing of money upon a note or notes secured by a chattel mortgage, pledge, or other lien, does not impair or invalidate the proceedings or the notes and mortgage, pledge, or other lien given in pursuance thereof, and, except as provided in subsection (f) of this section, the mortgagee, his heirs and assigns, possess the same rights and remedies on the note or notes and mortgage, pledge, or other lien as if it had been made by the minor ward after reaching the age of maturity or the incompetent ward when legally competent.

(f) Upon a foreclosure, if the proceeds of the encumbered property are insufficient to pay the note or notes, and mortgage, pledge, or other lien, a judgment or claim for any deficiency of the proceeds to satisfy the obligation, or the costs or expenses of sale, may not be had or allowed, except in cases where the note or notes, mortgage, pledge or other lien were given to pay, reduce, extend, or renew a lien upon the interest of the minor in the property at the time it vested in him, or upon the estate of the incompetent ward at the time his incompetency was declared by the court.

§ 3043. Procedure for sales of property

All proceedings by guardians concerning sales of property of their wards shall be had and made as required by Part 3 of this title concerning estates of decedents, unless otherwise specially provided in this Part. All known relatives of the ward within the third degree residing in the Canal Zone whose addresses are known to the guardian shall within two days after filing of the return of sale be served by mail with a brief notice of the time set for hearing of the return.

§ 3044. Application and investment of proceeds of sales

(a) If the estate is sold for the purposes mentioned in this chapter, the guardian shall apply the proceeds of the sale to those purposes, as far as necessary, and put out the residue, if any, at interest, or invest it in the best manner in his power, until the capital is needed for the maintenance of the ward and his family, or the education of his children, or for the education of the ward if a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

(b) If the estate is sold for the purpose of putting out or investing the proceeds, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the court.

§ 3045. Conveyances and transfers to complete contracts

(a) Proceedings for the completion of contracts for the sale of real estate by guardians shall be had and made as required by Part 3 of this title concerning the conveyance of real estate by executors and administrators under sections 1771–1779 of this title.

(b) When a person who is bound by a contract in writing to convey real estate is afterwards, and before making the conveyance, adjudged to be an incompetent person, the court may make an order authorizing and directing his guardian to convey the real estate to the person entitled thereto. The decree may be made pursuant to sections 1771–1779 of this title.

(c) When a person who is bound by contract in writing to convey real estate, or to transfer personal property, dies before making conveyance or transfer, and in all cases when the decedent, if living might be compelled to make the conveyance or transfer, the court having jurisdiction of the guardianship proceedings of a minor may make a decree authorizing and directing the guardian of the minor, who has succeeded by distribution to the estate of the deceased person, to convey or transfer the real estate or personal property to the person entitled thereto. Sections 1771–1779 of this title apply to conveyances by guardians as provided in this subsection.

§ 3046. Limitation of actions for the recovery of property

An action for the recovery of property sold by a guardian may not be maintained by the ward, or by a person claiming under him, unless it is commenced within three years after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise at the time the cause of action accrues, within three years next after the removal thereof.

CHAPTER 135—INVENTORY AND ACCOUNTING

Sec.

§ 3081. Inventory and appraisement

(a) Within 30 days after his appointment, or within such further period as the court, for reasonable cause, allows, the guardian shall return to the court a verified inventory of the estate of his ward. The estate of the ward described in the first inventory shall be appraised by appraisers, appointed, sworn, and acting in the manner provided for regulating the settlement of the estates of decedents. The inventory, with the appraisement of the property therein described, shall be recorded by the clerk of the court in a book kept in his office for that purpose.

(b) When property of the estate of a ward is discovered which is not included in the inventory of the estate already returned, and when any other property has been succeeded to or acquired by a ward, or for his benefit, like proceedings shall be had for the return and appraisement thereof and the service of the same as are provided in this section in relation to the first inventory and return.

§ 3082. Failure to file inventory or account; revocation of letters; liability on bond

If a guardian neglects or refuses to return an inventory or render an account within the time prescribed, the court, upon notice, may revoke his letters of guardianship, and he shall be liable on his bond the failure.

§ 3083. Examination of persons suspected of defrauding wards or concealing property

Upon complaint by a guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, smuggled, or fraudulently disposed of, any of the property, or an instrument in writing belonging to the ward or to his estate, the district court may cite the suspected person to appear before the court, and may examine and proceed against him on such charge in the manner provided by Part 3 of this title, with respect to persons suspected of and charged with concealing, embezzling, smuggling, or fraudulently disposing of the effects of a decedent.

§ 3084. Accounts of guardians; joint guardians

(a) At the expiration of a year from the time of his appointment, and as often thereafter as may be required by the court, the guardian shall present his account to the court for settlement and allowance.

(b) When an account is rendered by two or more joint guardians, the court may allow the account upon the oath of any of them.

§ 3085. Termination of guardianship; continuing jurisdiction to settle accounts

The termination of the relation of guardian and ward by the death of either guardian or ward or by the ward's attaining his majority or being restored to capacity does not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the guardian.

§ 3086. Accounts of deceased guardians

If a guardian dies, his accounts may be presented by his personal representative to, and settled by, the court in which the estate of which he was guardian is being administered. Upon petition of the successor of the deceased guardian, the court may compel the personal representative of the deceased guardian to render an account of the administration of his testator or intestate, and the court shall settle the account as in other cases.

§ 3087. Expenses and compensation of guardians

A guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust, and have such compensation for his services as the court in which his accounts are settled deems just and reasonable. He shall also be allowed reasonable and proper disbursements, made after the legal termination of the guardianship, but while that relation, by consent or acquiescence of the parties, still subsists in fact, and before the discharge of the guardian by the court, and which were made by the consent, express or implied, of the ward, and for his benefit or the benefit of his estate.

§ 3088. Investment and managment of wards' estates; orders of court

On the application of a guardian or a person interested in the estate of a ward, after such notice to persons interested therein as the court directs, the court may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his

hands, in a manner most to the interest of all concerned therein, and the court may make such other orders and give such directions as are needful for the management, investment, and disposition of the estate and effects as circumstances require.

CHAPTER 137—NONRESIDENT WARDS

Sec.

§ 3121. Appointment of guardians of nonresidents

The district court may appoint a guardian of the person or estate, or both, of a minor or incompetent person, who has no guardian within the Canal Zone, legally appointed by will, deed, or otherwise, and who resides out of the Canal Zone, and has estate within the division or who, though not having such an estate, is within the division, upon petition of a friend of the person or any one interested in his estate, in expectancy or otherwise. Before making the appointment, the court shall cause notice to be given to all persons interested, in such manner as the court deems reasonable.

The guardianship which is first lawfully granted of a person residing out of the Canal Zone extends to all the estate of the ward within the Canal Zone.

§ 3122. Powers and duties of guardians of nonresidents; bonds

(a) A guardian appointed pursuant to section 3121 of this title has the same powers and duties, with respect to the estate of the ward within the Canal Zone, and with respect to the person of the ward, if the ward comes to reside within the Canal Zone, as are prescribed with respect to any other guardian appointed under this Part.

(b) The guardian shall give bond to the ward, in the manner and with the like conditions as provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to the estate and effects which come to his hands in the Canal Zone.

§ 3123. Removal of ward's property

When the guardian and ward are both nonresidents, and the ward is entitled to property in the Canal Zone which may be removed to a State or foreign country without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, the property may be removed to the State or foreign country of the ward's residence, upon the application of the guardian to the division of the district court in which the estate of the ward, or the principal part thereof, is situated.

§ 3124. Same; notice; certificate

(a) The application pursuant to section 3123 of this title shall be made upon 10 days' notice to the resident executor, administrator, or guardian, if any.

(b) Upon the application, the nonresident guardian shall produce and file:

(1) a certificate, under the hand of the clerk and the seal of the court from which his appointment was derived, showing:

(A) a transcript of the record of his appointment;

(B) that he has entered upon the discharge of his duties; and

(C) that he is entitled, by the laws of the State of his appointment, to the possession of the estate of the ward; or

(2) a certificate, under the hand of the clerk and the seal of the court having jurisdiction in the country of his residence of the estates of persons under guardianship, or of the highest court of the country, attested by a minister, consul, or vice consul of the United States, resident in the country, that, by the laws of the country, the applicant is entitled to the custody of the estate of his ward, without the appointment of a court.

§ 3125. Same; order; discharge of local fiduciary

(a) Upon an application pursuant to sections 3123 and 3124 of this title, unless good cause to the contrary is shown, the court shall make an order granting to the guardian leave to take and remove his ward's property to the State or place of his residence, which is authority to him to sue for and receive the property in his own name, for the use and benefit of his ward.

(b) The order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the clerk of the court the nonresident guardian's receipt therefor, and transmitting a duplicate receipt, or a certified copy of the receipt, to the court from which the nonresident guardian received his appointment.

CHAPTER 139—SUSPENSION, REMOVAL, AND RESIGNATION

Sec.

§ 3161. Removal of guardian

The district court may remove a guardian appointed by will or deed or by the court:

(1) for waste or mismanagement of the estate, or abuse of his trust;

(2) for failure to file an inventory or to render an account within the time allowed by law, or for continued failure to perform his duties;

(3) for incapacity to perform his duties suitably;

(4) for gross immorality;

(5) for having an interest adverse to the faithful performance of his duties;

(6) for removal from the Canal Zone;

(7) in the case of a guardian of the property, for insolvency; or

(8) when it is no longer necessary that the ward be under guardianship.

§ 3162. Removal; notice; surrender of estate; suspension of powers pending hearing

The removal of a guardian may be ordered by the district court after such notice to the guardian as the court requires. The court may compel the guardian to surrender the estate of the ward to the person found to be lawfully entitled thereto. Pending the hearing, the court may suspend the powers of the guardian to such extent as it deems necessary.

§ 3163. Resignation; appointment to fill vacancy

(a) A guardian may resign when it appears proper to allow the resignation.

(b) Upon the resignation or removal of a guardian, the court may appoint another in his place, after notice and hearing as in the case of an original appointment.

§ 3164. Revocation of letters for contempt

When a guardian is committed for contempt in disobeying a lawful order of the court, and has remained in custody for 30 days without obeying the order, or purging himself otherwise of the contempt, the court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint another person entitled thereto to succeed him.

CHAPTER 141—TERMINATION OF GUARDIANSHIP

Sec.
3201. Termination by marriage, majority, or court order.
3202. Survivorship of joint guardians.
3203. Release by ward.
3204. Discharge after majority.

§ 3201. Termination by marriage, majority, or court order

(a) If the appointment of a guardian was made solely because of the ward's minority, the marriage of a minor ward terminates the guardianship of the person; and the guardianship of the estate of a minor ward is terminated upon his attaining majority as provided by section 31 of Title 4.

(b) If the appointment of a guardian was made solely because of the ward's minority, the guardianship is terminated by his obtaining majority.

(c) In all other cases the guardianship is terminated only by order of the court upon application of the guardian or the ward, after such notice to the other as the court requires, or by restoration of the ward to capacity pursuant to chapter 127 of this title.

§ 3202. Survivorship of joint guardians

On the death of one joint guardian, the power continues to the survivor or survivors until a further appointment is made by the court.

§ 3203. Release by ward

After a ward has reached his majority, he may settle accounts with his guardian and give him a release, which is valid if obtained fairly and without undue influence.

§ 3204. Discharge after majority

Except as otherwise provided by this Part, a guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

CHAPTER 143—NOTICES AND PROCEDURE

Sec.
3241. Requests for special notice.
3242. United States as party; notice; actions on bonds; exceptions to accounts.
3243. Order appointing guardians; entry and filing.
3244. Procedure generally.
3245. Guardians ad litem.

§ 3241. Requests for special notice

(a) At any time after the issuance of letters of guardianship upon the estate of a minor or incompetent person, a relative of the ward, or the attorney for a relative, may serve upon the guardian, or upon the guardian's attorney, and file with the clerk of the court wherein administration of the ward's estate is pending, a written request, stating his post-office address and stating that he desires special notice of any or all of the following matters, steps, or proceedings in the administration of the estate:

(1) filing of the return of sales of any property of the ward's estate;

(2) filing of accounts;

(3) filing of application for removal of any property of the ward's estate to a foreign jurisdiction;

(4) filing of petitions for partition of any property of the ward's estate;

(5) proceedings for removal, suspension or discharge of the guardian, or final determination of the guardianship.

(b) Thereafter a brief notice of the filing of any such petitions, applications, accounts, or proceedings, except petitions for sale of perishable property, or other personal property which will incur expense or loss by keeping, shall be addressed to the relative, or his attorney, at his stated post-office address, and deposited in the post office, within two days after the filing of the petition, account, application, or the commencement of the proceedings; or personal service of the notice may be made on the relative, or his attorney, within two days, and the personal service shall be equivalent to deposit in the post office. Proof of mailing or of personal service shall be filed with the clerk before the hearing of the matter.

(c) If upon the hearing it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order or judgment, and the judgment shall be final and conclusive upon all persons.

§ 3242. United States as party; notice; actions on bonds; exceptions to accounts

When compensation, pension, insurance, or other allowance is made or awarded to minor or incompetent persons for whom guardians have been appointed, or to their estates, by the United States Government or a department or agency thereof, the department or agency making or awarding the compensation, pension, insurance, or allowance shall have the same right as provided in this title for interested parties and relatives to:

(1) request notice of proceedings;

(2) commence and prosecute actions on guardians' bonds;

(3) petition the court for appointment or removal of guardians of minor or incompetent persons; and

(4) file exceptions in writing to guardians' accounts and contest the accounts.

§ 3243. Order appointing guardians; entry and filing

An order appointing a guardian becomes a decree of the court and shall be entered at length in the records of the court, or shall be signed by the judge and filed.

§ 3244. Procedure generally

Part 3 of this title, relating to the estates of decedents, as far as they relate to the practice in the district court, applies to proceedings under this Part.

§ 3245. Guardians ad litem

This Part does not affect or impair the power of the court to appoint a guardian ad litem to defend the interests of a minor or incompetent person interested in a suit or matter pending therein.

PART 6—TRUSTS AND TRUSTEES

CHAPTER 161—TRUSTS GENERALLY

SUBCHAPTER I—NATURE AND CREATION OF A TRUST

SUBCHAPTER II—OBLIGATIONS OF TRUSTEES

SUBCHAPTER III—OBLIGATIONS OF THIRD PERSONS

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

Subchapter I—Nature and Creation of a Trust

§ 3501. Classification of trusts

A trust is either:

(1) voluntary; or

(2) involuntary.

§ 3502. Voluntary trust defined

A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

§ 3503. Involuntary trust defined

An involuntary trust is one which is created by operation of law.

§ 3504. Parties to the contract

The person whose confidence creates a trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

§ 3505. Trustee defined

One who voluntarily assumes a relation of personal confidence with another is a trustee, within the meaning of this chapter, not only as to the person who reposes the confidence, but also as to all

persons of whose affairs he thus acquires information which was given to that person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

§ 3506. Purposes for which trust may be created

A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by chapter 25 of Title 4, relating to the transfer of property.

§ 3507. Creation of voluntary trust as to trustor and beneficiary

A voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

(1) an intention on the part of the trustor to create a trust; and

(2) the subject, purpose, and beneficiary of the trust.

§ 3508. Creation of voluntary trust as to trustee

A voluntary trust is created, as to the trustee, by any words or acts of his indicating with reasonable certainty:

(1) his acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and

(2) the subject, purpose, and beneficiary of the trust.

§ 3509. Involuntary trustee defined

One who wrongfully detains a thing is an involuntary trustee thereof for the benefit of the owner.

§ 3510. Involuntary trust resulting from fraud, accident, mistake, etc.

One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

Subchapter II—Obligations of Trustees

§ 3531. Good faith

In all matters connected with his trust, a trustee shall act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

§ 3532. Use of trust property for own profit

A trustee may not use or deal, in any manner, with the trust property for his own profit, or for any other purpose unconnected with the trust.

§ 3533. Prohibited transactions; exceptions

A trustee or his agent may not take part in a transaction concerning the trust in which he or anyone for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except:

(1) when the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;

(2) when the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or

(3) when some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court grants permission for the latter, in the manner above prescribed.

§ 3534. Influence to obtain advantage

A trustee may not use the influence which his position gives him to obtain an advantage from his beneficiary.

§ 3535. Undertaking trust adverse to interest of beneficiary

A trustee, so long as he remains in the trust, may not undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

§ 3536. Disclosure of adverse interest; removal

If a trustee acquires an interest, or becomes charged with a duty, adverse to the interest of his beneficiary in the subject of the trust, he shall immediately inform the latter thereof, and may be at once removed.

§ 3537. Violations as fraud

A violation of section 3531, 3532, 3533, 3534, 3535, or 3536 of this title is a fraud against the beneficiary of a trust.

§ 3539. Mingling trust property with that of trustee

A transaction between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains an advantage from his beneficiary, is presumed to be entered into by the latter without sufficient consideration, and under undue influence.

§ 3539. Mingling trust property with that of trustee

A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use.

§ 3540. Measure of liability for breach of trust

(a) A trustee who uses or disposes of the trust property, contrary to section 3532 of this title, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

(b) A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

§ 3541. Liability of cotrustee for acts of others

A trustee is responsible for the wrongful acts of a cotrustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

Subchapter III—Obligations of Third Persons

§ 3561. Third persons as involuntary trustees

A person to whom property is transferred in violation of a trust, holds the property as an involuntary trustee under the trust, unless he purchased it in good faith, and for a valuable consideration.

§ 3562. Obligation of third person to see to proper application of trust property

A person who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights are not prejudiced by a misapplication thereof by the trustee. Other persons shall at their peril, see to the proper application of money or other property paid or delivered by them.

Subchapter IV—Miscellaneous Provisions

§ 3581. Trust companies as trustees, assignees, etc.

A corporation or association authorized to conduct the business of a trust company in the Canal Zone may be appointed to act as a trustee, assignee, receiver, or depositary, in like manner as an individual.

§ 3582. Oaths and affidavits of trust companies

If it is required that a trustee, assignee, receiver, or depositary shall qualify by taking and subscribing an oath, or an affidavit is required, it is a sufficient qualification by a corporation or association receiving an appointment, as such, if the oath is taken and subscribed, or the affidavit is made, by the president, vice president, secretary, manager, trust officer, or assistant trust officer thereof.

§ 3583. Waiver of provisions; intention of parties

Except where it is otherwise declared, the provisions of this chapter and chapter 163 of this title, with respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by chapter 35 of Title 4, relating to the interpretation of contracts; and the benefit thereof may be waived by a party entitled thereto, unless the waiver would be against public policy.

CHAPTER 163—TRUSTS FOR BENEFIT OF THIRD PERSONS

SUBCHAPTER I—NATURE AND CREATION OF THE TRUST

Sec.

SUBCHAPTER II—OBLIGATIONS OF TRUSTEES

SUBCHAPTER III—POWERS OF TRUSTEES

SUBCHAPTER IV—RIGHTS OF TRUSTEES

SUBCHAPTER V—TERMINATION OF THE TRUST

SUBCHAPTER VI—SUCCESSION OR APPOINTMENT OF NEW TRUSTEES

Subchapter I—Nature and Creation of the Trust

§ 3611. Trusts within scope of chapter

The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such.

§ 3612. Creation by mutual consent

The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission.

§ 3613. Trustor when trustee appointed by court or officer

When a trustee is appointed by a court or public officer, as such, the court or officer is the trustor, within the meaning of section 3612 of this title.

§ 3614. Declaration of trust

The nature, extent, and object of a trust are expressed in the declaration of trust.

§ 3615. Oral declarations; merger of previous declarations with written declaration

All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

Subchapter II—Obligations of Trustees

§ 3651. Obedience to declaration of trust

A trustee shall fulfill the purpose of the trust, as declared at its creation, and shall follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee.

§ 3652. Degree of care and diligence

A trustee, whether or not he receives any compensation, shall use at least ordinary care and diligence in the execution of his trust.

§ 3653. Care and diligence as to appointment of successor

If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he shall use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

§ 3654. Investments by trustee

A trustee shall invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the money invested.

§ 3655. Payment of interest on failure to invest

A trustee who omits to invest the trust moneys according to section 3654 of this title shall pay simple interest thereon, if the omission is negligent merely, and compound interest if it is willful.

§ 3656. Purchase by trustee of claims against trust fund

A trustee may not enforce a claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by a competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging it.

Subchapter III—Powers of Trustees

§ 3681. Authority as general agent

A trustee is a general agent for the trust property. His authority is only such as is conferred upon him by the declaration of trust and by this chapter. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

§ 3682. Uniting by cotrustees in acts to bind trust property

Where there are several cotrustees, all shall unite in an act to bind the trust property, unless the declaration of trust otherwise provides.

§ 3683. Discretionary powers

A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

Subchapter IV—Rights of Trustees

§ 3701. Indemnification

A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

§ 3702. Compensation

Except as provided by section 3782 of this title, when a declaration of trust is silent upon the subject of compensation the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled only to the amount thus specified. If it directs that he shall be allowed a compensation but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. If there are two or more trustees, the compensation shall be apportioned among the trustees according to the services rendered by them respectively.

§ 3703. Involuntary trustee

An involuntary trustee, who becomes an involuntary trustee through his own fault, has none of the rights mentioned in this subchapter.

Subchapter V—Termination of the Trust

§ 3721. Extinguishment

A trust is extinguished by the entire fulfillment of its object, or by the object of the trust becoming impossible or unlawful.

§ 3722. Revocation

A trust may not be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor. In the latter case, the power shall be strictly construed.

§ 3723. Vacation of office

The office of a trustee is vacated by his death or his discharge.

§ 3724. Discharge of trustee

A trustee may be discharged from his trust only by:

(1) the extinction of the trust;
(2) the completion of his duties under the trust;
(3) such means as may be prescribed by the declaration of trust;
(4) the consent of the beneficiary, if he has capacity to contract;
(5) the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is legally incompetent; or
(6) the district court.

§ 3725. Removal by district court

The district court may remove a trustee who has violated or is unfit to execute the trust, or may accept the resignation of a trustee.

Subchapter VI—Succession or Appointment of New Trustees

§ 3751. Appointment by court; nominee of beneficiary

The district court shall appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practical method of appointment. In all cases of appointment of a trustee by the court, if the beneficiary is 14 years of age or over, he may make nomination to the court, and unless the nominee is incompetent, upon one or more of the grounds of incompetency specified in section 1101 of this title, to discharge the duties of trustee, the court shall appoint the nominee as trustee. If there are two or more beneficiaries, only those 14 years of age or over may make the nomination.

§ 3752. Survivorship between cotrustees

On the death, renunciation, or discharge of one of several cotrustees the trust survives to the others.

§ 3753. When court shall appoint trustee

When a trust exists without an appointed trustee, or where all the trustees renounce, die, or are discharged, the district court shall appoint another trustee and direct the execution of the trust. The court may appoint the original number, or any lesser number of trustees.

CHAPTER 165—ADMINISTRATION OF TESTAMENTARY TRUSTS

Sec.

§ 3781. Continuing jurisdiction; accounting by trustee

(a) When a trust has been created by or under a will to continue after distribution, the district court does not lose jurisdiction of the estate by final distribution, but retains it for the purpose of the settlement of accounts under the trust.

(b) A trustee created by a will, or appointed to execute a trust created by a will, may, from time to time, pending the execution of his trust, or may, at the termination thereof, render and pray for the settlement of his accounts as trustee, before the court in which the

will was probated, and in the manner provided for the settlement of the accounts of executors and administrators. For that purpose the trustee, or his legal representatives in case of his death, shall present to the court his verified petition, setting forth his accounts in detail, with a report showing the condition of trust estate, together with a verified statement of the trustee, giving the names and post-office addresses, if known, of the beneficiaries. Upon the filing thereof, the clerk shall fix a day for the hearing, and give notice thereof of not less than 10 days, by causing notices to be posted in at least three public places in the Canal Zone, setting forth the name of the trust estate, the trustee, and the day appointed for the settlement of the account. The court may order such further notice to be given as may be proper.

(c) The trustee may, in the discretion of the court, upon application of a beneficiary of the trust, or the guardian of a beneficiary, be ordered to appear and render his account, after being cited by service of citation, as provided for the service of summons in civil actions, and the application may not be denied where an account has not been rendered to the court within six months prior to the application. Upon the filing of the account so ordered, the same proceedings for the hearing and settlement thereof shall be had as provided in subsection (b) of this section.

§ 3782. Expenses and compensation of trustees

On an accounting the court shall allow the trustee or trustees the proper expenses and such compensation for services as it deems just and reasonable. The court shall apportion the compensation among the trustees according to the services rendered by them respectively. The court may fix a yearly compensation for the trustee or trustees to continue as long as the court deems proper.

§ 3783. Declination of trustee; filling vacancies; jurisdiction

(a) A person designated as a trustee in a will which is admitted to probate in the Canal Zone may, at any time before final distribution, decline to act as trustee, and an order of court shall thereupon be made accepting the resignation. The declination of a person who has qualified as trustee may not be accepted by the court, unless it is in writing and filed in the matter of the estate in the court in which the administration is pending, and such notice shall be given thereof as is required upon a petition praying for letters of administration.

(b) The court in which the administration is pending may at any time before final distribution appoint a proper person to fill a vacancy in the office of trustee under the will, whether resulting from declination, removal, or otherwise, if it is required by law or necessary to carry out the trust created by the will that the vacancy be filled. A person so appointed shall, before acting as trustee, give a bond as is required by section 1371 of this title of a person to whom letters of administration are directed to issue. The appointment may be made by the court upon the written application of any person interested in the trust filed in the probate proceedings, and shall only be made after notice to all parties interested in the trust, given in the same manner as notice is required to be given of the hearing upon the petition for the probate of a will.

(c) In each case under this section, the court may order such further notice as it deems necessary.

(d) In accepting a declination under the provisions of this section, the court may make and enforce any order which may be necessary for the preservation of the estate.

(e) This section applies where a final decree of distribution has not been made; but the jurisdiction given by this section does not exclude, in cases to which it applies, the jurisdiction now possessed by the district court.

TITLE 8—DOMESTIC RELATIONS

CHAPTER 1—MARRIAGE

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—PRE-MARITAL MEDICAL EXAMINATIONS

Subchapter I—General Provisions

§ 1. Marriage relation; consent; solemnization

Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making that contract is necessary. Consent alone does not constitute marriage; it must be followed by a solemnization authorized by this title.

§ 2. Capacity of minors to marry

(a) Except as provided by subsections (b) and (c) of this section, a male under 21 years of age or a female under 18 years of age may not enter into a marriage in the Canal Zone.

(b) A male 17 years of age or over and under 21, or a female 14 years of age or over and under 18, may enter into a marriage with the written consent of:

(1) his or her natural or adopted parents; or

(2) the parent having his or her custody if the parents are divorced; or

(3) one parent, if the other is dead, has deserted his or her family, or has been adjudged incompetent; or

(4) a legally appointed guardian if there is no parent qualified to give consent.

(c) The written consent required by subsection (b) of this section shall be sworn to and acknowledged before a person authorized to administer oaths, and shall state:

(1) the name and age of the minor;

(2) the name of the person whom the minor wishes to marry; and

(3) if the consent is executed by only one parent as provided by paragraph (2) or (3) of subsection (b) of this section, the applicable circumstances referred to in those paragraphs.

§ 3. Proof of consent and solemnization

Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases.

§ 4. Marriage license; application; waiting period; medical certificate or court order; fee; record; period of validity

(a) A marriage may not be celebrated in the Canal Zone unless a license to marry has first been secured from the office of the clerk of the district court in either division. If both parties to a proposed marriage are residents of the Republic of Panama and neither is a United States citizen, a license may not issue in the Canal Zone unless the parties have previously obtained a license to marry from the proper authorities in the Republic of Panama. A marriage license may not be issued to a leper except upon a certificate of approval by the health director of the Canal Zone Government. A license when issued shall be accompanied by a marriage certificate to be executed by the person celebrating the marriage.

(b) The application for a marriage license shall state:

(1) the name, address, age, color, and race of each of the persons to be married;

(2) the relationship, if any, of the persons, by consanguinity or affinity; and

(3) if either person has been previously married, the date and place of each previous marriage, the name of each former spouse, and the manner in which each previous marriage has been terminated.

(c) Except as provided by subsection (d) of this section, the clerk shall issue a marriage license, after application therefor, if:

(1) the application for the license is in accordance with subsection (b) of this section, and is accompanied by the written consent when required by section 2 of this title; and

(2) it appears to the clerk's satisfaction, from the sworn statements of the persons desiring to marry, or, if required by the clerk, from the sworn statement of another person, that no legal impediment to the marriage is known to exist.

(d) The clerk may not issue a marriage license until:

(1) the application therefor remains on file, open to the public, in his office, for three days before license is issued; and

(2) each of the persons desiring to be married has presented and filed with him either a medical certificate indicating that the examination required by subchapter II of this chapter has been made, or an order from the district court, as provided by that subchapter, directing him to issue the license.

(e) The Governor shall prescribe the form of the application for a marriage license, of the marriage license, and of the marriage certificate.

(f) The clerk shall collect a fee of $2 upon the issuance of a marriage license, and shall keep a record of all licenses issued and of all applications for licenses, together with any written consent of parents or a parent or guardian or the health director accompanying the same.

The fee shall be disposed of in the same manner as other fees received by the clerk.

(g) A marriage license is valid for only 30 days, including the date it is issued.

§ 5. Who may celebrate marriages; license to celebrate

(a) A marriage may be celebrated in the Canal Zone only by a:

(1) magistrate of the Canal Zone;

(2) minister in good standing in any religious society or denomination who resides in the Canal Zone; or

(3) minister in good standing in any religious society or denomination who resides in the Republic of Panama, if he has procured from the clerk of the district court for the Canal Zone a license authorizing the minister to celebrate marriages in the Canal Zone.

(b) The clerk shall issue the license provided for by paragraph (3) of subsection (a) of this section upon the submission, by a minister referred to therein, of a written application, together with a duly authenticated copy of his authority to celebrate marriages in the Republic of Panama. The clerk shall be paid a fee of $5 for issuing and recording the license. The fee shall be disposed of in the same manner as other fees received by the clerk.

§ 6. Certifying, signing, return, and recording of license; marriage certificate

(a) The judicial officer or minister celebrating a marriage shall:

(1) certify upon the marriage license that he celebrated the marriage, giving his official title and the time when and place where the marriage was celebrated;

(2) cause two persons who witnessed the marriage to sign their names on the marriage license as witnesses, each giving his place of residence;

(3) at the time of the marriage, fill out and sign the marriage certificate accompanying the license and deliver it to one of the parties to the marriage; and

(4) within thirty days after the date of the marriage, return the license, so certified and witnessed, to the clerk who issued it.

(b) Upon return of a license as required by subsection (a) of this section, the clerk shall file it after making registry thereof in a book to be kept in his office for that purpose only. The registry must contain the Christian and surnames of the parties, the time of their marriage, and the name and title of the person who celebrated the marriage.

§ 7. Declaration when there is no record

If a record of the solemnization of a marriage, heretofore contracted, is not known to exist, the parties may join in a written declaration of the marriage, substantially showing:

(1) the names, ages, and residences of the parties;

(2) the fact of marriage; and

(3) that a record of the marriage is not known to exist.

The declaration shall be subscribed by the parties and attested by at least three witnesses.

§ 8. Acknowledgment and recording of declaration

Declarations of marriage shall be acknowledged and recorded in the office of the clerk of the district court.

§ 9. Test of validity of the marriage by suit

If either party to a marriage denies the marriage, or refuses to join in a declaration thereof, the other may proceed, by action in the district court, to have the validity of the marriage determined and declared.

§ 10. Marriages contracted outside Canal Zone

Except as provided by section 73 of this title, marriages contracted outside the Canal Zone, which are valid under the laws of the country in which they were contracted, are valid in the Canal Zone.

§ 11. Offenses and penalties

(a) Whoever, being a judicial officer, minister qualified to celebrate marriages in the Canal Zone or a clerk of court, violates section 4, 5 or 6 of this title, shall be fined not more than $100 or imprisoned in jail not more than 30 days, or both.

(b) Whoever knowingly makes a false oath as to a material matter for the purpose of procuring or aiding another to procure a marriage license is guilty of perjury and shall be imprisoned in the penitentiary not more than 10 years.

(c) Whoever knowingly files with the clerk a written consent, any signature to which is a forgery, is guilty of uttering a forged instrument and shall be imprisoned in the penitentiary not more than 14 years.

(d) Whoever, not being qualified to celebrate marriages in the Canal Zone pursuant to this subchapter, celebrates what purports to be a marriage ceremony shall be imprisoned in the penitentiary not more than 3 years.

Subchapter II—Pre-Marital Medical Examinations

§ 31. Medical examination required

Each person making application for a marriage license shall, at any time within 15 days prior to the application, be examined by a physician authorized to practice medicine in the Canal Zone as to the existence, or nonexistence of any stage of syphilis infection that is or is likely to become communicable.

§ 32. Laboratory tests

The medical examination required by section 31 of this title shall include a complete history, such physical examination as will reveal any existing clinical evidence of a syphilis infection, and a laboratory test or tests. Laboratory tests required by this subchapter shall be made by a laboratory approved by the health director of the Canal Zone Government. A laboratory test made by a government-operated hospital or clinic shall be made free of charge. Laboratory tests shall include a Kahn diagnostic test for syphilis, or other serological test for syphilis approved by the health director, or a Darkfield test for syphilis when moist lesions are present, or both tests. The medical certificate shall be made on a form prescribed by the health director.

§ 33. Procedure upon return of examination

If, on the basis of laboratory tests, and the medical examination, the examining physician finds no evidence of a syphilis infection, he shall issue a medical certificate to that effect to the applicant, and if he finds evidence of a syphilis infection, a medical certificate shall be withheld until the applicant has undergone additional clinical examination and laboratory tests, by the same or another physician authorized to practice medicine in the Canal Zone, to determine the existence or nonexistence of a syphilis infection. If the existence of a syphilis infection is determined, the applicant immediately becomes subject to regulations issued pursuant to section 911 of Title 2 to prevent persons having a syphilis infection in a communicable stage from transferring the infection to other persons, and a medical certificate shall be issued only when the regulations for prevention of the spread of syphilis have been fully complied with.

§ 34. Marriage license, without medical certificate, because of pregnancy

If a female applicant for a marriage license makes an affidavit to the effect that marriage is necessary because she is with child and that the marriage will confer legitimacy on the unborn child, the district court may hear and determine on medical testimony the question of pregnancy and, on adjudging that pregnancy exists, shall order the clerk of the court to issue the marriage license if all other requirements of the law regulating the issuance of marriage licenses are complied with, even though the clinical examination and laboratory tests reveal that one or both applicants have a syphilis infection. In its order, the court shall provide that the applicant or applicants having syphilis infection shall be treated for the infection as provided by the regulations referred to in section 33 of this title. A copy of the order shall be filed with the clerk in lieu of the medical certificate.

§ 35. Submission of specimen to laboratory; report in triplicate

A health officer, or a physician authorized to practice medicine in the Canal Zone and designated as a representative of the health director of the Canal Zone Government, who takes from an applicant for marriage license a specimen for laboratory examination shall submit it in a manner prescribed by the health director, and shall identify that specimen as "Pre-marital" when submitting it to an approved laboratory for test. The laboratory shall provide a report, in triplicate, on a form prepared and furnished by the health director, of the result of the text on each specimen submitted. The original of each report shall be forwarded to the physician submitting the specimen. A duplicate shall be forwarded to the health director not later than Saturday of the week in which the test was made, and the triplicate shall be retained by the laboratory for its files.

§ 36. Protest after refusal of medical certificate and marriage license; hearing

(a) If an applicant has been refused a marriage license by the clerk of the district court because of failure to obtain a medical certificate, the applicant may elect to file a protest and take the procedure authorized by this section or to take any other proper procedure.

(b) If an applicant elects the procedure authorized by this section, he shall file a protest in the division of the district court in which the license was denied. Notice of the protest shall be served, in the same manner as a summons, upon the health director of the Canal Zone Government.

(c) An action pursuant to subsection (b) of this section shall be summarily heard and determined by the judge in chambers. All persons shall be excluded from the hearing except necessary officers of the court, attorneys of record in the matter under consideration, the health director or a physician appointed as a representative of the health director, the witnesses and any other persons authorized by the applicant to attend. The evidence shall be transcribed, and all information, reports and evidence concerning the persons allegedly having a syphilis infection, and all recommendations, including laboratory reports pertaining thereto, shall be considered privileged communications and shall be inaccessible to the public. A final order upon a hearing in the matter shall simply state that the applicant may or may not secure the license sought if all other requirements of law regulating the issuance of a marriage license are complied with. There shall be no court costs chargeable for services incident to carrying out the provisions of this section, and the services shall be considered a part of the official duties of all officers involved in the proceedings.

(d) A protest shall be heard by the judge within 20 days after it is filed, and upon the hearing the judge shall, in addition to any other evidence, hear medical testimony by the medical examiner, or examiners, and testimony by the health director or by a physician authorized to practice medicine in the Canal Zone and designated as a representative of the health director. The medical testimony shall be addressed solely to the determination of whether the applicant is suffering from syphilis infection in a communicable stage or in a stage likely to become communicable. Evidence of a laboratory examination is not admissible unless the examination was made in a laboratory approved by the health director for the purpose of making serological tests. A written report of an approved laboratory, attested by the physician in charge and identifying the applicant, is prima facie evidence of the result of the laboratory test made concerning the applicant.

§ 37. Health director to advise judge

In order that the district court may arrive at just decisions pursuant to sections 34 and 36 of this title, the health director of the Canal Zone Government, after hearing the evidence, shall, by himself or by a physician authorized to practice medicine in the Canal Zone and especially skilled in the diagnosis of pregnancy or in the diagnosis, prevention and treatment of syphilis, advise the judge in writing as to the existence of pregnancy or of syphilis in communicable stage or a stage likely to become communicable. The advice shall be considered by the court and made a part of the record.

§ 38. Appeal from order

Either the health director of the Canal Zone Government or the applicant may appeal to the United States Court of Appeals for the Fifth Circuit from a final order issued by the district court pursuant to section 34 or 36 of this title, within 60 days from the date of the entry of the order, in the same manner as that provided for appeals in civil actions.

CHAPTER 3—VOID AND VOIDABLE MARRIAGES; ANNULMENT

Sec.

§ 71. Void marriages

(a) A marriage celebrated in the Canal Zone after December 29, 1926, is void, without being so decreed, if:

(1) it is between persons related by consanguinity within the fourth degree, determined pursuant to sections 572–574 of Title 7;

(2) either party thereto has been previously married and the previous marriage has not been terminated by death, annulment or a final decree of divorce; or

(3) either party thereto is not present in person at the celebration of the marriage.

(b) In addition, a void marriage may be declared by judicial decree, or be shown in any collateral proceeding, to have been void from the time of its celebration.

§ 72. Voidable marriages

(a) A marriage celebrated in the Canal Zone after December 29, 1926, is voidable if:

(1) either party thereto, at the time of the marriage, is an idiot or is insane;

(2) the consent of either party thereto was procured by force or fraud;

(3) either party thereto is, at the time of the marriage, incapable, from physical cause, of entering into the marriage state;

(4) because of the age of either party thereto, a written consent under section 2 of this title was required, and the marriage was celebrated without such consent; or

(5) at the time of the marriage, the male is under 17 or the female is under 14 years of age.

(b) A voidable marriage is valid until it is annulled by judicial decree as of the date of such decree.

§ 73. Annulment of marriage celebrated elsewhere

(a) A marriage celebrated outside the Canal Zone may be declared void or annulled in the same manner and with the same effect as though it had been celebrated in the Canal Zone if the petitioner has resided in the Canal Zone within a period of 30 days before and a period of 30 days after the date of the marriage.

(b) A marriage celebrated outside the Canal Zone may be declared void or annulled by an action instituted by the United States attorney for the Canal Zone in the name of the Government of the Canal Zone.

§ 74. Jurisdiction of annulment actions; parties

(a) The district court has jurisdiction of an action to have a marriage declared void or annulled.

(b) An action to have a marriage declared void or annulled may be instituted:

(1) in the case of a male person under 21 or a female person under 18 years of age, through a next friend or by a parent or guardian; and

(2) in the case of an idiot or an insane person, through a next friend.

(c) An action to have a marriage declared void or annulled may not be instituted by a person who, when fully capable of contracting marriage, entered into the marriage willfully and with knowledge of the circumstances rendering the marriage voidable.

(d) An uncontested action to have a marriage declared void or annulled shall be heard in open court.

§ 75. Legitimacy of children of void or annulled marriages; custody and support

The issue of a void marriage is legitimate. A judgment of nullity of marriage does not affect the legitimacy of children conceived or born before the judgment, and, during the pendency of the action, or at the time judgment is rendered or at any time thereafter, the court may make such order for the custody, care, education, maintenance and support of the children during their minority as it deems necessary or proper.

§ 76. Effect of judgment of nullity

A judgment of nullity of marriage is conclusive only as against the parties to the action and those claiming under them.

CHAPTER 5—DIVORCE

SUBCHAPTER I—CAUSES FOR DIVORCE

SUBCHAPTER II—CAUSES FOR DENYING DIVORCE

SUBCHAPTER III—PROCEDURE IN DIVORCE ACTIONS

SUBCHAPTER IV—ALIMONY, SUPPORT, CUSTODY, AND PROPERTY

Subchapter I—Causes for Divorce

§ 111. Enumeration of causes for divorce

A divorce or dissolution of the marriage contract may be judicially declared at the instance of the injured party for any of the following causes:

(1) adultery subsequent to the marriage;

(2) willful desertion or absence from the husband or wife for a period of two years;

(3) willful neglect, consisting of the willful failure of the husband to provide for his wife the necessaries of life, he having the ability to do so, or the willful failure to do so by reason of voluntary idleness, profligacy, or dissipation, in either case continued for a period of one year;

(4) habitual drunkenness for a period of two years;

(5) attempt, by the husband or wife, on the life of the other by any means showing malice;

(6) extreme cruelty; or

(7) conviction, subsequent to the marriage, of a felony.

§ 112. Adultery

Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

§ 113. Desertion generally

(a) Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

(b) Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make the refusal reasonably necessary, or the refusal without just cause of either party to dwell in the same house with the other party, is desertion.

§ 114. Desertion in case of stratagem or fraud

If one party is induced, by the strategem or fraud of the other party, to leave the family dwelling place, or to be absent, and during the absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

§ 115. Departure or absence because of cruelty or threats

Departure or absence of one party from the family dwelling place, caused by extreme cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

§ 116. Separation by consent

Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

§ 117. Absence becoming desertion

Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during the absence or separation.

§ 118. Consent to separate as revocable

Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, the refusal is desertion.

§ 119. Return as curing desertion; effect of refusing condonation

If one party deserts the other, and, before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuses the offer and condonation, the refusal shall be deemed and treated as desertion by that party from the time of refusal.

§ 120. Husband's selection of home or mode of living

(a) The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion on her part.

(b) If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it

is desertion on the part of the husband from the time her reasonable objections are made known to him.

§ 121. Habitual drunkenness

Habitual drunkenness is that degree of intemperance from the use of intoxicating drinks which:

(1) disqualifies the person a great portion of the time from properly attending to business; or

(2) would reasonably inflict a course of great mental anguish upon the innocent party.

§ 122. Extreme cruelty

Extreme cruelty is the wrongful infliction of grievous bodily injury, or grievous mental suffering, upon the other by one party to the marriage.

Subchapter II—Causes for Denying Divorce

§ 151. Acts or circumstances prohibiting divorce

Divorces shall be denied upon showing:

(1) connivance;
(2) collusion;
(3) condonation;
(4) recrimination; or
(5) limitation and lapse of time.

§ 152. Connivance

Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

§ 153. Corrupt consent

Corrupt consent is manifested by passive permission with intent to connive at or actively procure the commission of the acts complained of.

§ 154. Collusion

Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

§ 155. Condonation generally

Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

§ 156. Requisites to condonation

The following requisites are necessary to condonation:

(1) a knowledge on the part of the condoner of the facts constituting the cause of divorce;

(2) reconciliation and remission of the offense by the injured party; and

(3) restoration of the offending party to all marital rights.

§ 157. Implication by condonation

Condonation implies a condition subsequent; that the forgiving party must be treated with conjugal kindness.

§ 158. Evidence of condonation

Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from excessive acts of ill treatment which may aggregately constitute the offense, cohabitation, or passive endurance, or conjugal kindness, is not evidence of condonation of any of the acts constituting the cause, unless accompanied by an express agreement to condone.

§ 159. Time when condonation can be made

In cases mentioned in section 158 of this title, condonation can be made only after the cause of divorce has become complete as to the acts complained of.

§ 160. Concealment as voiding condonation

A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids the condonation.

§ 161. Revocation of condonation

Condonation is revoked and the original cause of divorce revived when the condonee:

(1) commits acts constituting a like or other cause of divorce; or

(2) is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

§ 162. Recrimination generally

Recrimination is a showing by the defendant of a cause of divorce against the plaintiff, in bar of the plaintiff's cause for divorce.

§ 163. Condonation as bar to recriminatory defense

Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to the defense unless:

(1) the condonation is revoked as provided in section 161 of this title; or

(2) two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown.

§ 164. Lapse of time as bar to divorce; limitations

(a) A divorce shall be denied:

(1) when the cause is adultery and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party;

(2) when the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence; or

(3) in all other cases when there is an unreasonable lapse of time before the commencement of the action.

(b) There are no limitations of time for commencing actions for divorce, except those contained in subsection (a) of this section.

§ 165. Presumptions arising from lapse of time

Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation notwithstanding the commission of the offense.

§ 166. Rebuttal of presumptions

The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

Subchapter III—Procedure in Divorce Actions

§ 191. Jurisdiction and venue of divorce actions

(a) The district court has jurisdiction of actions for divorce.

(b) Complaints for divorce shall be filed in the division of the district court in which the plaintiff resides.

§ 192. Residence requirements

(a) A person is a resident of the Canal Zone for the purpose of this chapter, although he may not have acquired a permanent domicile within the Canal Zone, if he:

(1) has an official residence within the territorial limits of the Canal Zone; or

(2) resides therein for the purpose of an occupation or employment.

(b) A plaintiff who has not actually resided in the Canal Zone continuously during the entire year next preceding the filing of the complaint is not entitled to a divorce.

(c) The plaintiff shall prove the required residence, to the satisfaction of the court, by at least two witnesses who are residents of the Canal Zone. He shall file an affidavit with the complaint stating the:

(1) length of time the plaintiff has resided in the Canal Zone;

(2) places of residence during the next preceding year; and

(3) office or occupation of the plaintiff.

§ 193. Procedure generally

Except as otherwise provided in this chapter, the process and practice in proceedings for divorce are the same as in other civil actions in which equitable relief is sought.

§ 194. Complaint

In an action for divorce the complaint shall set forth, among other matters, as near as can be ascertained, the following facts:

(1) State or country in which the parties were married;

(2) date of marriage;

(3) date of separation;

(4) number of years from marriage to separation;

(5) number of children of the marriage, if any, and, if none, a statement of that fact; and

(6) ages of minor children.

§ 195. Counterclaim for divorce

In his answer, the defendant may file a counterclaim for divorce; and when filed the court shall decree the divorce to the party legally entitled thereto. If the original complaint is dismissed after the filing of the counterclaim, the defendant may proceed to the trial of the counterclaim without further notice to the adverse party; and the proceedings on the counterclaim are governed by the same rules as are applicable to the proceedings on an original complaint.

§ 196. Uncontested actions; default; additional notice

(a) If the complaint is taken as confessed, the court shall proceed to hear the cause by examination of witnesses in open court, unless it otherwise orders pursuant to section 271 of Title 3.

(b) In case of default the court may not grant a divorce unless it is satisfied that:

(1) all proper means have been taken to notify the defendant of the pendency of the suit; and

(2) the cause of divorce has been fully proved by competent evidence.

(c) When the court is satisfied that the interests of the defendant require it, the court may order such additional notice as it considers equitable.

§ 197. Admissions of defendant

In proceedings for divorce, an admission of the defendant may not be taken as evidence unless the court is satisfied that the admission was made in sincerity and without fraud or collusion to enable the plaintiff to obtain a divorce.

§ 198. Interlocutory order; appeal; final decree of divorce

(a) A final decree granting a divorce may not be entered until after the expiration of a period of six months from the date of the entry of an interlocutory order adjudging that a case for divorce has been proved. The interlocutory order shall expressly state that a divorce is not granted by it. An appeal may be taken from the order in the same manner and within the same time as an appeal from a final decree of the court in any other proceeding.

(b) After the expiration of the period of six months provided by subsection (a) of this section, or, if an appeal is taken and the case is pending at the time of the expiration of the period, after the final disposition of the case if determined in favor of the plaintiff, the court, upon application filed within 30 days after the expiration of the period or the final disposition, by the person in whose favor the interlocutory order was entered, shall enter a final decree granting a divorce. If an application is not made, the court may, on its own motion, within three months after the expiration of the 30-day period, enter a final decree of divorce. An appeal may not be taken from the final decree.

§ 199. Effect of divorce generally

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons.

§ 200. Legitimacy of children

A divorce does not affect the legitimacy of the children of the marriage.

§ 201. Resumption of former name

The court, upon granting to a woman a divorce from the bonds of matrimony, may allow her to resume her maiden name or the name of a former husband.

§ 202. Decrees and orders prior to September 21, 1922

All proceedings in the district court of the Canal Zone, wherein and whereby a decree of divorce was granted prior to September 21, 1922, upon personal service, or service by publication, and wherein other orders were made affecting the status of the parties or their children, are valid.

Subchapter IV—Alimony, Support, Custody, and Property

§ 231. Custody and care of children pending action

On the application of either party, the court may make such order concerning the custody and care of the minor children of the parties during the pendency of the action as it deems expedient and for the benefit of the children.

§ 232. Alimony pending action

In cases of divorce the court may require the husband or wife to pay to the other spouse or pay into court for the latter's use during the pendency of the action such sums of money as may enable the latter to maintain or defend the action. Either spouse, when it is just and equitable, is entitled to alimony during the pendency of the action. On appeal by either spouse, the district court may grant and enforce the payment of such money for defense and such equitable alimony during the pendency of the appeal as it deems reasonable and proper.

§ 233. Maintenance where divorce is denied

Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance by the husband, of the wife and children of the marriage, or any of them.

§ 234. Separate maintenance action

(a) Without applying for a divorce, a husband or wife may maintain in the district court a separate maintenance action against the other spouse for permanent support and maintenance of the plaintiff or of the plaintiff and children, when:

(1) the defendant willfully deserts, or fails to provide for the plaintiff; or

(2) the plaintiff has a cause of action for divorce as provided by section 111, of this title.

(b) During the pendency of the action, the court may require the husband or wife to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and have execution issue therefor.

(c) In an action under this section, the court, in granting permanent support and maintenance of a spouse or of a spouse and children, shall make the same disposition of the community property as would have been made if the marriage had been dissolved by judicial decree.

(d) The court may enforce its final judgment in an action under this section by such orders as from time to time it deems necessary, and may amend or revoke the orders at its discretion.

§ 235. Alimony and maintenance; care, custody and support of children

The court, in rendering a decree of divorce may make such order touching the alimony and maintenance of the husband or wife, the care, custody, and support of the children, or any of them, as from the circumstances of the parties and the nature of the case, is reasonable and just. The court may order the giving of reasonable security for the alimony and maintenance, or may enforce the payment of the alimony and maintenance in any other manner consistent with the rules and practice of the court. On application, the court may, from time to time, make such alterations in the allowance of alimony and maintenance and the care, custody, and support of the children as appear reasonable and proper. In decreeing a divorce, the court may order the payment of alimony in a gross sum or in installments as may seem best. It may make the orders and enforce them by attachment and secure the payment of the alimony, but judgment for alimony may not be taken when the defendant is not personally served with summons or does not voluntarily appear.

§ 236. Order of resort to property

In executing sections 232–235 of this title, the court shall resort:

(1) to the community property; then

(2) to the separate property of the party required to make the payments.

§ 237. Withholding allowance to prevailing party

When the prevailing party has a separate estate, or is earning his or her own livelihood, or there is community property sufficient to give him or her alimony or a proper support, or the custody of the children has been awarded to the other party who is supporting them, the court may withhold any allowance to the prevailing party out of the separate property of the other party. Where there are no children, and either party has a separate estate sufficient for his or her proper support, an allowance may not be made from the separate estate of the other party.

§ 238. Subjection of property to support and education of children

The court may subject the community property and the separate property to the support and education of the children in such proportions as it deems just.

§ 239. Disposition of community property on divorce

(a) In case of the dissolution of the marriage by the decree of the district court, the community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, deems just.

(b) The court, in rendering a decree of divorce, shall make such order for the disposition of the community property, as is provided in this chapter, and, whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds.

§ 240. Compelling conveyance of property belonging to other spouse

If it appears to the court that either party holds the title to property equitably belonging to the other, the court, in rendering a decree of divorce may compel conveyance thereof to the party entitled to it, upon such terms as it deems equitable.

CHAPTER 7—HUSBAND AND WIFE

Sec.

§ 271. Mutual obligations

Husband and wife contract towards each other obligations of mutual respect, fidelity, and support.

§ 272. Husband as head of family

The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife shall conform thereto.

§ 273. Separate interests; dwelling

A husband or wife has no interest in the property of the other, but neither may be excluded from the other's dwelling, except that in actions or proceedings for divorce, annulment of marriage, or permanent support of wife or children, the court may make orders for

temporary exclusion of either party from the family dwelling or from the dwelling of the other, until the final determination of the action.

§ 274. Contracts

Either spouse may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by chapters 161 and 163 of Title 7 on trusts.

§ 275. Legal relations; separation agreement

A husband and wife may not, by a contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during the separation.

§ 276. Separation agreement; consideration

The mutual consent of the parties is a sufficient consideration for a separation agreement pursuant to section 275 of this title.

§ 277. Methods of holding property

A husband and wife may hold property by joint interests, by interests in common, or as community property.

§ 278. Separate property generally

The following property, with the rents, issues and profits thereof, is the separate property of a spouse:

(1) property owned by the spouse before marriage; and

(2) property acquired by the spouse after marriage by gift, bequest, devise, or descent.

The wife may convey her separate property without the consent of her husband.

§ 279. Damages for personal injuries as separate property

All damages, special and general, awarded a married person in a civil action for personal injuries, are the separate property of that person.

§ 280. Community property; presumptions

(a) Except as provided by sections 278 and 279 of this title, personal property, wherever situated, acquired after marriage by either husband or wife, or both, while residing in the Canal Zone, is community property; but whenever personal property, or an interest therein or encumbrance thereon, is acquired by a married woman by an instrument in writing, the presumption is that it is her separate property, and if acquired by her and another person, the presumption is that she takes the part acquired by her, as an interest in common, unless a different intention is expressed in the instrument; except that when personal property is acquired by husband and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that the property is the community property of the husband and wife.

(b) The presumptions provided for by subsection (a) of this section are conclusive in favor of a person dealing in good faith and for a valuable consideration with the married woman or her legal representatives or successors in interest, and regardless of a change in her marital status after acquisition of the property.

§ 281. Inventory of separate property

A full and complete inventory of the separate personal property of either spouse may be made out and signed by the spouse, acknowledged or proved in the manner required by chapter 27 of Title 4, and recorded in the office of the registrar of property.

§ 282. Filing inventory; effect

The filing of the inventory in the office of the registrar of property is notice and prima facie evidence of the title of the party filing the inventory.

§ 283. Contracts by wife; liability of community property

The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by mortgages thereof executed by the husband.

§ 284. Wife's earnings; liability for husband's debts

The earnings of the wife are not liable for the debts of the husband.

§ 285. Wife's earnings when living separate

The earnings and accumulations of the wife, while she is living separate from her husband, are her separate property.

§ 286. Earnings of each party after separate maintenance judgment

After the rendition of a judgment or decree for separate maintenance the earnings or accumulations of each party are the separate property of the party acquiring them.

§ 287. Husband's earnings after interlocutory divorce judgment

After the rendition of an interlocutory judgment of divorce and while the parties are living separate and apart, the earnings and accumulations of the husband are the separate property of the husband.

§ 288. Wife's pre-marital debts; liability of husband

Neither the separate property of the husband nor his earnings after marriage are liable for the debts of the wife contracted before the marriage.

§ 289. Wife's separate property; general liability

(a) The separate property of the wife is liable for her own debts contracted before or after marriage, but it is not liable for her husband's debts, except as provided by subsection (b) of this section.

(b) The separate property of the wife is liable for the payment of debts contracted by the husband or wife for the necessities of life furnished to them or either of them while they are living together. This subsection does not apply to the separate property of the wife held by her at the time of marriage or acquired by her after marriage by devise, succession, or gift, other than by gift from the husband.

§ 290. Wife's separate property; liability for certain secured debts

The separate property of the wife is not liable for a debt or obligation secured by mortgage, deed of trust, or other hypothecation of the community property, unless the wife expressly assents in writing to the liability of her separate property for the debt or obligation.

§ 291. Married woman's torts

For civil injuries committed by a married woman, damages may be recovered from her alone, and her husband is not liable therefor, except in cases where he would be jointly liable with her if the marriage did not exist.

§ 292. Management of wife's earnings

Notwithstanding section 293 of this title, and subject to sections 280 and 285 of this title, the wife has the management, control, and disposition, other than testamentary except as otherwise permitted by law, of community property money earned by her until it is commingled with other community property.

During the time the wife has the management, control, and disposition of such money, she may not make a gift thereof, or dispose of it without a valuable consideration, without the written consent of the husband.

This section does not make such money the separate property of the wife, nor does it change the respective interests of the husband and wife in the money.

§ 293. Management of community personal property

The husband has the management and control of the community personal property, with the same power of disposition, other than testamentary, as he has of his separate estate; except that he may not, without the written consent of the wife:

(1) make a gift of the community personal property;

(2) dispose of the community personal property without a valuable consideration; or

(3) sell, convey, or encumber the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the wife or minor children that is community.

§ 294. Property rights of spouses; effect of marriage settlement

The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

§ 295. Execution of marriage settlement

Contracts for marriage settlements shall be:

(1) in writing;

(2) subscribed by the party to be charged or by his agent authorized in writing; and

(3) acknowledged or proved as prescribed by chapter 27 of Title 4.

§ 296. Marriage settlements by minors

A minor capable of contracting marriage may make a valid marriage settlement.

CHAPTER 9—CHILDREN BY BIRTH

Sec.

§ 331. Legitimacy of issue of wife cohabiting with husband

The issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate.

§ 332. Children born in wedlock

All children born in wedlock are presumed to be legitimate.

§ 333. Children born after dissolution of marriage

All children of a woman who has been married, born within 10 months after the dissolution of the marriage, are presumed to be legitimate children of that marriage.

§ 334. Who may dispute legitimacy

The presumption of legitimacy may be disputed only by the Government of the Canal Zone in a criminal action brought pursuant to section 431 of this title, or by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such a case, may be proved in the same manner as any other fact.

§ 335. Subsequent marriage of parents

A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

§ 336. Custody of minors

The father and mother of a legitimate unmarried minor child are equally entitled to his custody and services; but either one of them is entitled to the custody and services if the other:

(1) is dead or unable to take the custody;
(2) refuses to take the custody; or
(3) has abandoned the family.

§ 337. Rights of parents when separated

The husband and father has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while the husband and wife live separate and apart from each other.

§ 338. Action and decree for exclusive control of children

Without applying for a divorce, either spouse may bring an action for the exclusive control of the children of the marriage.

During the pendency of the action, at the final hearing, or afterwards, the district court may make any order or decree, in regard to the support, care, custody, education and control of the children of the marriage, as may be just and in accordance with the natural rights of the parents and the best interests of the children. At any time after an order or decree is made, the court may amend, vary, or modify it, as the natural rights and the interests of the parties, including the children, may require.

§ 339. Custody of illegitimate child

The mother of an illegitimate unmarried minor is entitled to its custody and services.

§ 340. Allowance to parent

The district court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such a direction is for its benefit.

§ 341. Control of property of child

The parent, as such, has no control over the property of the child.

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§ 342. Parental abuse

The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, by its relative within the third degree, or by the United States attorney. If the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

§ 343. Termination of parental authority

The authority of a parent ceases upon:

(1) the appointment by a court of a guardian of the person of a child;

(2) the marriage of the child; or

(3) its attaining majority.

§ 344. Relinquishment of services and custody

The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him. Abandonment by the parent is presumptive evidence of such a relinquishment.

§ 345. Wages of minors

The wages of a minor employed in service may be paid to him.

§ 346. Residence of child

Subject to the power of the proper court to restrain a removal prejudicial to the rights or welfare of the child, a parent entitled to the custody of a child has a right to change his residence.

CHAPTER 11—CHILDREN BY ADOPTION

Sec.

§ 381. Adoption generally

(a) An unmarried resident of the Canal Zone, or a husband and wife jointly, may petition the district court for leave to adopt a minor child.

(b) Written consent to the adoption must be given by the child, if of the age of 14 years, and:

(1) by each living parent who is not incompetent, intemperate, or otherwise unfit, or has not abandoned the child; or

(2) if there are no such parents, or the parents are unknown, or have abandoned the child, or they are incompetent, intemperate, or otherwise unfit, then by the legal guardian; or

(3) if there is no legal guardian, then by a discreet and suitable person appointed by the court to act in the proceeding as next friend of the child.

(c) When the child is an inmate of a charitable institution within the Canal Zone, and has been previously abandoned by its parents or guardians thereto, written consent to the adoption by the head of the institution is required.

(d) This section does not authorize a guardian to adopt his ward before the termination of the guardianship and the final settlement and approval, by the court, of his accounts as guardian.

§ 382. Adoption by stepfather or stepmother

(a) A resident of the Canal Zone, the husband or wife of a parent who has a minor child by a deceased or divorced former spouse, may petition the district court for leave to adopt the minor child and change his name.

(b) Written consent to the adoption is required, as provided by section 381 of this title, except that if the custody of the child has been awarded to the petitioner's spouse, the consent of the other parent is not required.

§ 383. Notice to absent or nonconsenting parent

In cases of adoption where the consent of a parent is required, and it is alleged in the petition that the parent refuses to sign the consent, or is a resident of the Republic of Panama or elsewhere, an order to the parent to show cause why the petition should not be granted may be entered by the court. The order shall be published in accordance with section 163 of Title 5.

§ 384. Investigation

Upon the filing of a petition for adoption, the court may order an investigation to be made by a representative designated by the court and may further order that a report of the investigation shall be filed with the court within the time fixed in the order. The investigation may include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge. The report of the investigation shall become a part of the files in the case, and the court may require that the report contain a definite recommendation for or against the adoption and state reasons therefor.

§ 385. Adoption order; effect

(a) When this chapter is complied with, if the court is satisfied with the ability of the petitioner to bring up and educate the child properly, having reference to the degree and condition of the child's parents and the fitness and propriety of the adoption, it shall make an order setting forth the facts and declaring that from that date the child, to all legal intents and purposes, is the child of the petitioner and that its name is thereby changed. The order shall be recorded in the records of the court.

(b) The natural parents, except the spouse of the petitioner when a child is adopted pursuant to section 382 of this title, shall, by the order referred to in subsection (a) of this section, be divested of all legal rights and obligations in respect to the child, and the child shall be free from all legal obligations of obedience and maintenance with respect to them. The child shall be to all intents and purposes the child and legal heir of the person adopting him or her, entitled to all the rights and privileges, and subject to all the obligations of a child of such person begotten in lawful wedlock.

§ 386. Consent to adoption of illegitimate child

If the child to be adopted is illegitimate, the consent of the father to adoption is not required.

§ 387. Adoption of illegitimate child by father

The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as his own, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as a legitimate child; and the child is thereupon deemed for all purposes legitimate from the time of its birth. Sections 381–386 of this title do not apply to such an adoption.

CHAPTER 13—SUPPORT OF RELATIONS

Sec.
421. Support of wife.
422. Support of wife on abandonment or separation; husband's earnings.
423. Support of husband.
424. Duties of parents; support and education.
425. Death of parent without providing for support.
426. Reciprocal duties of parents and children.
427. Action for relief from obligation to support parent.
428. Parent's liability for necessaries or support.
429. Wife's children by former marriage.
430. Compensation and support of adult child.
431. Penalty for abandonment or failure to support wife or child.

§ 421. Support of wife

If a husband neglects to make adequate provisions for the support of his wife, except in the cases provided for by section 422 of this title, any other person may, in good faith, supply her with articles necessary for her support, and recover their reasonable value from the husband.

§ 422. Support of wife on abandonment or separation; husband's earnings

A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified in abandoning him by his misconduct. During the period of unjustified abandonment, prior to the wife's offer to return, the earnings of the husband are his separate property.

A husband is not liable for his wife's support when she is living separate from him by written agreement, unless the support is stipulated in the agreement.

§ 423. Support of husband

A wife shall support the husband out of her separate property when:

(1) he has not deserted her;
(2) he does not have separate property;
(3) there is no community property; and
(4) he is unable, from infirmity, to support himself.

§ 424. Duties of parents; support and education

A parent entitled to the custody of a child shall give him support and education suitable to his circumstances; but if a child has sufficient earnings of his own, the cost of his support and education may be taken therefrom. If the support and education which the father of a legitimate child is able to give are inadequate, the mother shall assist him to the extent of her ability.

§ 425. Death of parent without providing for support

If a parent chargeable with the support of a child dies, leaving it a public charge, and leaving an estate sufficient for its support, the United States attorney may claim provision for its support from the parent's estate by civil action. For this purpose, the United States attorney may have the same remedies as any creditor against the estate, and against the heirs and next of kin of the parent.

§ 426. Reciprocal duties of parents and children

A father, mother, and children of a poor person unable to maintain himself by work, shall maintain him to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to his parent is binding.

§ 427. Action for relief from obligation to support parent

(a) An adult person may file in the division of the district court where his parent resides a verified complaint alleging that:

(1) while the plaintiff was a minor, he was abandoned by the parent, and the abandonment continued for a period of two or more years prior to the time the plaintiff reached the age of 18 years; and

(2) the parent, during the period provided for by paragraph (1) of this subsection, was physically and mentally able to support the plaintiff—

and praying the court to free the plaintiff from the obligation otherwise imposed by law to support the parent.

(b) Upon the filing of a complaint under subsection (a) of this section, the clerk shall set it for hearing by the court, and issue a summons directed to the parent setting forth the time and place of the hearing. The summons and a copy of the complaint shall be personally served on the parent, in the same manner as that provided by law for the service of a summons in civil actions, at least five days before the time of hearing. If, upon the hearing, the court determines that the allegations in the complaint are true, it shall render a judgment granting the relief prayed for.

(c) A person released from the obligation to support a parent, as provided in this section, shall be deemed to be so released with respect to any law of the Canal Zone under which a child is required to pay for the support, care, maintenance, and the like, of a parent.

§ 428. Parent's liability for necessaries or support

(a) If a parent neglects to provide articles necessary for his child under his charge, according to his circumstances, a third person may in good faith supply them, and recover the reasonable value thereof from the parent.

(b) A parent is not bound to compensate the other parent or a relative for the voluntary support of his child, without an agreement for compensation.

(c) A parent is not bound to compensate a stranger for the support of a child who has abandoned the parent without just cause.

§ 429. Wife's children by former marriage

A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and they are not liable to him for their support, nor he to them for their services.

§ 430. Compensation and support of adult child

Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

§ 431. Penalty for abandonment or failure to support wife or child

A husband, or a parent, lawfully chargeable with the support or maintenance of the wife or child, who abandons, or willfully fails, without lawful excuse, to furnish support or maintenance to the wife or child, shall be fined not more than $100 or imprisoned in jail not more than 30 days or both.

CHAPTER 15—ESTABLISHING PATERNITY

SUBCHAPTER I—PATERNITY PROCEEDINGS

SUBCHAPTER II—BLOOD TESTS TO DETERMINE PATERNITY

Subchapter I—Paternity Proceedings

§ 461. Persons who may bring action; certificate where child unborn; nature of action

(a) An action pursuant to this subchapter may be brought by:

(1) a female resident of the Canal Zone who has delivered an illegitimate child or who is pregnant with a child which, if born alive, would be illegitimate; or

(2) an illegitimate child or, if the illegitimate child is a minor or otherwise incompetent, his next friend.

(b) An action for the support of a child still unborn may not be brought unless the mother files a certificate from an authorized physician specifying that she is pregnant.

(c) If the mother was married when the illegitimate child was conceived, but living separate and apart from her husband, an action for support of the illegitimate child may be brought in the manner provided by this subchapter.

(d) An action pursuant to this subchapter is in the nature of a civil action.

§ 462. Jurisdiction; complaint; procedure

(a) The district court has exclusive jurisdiction of actions under this subchapter.

(b) The action is brought by the filing of a verified complaint in the division of the court in which the plaintiff resides. The court shall proceed without unnecessary delay to a trial upon the complaint, and, except as otherwise provided by this subchapter, proceedings upon the complaint, including the issuance and service of summons, service of a copy of the complaint, and the giving of security for costs when required by the court, shall conform, as nearly as may be practicable, to proceedings in civil actions.

§ 463. Jury trial

An action pursuant to this subchapter shall be tried by jury, if either the plaintiff or defendant demands that it be so tried.

§ 464. Agreement or compromise

If, at any time before judgment in an action pursuant to this subchapter, the defendant pays or secures to be paid to the plaintiff such sums of money or property as the plaintiff may, with the approval of

the court, agree to receive, the court shall, if the agreement is made or acknowledged in its presence, dismiss the action upon the payment, by the defendant, of the costs of the proceeding. The court shall cause a memorandum of the agreement to be entered upon the docket.

§ 465. Competency of mother to testify; dying declarations

(a) In an action pursuant to this subchapter, the mother is a competent witness, unless she is otherwise legally incompetent.

(b) If the mother is dead at the time of trial, her declaration made at the time of travail and persevered in as her dying declaration shall be evidence.

§ 466. Judgment; payments

(a) If, in an action pursuant to this subchapter, it is determined that the defendant is the father of the child, the court shall adjudge him the father of the child and he shall be responsible for the maintenance of the child up to the age of 21 years, in such reasonable sums as the court may order, as well as for the costs of the action.

(b) In addition, the court may order the father to pay special sums for the expense caused the mother by the birth, for the child's education, and for expenses caused by the child's sickness or death, and to pay such attorney fees of the plaintiff as the court, in its discretion, allows.

(c) Amounts paid for support of the illegitimate child shall ordinarily be paid in advance in bi-weekly installments.

(d) Compromises between the parents of an illegitimate child are valid only if approved by the court.

(e) Money paid by the father for the support of an illegitimate child shall be spent solely for the benefit of the child.

§ 467. Writ of execution on failure to make support payments

(a) If default is made in the payment of money toward the support of an illegitimate child, the court, upon application of the plaintiff, may issue a writ of execution. The execution shall be served and satisfied as executions upon a civil judgment, except that an exemption may not be allowed against a writ issued for nonpayment of money for support of an illegitimate child.

(b) An execution may not issue, however, except for payments due within the six months next preceding the issuance of the execution.

§ 468. Action when putative father has died; claim against estate when father dies

(a) If the father of an illegitimate child dies before its birth or within a year after it was born, and before an action against him for the support of the child has been brought to conclusion, an action may be brought for the support of the child against his estate, and if it is adjudged that the deceased was the father of the child, the amounts necessary for the support of the child may be collected from his estate in the same manner as any other debt.

(b) If a man who has been ordered to pay for the support of a child dies before the child is 21 years old, the amounts he was ordered to pay may be collected from his estate, except that—

(1) if he leaves a widow or legitimate children, the amounts to be collected from his estate for his illegitimate children shall not exceed the inheritance of a legitimate child; and

(2) nothing may be paid from his estate for the support of an illegitimate child until the creditors of the estate have been fully satisfied.

Subchapter II—Blood Tests to Determine Paternity

§ 491. Authority for test

In a civil action, in which paternity is a relevant fact, including an action in the district court pursuant to subchapter I of this chapter, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests. If a party refuses to submit to such tests, the court may resolve the question of paternity against that party or enforce its order if the rights of others and the interests of justice so require.

§ 492. Selection of experts

The tests provided by section 491 of this title shall be made by experts qualified as examiners of blood types who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and shall be subject to cross-examination by the parties. A party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of blood types, perform independent tests under orders of court, the results of which may be offered in evidence. The number and qualifications of experts shall be determined by the court.

§ 493. Compensation of expert witnesses

(a) Except as provided by subsection (b) of this section, the court shall fix the compensation of each expert witness appointed by the court at a reasonable amount. It shall be paid as the court shall order. The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe, and that, after payment by the parties, all or part or none of it be taxed as costs in the action. The fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling him but shall not be taxed as costs in the action.

(b) If an expert witness appointed by the court is employed by serving with an agency of the United States in the Canal Zone, he may not receive a fee but shall receive his regular full pay for the time spent in performing his services as an expert, without deduction from time allowed him for leave of absence authorized by law.

§ 494. Effect of test results

If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly. If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence. If the experts conclude that the blood tests show the possibility of the alleged father's paternity, admission of this evidence is within the discretion of the court, depending upon the infrequency of the blood type.

§ 495. Applicability to criminal actions

This subchapter applies to criminal cases subject to the following limitations and provisions:

(1) an order for the tests shall be made only upon application of a party or on the court's initiative;

(2) the compensation of the experts shall be paid by the Canal Zone Government, except that, if the expert is one who falls within the scope of section 493(b) of this title, that subsection is applicable;

(3) the court may direct a verdict of acquittal upon the conclusions of all the experts pursuant to section 494 of this title, otherwise the case shall be submitted for determination upon all the evidence.

§ 496. Uniformity of interpretation

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

§ 497. Short title

This subchapter may be cited as the Uniform Act on Blood Tests to Determine Paternity.

CHAPTER 17—CHANGE OF NAME

Sec.
531. Jurisdiction.
532. Petition for change of name.
533. Order to show cause; posting.
534. Hearing; order.

§ 531. Jurisdiction

Applications for changes of names shall be heard and determined by the district court.

§ 532. Petition for change of name

An application for change of name may be made to the division of the district court where the person whose name is proposed to be changed resides, by petition, signed by the person or, if the person is under 21 years of age, if a male, and under 18 years of age, if a female, by one of the parents, if living, or, if both are dead, then by the guardian or, if there is no guardian, then by some near relative or friend.

The petition shall specify the place of birth and residence of the person, his or her present name, the name proposed, and the reason for the change of name. If the father of the person is not living, the petition shall name, so far as known to the petitioner, the near relatives of the person, and their places of residence.

§ 533. Order to show cause; posting

Upon the filing of the petition, the court shall make an order reciting the filing of the application, the name of the person by whom it is filed and the name proposed, and directing all persons interested in the matter to appear before the court, at a time and place specified, not less than four or more than eight weeks from the time of making the order, to show cause why the application for change of name should not be granted. A copy of the order to show cause shall be posted by the clerk of the court in three of the most public places in the division in which the court is held, for a period of four successive weeks. Proof of the posting shall be made to the satisfaction of the court at the time of the hearing of the petition.

§ 534. Hearing; order

Objections may be filed by any person who can show the court good reason against the change of name. On the hearing of the petition, the court may examine on oath any of the petitioners, remonstrants, or other persons, touching the application, and may make an order changing the name, or dismissing the petition, as the court deems right and proper.

SEC. 2. Section 13(a) of the Act of July 25, 1958 (Public Law 85–550, 72 Stat. 410; 5 U.S.C., sec. 2252 note), is amended by striking out the designation "(1)" preceding the first clause, and by striking out clause (2).

SEC. 3. (a) Section 14 of Title 18, United States Code, as amended, is amended to read as follows:

"§ 14. Applicability to Canal Zone; definition

"(a) In addition to the sections of this title which by their terms apply to and within the Canal Zone, the following sections of this title apply to and within the Canal Zone: 6, 8, 11, 45, 201, 202, 287, 331, 371, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 505, 506, 507, 508, 509, 594, 595, 598, 600, 601, 604, 605, 608, 611, 612, 703, 752, 755, 756, 792, 793, 794, 795, 796, 797, 798, as added by section 24(a) of the Act of October 31, 1951 (chapter 655, 65 Stat. 719), 798 as added by section 4 of the Act of June 30, 1953 (chapter 175, 67 Stat. 133), 799, 915, 917, 951, 953, 954, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 1001, 1017, 1024, 1073, 1301, 1364, 1381, 1382, 1542, 1543, 1544, 1546, 1584, 1621, 1622, 1761, 1821, 1914, 1991, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2199, 2231, 2234, 2235, 2274, 2275, 2277, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, 2421, 2422, 2423, 2424, 3042, 3059, 3105, 3109, 3187, 3195, 3500.

"(b) The term 'Canal Zone', as used in the sections of this title which by their terms apply to and within the Canal Zone, and as used in subsection (a) of this section, includes the area designated as the Canal Zone by sections 1 and 2 of Title 2, Canal Zone Code; and it also includes the corridor over which the United States of America exercises jurisdiction pursuant to the provisions of Article IX of the General Treaty of Friendship and Cooperation between the United States of America and the Republic of Panama, signed March 2, 1936, to the extent that the application, to the corridor, of the sections mentioned in this subsection, and of those specified in subsection (a) of this section, is consistent with the nature of the rights of the United States in the corridor as provided by treaty.

"(c) The definitions of the terms prescribed by sections 5 and 10, or other sections of this title, are modified to effectuate the applicability of the sections enumerated by subsection (a) of this section to and within the Canal Zone."

(b) The analysis of chapter 1 of Title 18, United States Code, as amended, preceding section 1 of that title, is amended by striking out the item "14. Applicability to Canal Zone.", and in lieu thereof inserting "14. Applicability to Canal Zone; definition.".

SEC. 4. (a) Chapter 311 of Title 18, United States Code, as amended, is amended by inserting at the end thereof the following section:

"§ 4210. Warrants to retake Canal Zone parole violators

"An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to a representative of the Governor of the Canal Zone for return to the Canal Zone.".

(b) The analysis of chapter 311 of Title 18, United States Code, preceding section 4201 of that title, is amended by adding the following item:

"4210. Warrants to retake Canal Zone parole violators.".

SEC. 5. Title IV of the chapter designated by paragraph (2) of section 501 of the Act of June 30, 1958 (Public Law 85-477, chapter II, 72 Stat. 270) as chapter II of the Mutual Security Act of 1954, as amended, is further amended by adding to section 414 thereof (68 Stat. 848; 22 U.S.C., sec. 1934), as amended by paragraph (k) of

section 205 of the said Act of June 30, 1958 (72 Stat. 267), the following subsection:

"(d) This section applies to and within the Canal Zone.".

SEC. 6. That part of section 1 of the Act of June 12, 1917 (chapter 27, 40 Stat. 105), constituting the third full paragraph on page 179 of Volume 40, Statutes at Large (24 U.S.C., sec. 196), as amended, is amended to read as follows:

"Upon the application of the Governor of the Canal Zone, the Secretary of Health, Education, and Welfare may transfer to Saint Elizabeths Hospital, in the District of Columbia, for treatment, any American citizen subject to a hospitalization order issued under section 1637 of Title 5 of the Canal Zone Code, whose legal residence in one of the States, territories, the Commonwealth of Puerto Rico or the District of Columbia for the purpose of eligibility for public medical care it has been impossible to establish. Upon the ascertainment of the legal residence of persons so transferred to Saint Elizabeths Hospital, the superintendent of that hospital shall thereupon transfer them to their respective places of residence, and the expenses attendant thereon shall be paid from the appropriation for the support of Saint Elizabeths Hospital.".

SEC. 7. The first sentence of section 414 of Title 28, United States Code, is amended to read as follows: "All government publications and law books furnished to justices, judges, clerks of courts, and United States attorneys of the United States and its territories and possessions, and other officers of the United States or an agency thereof shall be transmitted to their successors in office.".

SEC. 8. Subsection (b) of section 547 of Title 28, United States Code, is amended by inserting "including those of the courts or Government of the Canal Zone," after "United States," so that the subsection will read as follows:

"(b) He shall execute all lawful writs, process and orders issued under authority of the United States, including those of the courts and Government of the Canal Zone, and command all necessary assistance to execute his duties.".

SEC. 9. Section 1404 of Title 28, United States Code, is amended by adding subsection (d) thereto, to read as follows:

"(d) As used in this section, 'district court' includes the United States District Court for the District of the Canal Zone; and 'district' includes the territorial jurisdiction of that court.".

SEC. 10. Section 1406 of Title 28, United States Code, as amended, is amended by adding subsection (d) thereto, to read as follows:

"(d) As used in this section, 'district court' includes the United States District Court for the District of the Canal Zone; and 'district' includes the territorial jurisdiction of that court.".

SEC. 11. Section 2 of the Act of November 15, 1941 (chapter 471, 55 Stat. 763; 50 U.S.C., sec. 191a), is amended to read as follows:

"SEC. 2. When the Coast Guard operates as a part of the Navy pursuant to section 3 of Title 14, United States Code, the powers conferred on the Secretary of the Treasury by section 1, title II, of the Act of June 15, 1917 (40 Stat. 220; U.S.C., title 50, sec. 191), shall vest in and be exercised by the Secretary of the Navy.".

SEC. 12. Section 4 of the Act of November 15, 1941 (chapter 471, 55 Stat. 763; 50 U.S.C., sec. 191b), as amended by subsection (b) of section 2 of the Act of September 26, 1950 (chapter 1049, 64 Stat. 1038), is amended to read as follows:

"SEC. 4. This Act and section 91 of Title 14, United States Code, do not affect the authority conferred upon the Governor of the Canal Zone by the second paragraph of section 1, title II, Act of June 15, 1917 (40 Stat. 220; U.S.C., title 50, sec. 191), notwithstanding the

provisions of section 2 of this Act; nor do they affect the powers and authority conferred by section 34 of Title 2, Canal Zone Code.".

SEC. 13. The Act of August 1, 1956 (chapter 849, 70 Stat. 899; 50 U.S.C., secs. 851–857) is amended by adding thereto the following section:

"SEC. 10. This Act applies to and within the Canal Zone.".

SEC. 14. Section 1 of the Joint Resolution of May 3, 1943 (chapter 92, 57 Stat. 74), is amended by striking out the two provisos therein, including the colons preceding and following the first of the two provisos.

SEC. 15. If the United States District Court for the District of the Canal Zone finds that, on a date ninety days prior to the effective date of the Canal Zone Code, enacted by section 1 of this Act, a person had completed or was actively engaged in the study of law that would qualify him to take the bar examination under clause (2) or clause (3) of Rule 5 of Part VI of the Rules of the Court in effect on that date, the court may permit him to take the bar examination and to be admitted to the bar, if he otherwise qualifies, as if section 541 of Title 3 of the Canal Zone Code had not been enacted by this Act.

SEC. 16. The provisions carried into sections 251 and 252 of Title 4 of the Canal Zone Code, enacted by section 1 of this Act, do not, as revised, invalidate any part of a will or other instrument executed prior to the effective date of this Act, and any such part which would have been valid prior to that date shall be valid irrespective of the revised provisions. The republication of a will executed prior to the effective date of this Act by a codicil executed after that date shall not constitute execution of the will after that date within the meaning of this section.

SEC. 17. Sections 548 and 549 of Title 5, Canal Zone Code, enacted by section 1 of this Act, relating to the exemption of property from execution or attachment, do not apply to the enforcement of judgments which became final prior to the effective date of this Act.

SEC. 18. The provisions of the Canal Zone Code, enacted by section 1 of this Act, with respect to the organization of the Canal Zone Government, the Panama Canal Company, and the courts in the Canal Zone, shall be construed as continuations of existing law, and the tenure of the officers and employees thereof, including the judges, the United States attorney, the marshal, and their deputies and assistants, in office on the effective date of this Act, shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of the Canal Zone Code, enacted by section 1 of this Act, pursuant to his prior appointment, until his tenure expires and his successor is appointed and has qualified, or unless he is removed, discharged or transferred under authority of that Code. No loss of rights, interruption of jurisdiction or prejudice to matters pending in any of the courts in the Canal Zone on the effective date of this Act shall result from its enactment.

SEC. 19. Orders, rules, and regulations in effect under laws repealed by section 26 of this Act, shall, to the extent that they would have been authorized under the Canal Zone Code, enacted by section 1 of this Act, remain in force and effect as orders, rules, and regulations under that Code, and shall be administered and enforced under that Code as nearly as may be until repealed, amended or superseded thereunder.

SEC. 20. References that other laws, orders, rules, and regulations make to laws repealed by section 26 of this Act shall be considered to be made to the corresponding or most nearly corresponding provisions of the Canal Zone Code, enacted by section 1 of this Act.

SEC. 21. An inference of a legislative construction is not to be drawn by reason of the article, subchapter, chapter, part or title in the Canal Zone Code, enacted by section 1 of this Act, in which a section is placed or by reason of the caption or catchline thereto.

SEC. 22. If a provision of the Canal Zone Code, enacted by section 1 of this Act, is held invalid, the remainder is not affected thereby unless a remaining provision is so related to the invalid provision that logical effect cannot be given to the remaining provision without the invalid provision. If a provision of the Code is invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid applications.

SEC. 23. The repeal of laws provided for by section 26 of this Act does not affect rights accruing or that have accrued or were acquired or established, or civil or criminal liabilities, penalties or forfeitures that were incurred, or judicial or administrative proceedings that were begun, under any of the laws so repealed, before the effective date of this Act; but, subject to section 19 of this Act, the proceedings in such a case shall conform with the procedure established by or under the authority of the Canal Zone Code, enacted by section 1 of this Act, unless such conformity, in the opinion of the court or administrative authority, would not be feasible or would work injustice.

SEC. 24. The repeal, by section 26 of this Act, of sections 11, 12, 121, 122 and 123 of Title 2, and section 1763 of Title 4, of the Canal Zone Code of 1934, does not repeal or affect the corresponding Federal laws, classified to the United States Code (Title 15 § 31; Title 50 § 191; Title 5 §§ 790, 791, 793; 24 U.S.C. § 196), from which they were derived.

SEC. 25. This Act takes effect January 2, 1963. Laws enacted after January 9, 1962, that are inconsistent with this Act, supersede it to the extent of the inconsistency.

SEC. 26. (a) The Code of Laws for the Canal Zone, enacted by the Act of June 19, 1934 (chapter 667, 48 Stat. 1122), is hereby repealed.

(b) The Acts or parts of Acts enumerated in the following schedule are hereby repealed.

STATUTES AT LARGE						C.Z. CODE 1934	
Date	Chapter	Title	Section	Volume	Page	Title	Section
1936—May 13	381		1	49	1269	4	981.
May 13	381		2	49	1270	6	843.
June 24	754		1	49	1903	2	13.
June 24	754		7	49	1905	2	142.
June 24	754		8	49	1905	2	158.
June 24	754		9	49	1906	2	159.
June 24	754		11	49	1906	5	603.
June 24	754		12	49	1906	5	876.
June 24	754		13	49	1907	6	132
1937—July 8	443		1	50	478		
July 9	470		1	50	486	2	14.
July 9	470		2	50	486	2	44.
July 9	470		3	50	487	2	81.
July 10	487		1	50	509	2	62.
July 10	487		2	50	510	2	323.
July 10	487		3	50	510	3	61(a).
July 10	487		4	50	510	3	1270.
July 10	487		5	50	510	3	1312.
July 10	487		6	50	510	4	182(b).
July 10	487		7	50	510	5	514.
July 10	487		8	50	510	6	571.
July 10	487		9	50	511	7	43.
July 10	487		10	50	511	2	222.
Aug. 24	752		1	50	750	2	412.
1938—Mar. 26	51		1	52	118	7	42.
1940—June 13	358		1	54	387	2	10.
June 13	358		2	54	389	2	271-281.
June 13	358		3	54	390	5	843.
June 13	358		4	54	391	6	125.
June 13	358		5	54	391	6	521.
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Dec. 16	580		1	55	802	6	365.
Dec. 16	580		2	55	802	6	861a.
Dec. 16	580		3	55	803	7	26a.
Dec. 16	581		1	55	803	3	2264.
Dec. 16	581		2	55	803	3	2265.
Dec. 16	581		3	55	803	3	2265a.
Dec. 16	581		4	55	804	3	2274.
Dec. 16	581		5	55	804	5	784.
Dec. 16	583		1	55	804	2	142.
Dec. 16	583		2	55	805	5	829.
1942—Oct. 1	574			56	763, 764	5	581-584.
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June 29	706		2	62	1076-1080	2	245-256.
1949—Aug. 10	415		1	63	593	2	84.
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Aug. 10	415		3	63	594	2	303.
Aug. 10	415		4	63	595	3	225.
Aug. 10	415		5	63	595, 596	4	1470a-1470f.
Aug. 10	415		6	63	596	4	1703.
Aug. 10	415		7	63	597	5	573.
Aug. 10	415		8	63	597	5	812.
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Aug. 12	422		3	63	602	2	85.
Aug. 12	422		4	63	602	2	124.
Aug. 12	422		5	63	602	6	906.
Oct. 25	705		1, 2	63	887		
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						5	833.
Sept. 26	1049		2(d)	64	1038	5	836.
Sept. 26	1049		2(e)	64	1038	2	7.
Sept. 26	1049		3	64	1039	2	10.
Sept. 26	1049		4	64	1040	2	82.
Sept. 26	1049		5	64	1041	2	245.
Sept. 26	1049		6	64	1041	2	246(c).
Sept. 26	1049		7	64	1041	2	246(e).
Sept. 26	1049		8	64	1041	2	248(e).
Sept. 26	1049		9	64	1042	2	249.
Sept. 26	1049		10	64	1042	2	255-258.
Sept. 26	1049		11	64	1042	2	411.
Sept. 26	1049		12	64	1042	2	412.

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[1] Only the first proviso in the paragraph headed "Canal Zone Government," on page 200.
[2] First paragraph of this section, only.

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