

# APPENDIX

## A

July 11, 2019

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**LOUIS M. WILLIS,**  
**Appellant/Defendant,**

v.

**PEOPLE OF THE VIRGIN ISLANDS**  
**Appellee/Plaintiff.**

**S. Ct. Crim. No. 2015-0078**  
Re: Super. Ct. Crim. No. 74/2014(STT)

2019 JUL 11 PM 3:17  
SUPREME COURT

**NOTICE OF ENTRY OF JUDGMENT/ORDER**

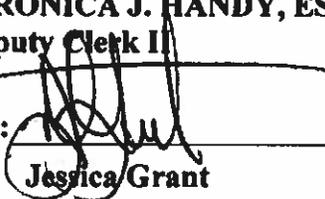
**TO: Justices of the Supreme Court**  
**Judges and Magistrate Judges of the Superior Court**  
**Kelechukwu Chidi Onyejekwe, Esq.**  
**Royette Valmond Russell, Esq.**  
**Veronica J. Handy, Clerk of the Supreme Court**  
**Estrella H. George, Clerk of the Superior Court**  
**Joseph T. Gasper, II. Esq., Superior Court Law Librarian**  
**Supreme Court Law Clerks**  
**Supreme Court Secretaries**  
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Please take notice that on July 11, 2019, a(n) **OPINION** dated July 11, 2019, was entered by the Clerk in the above-entitled matter.

**Dated: July 11, 2019**

**VERONICA J. HANDY, ESQ.**  
**Deputy Clerk II**

By: \_\_\_\_\_

  
**Jessica Grant**  
**Deputy Clerk II**



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CLERK OF THE COURT

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convictions on both counts.

## I. BACKGROUND

¶ 2 From 2000 to 2006, Willis served as the Director of the Virgin Islands Bureau of Internal Revenue (“BIR”). From 2002 to 2008, during his tenure as Director, and shortly after his term ended—Willis furnished false tax clearance letters to Gerald Castor—the owner of Balbo Construction, Inc. and Willis’ friend. Willis signed the letters in place of Judith Creighton, the Supervisor of the Tax Records Management Division, who was in charge of issuing tax clearance letters to entities in good standing.

¶ 3 The letters provided by Willis represented that Balbo Construction was current in all of its tax obligations. In fact, Balbo Construction owed BIR payments for gross receipts taxes and had not filed corporate tax returns for a number of years. Thus, prior to receiving assistance from Willis, Castor’s application for a tax clearance letter had been denied by Creighton because Balbo Construction was delinquent in its tax obligations. Because the Department of Licensing annually requires entities and their owners to be current on all taxes prior to obtaining a business license, Balbo Construction used the false letters provided by Willis to obtain a business license from the Department.<sup>1</sup>

¶ 4 Moreover, on or around February 14, 2008, Willis prepared gross receipt returns on behalf of Balbo Construction, which underreported its gross receipts for the years 2002–2007. One year later, Balbo Construction paid the outstanding gross receipts tax. After a BIR audit by the Internal Revenue Service (“IRS”) and the Virgin Islands Office of the Inspector General, the entities discovered Willis’ activities. Specifically, the IRS found that in exchange for the false clearance

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<sup>1</sup> The Department of Licensing issues business licenses to entities that are behind on their taxes, provided that the entities enter into a payment plan with the Bureau of Internal Affairs to pay the outstanding taxes.

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letters, Castor, on behalf of Balbo Construction, paid Willis five thousand dollars for “accounting services.”

¶ 5 Based on the preceding facts, the People initiated charges against both Willis and Castor for criminal tax offenses. Castor later entered into a plea agreement with the Government. In exchange for a reduced sentence, Castor entered a guilty plea and agreed to testify on behalf of the Government.

¶ 6 In a motion to dismiss, Willis argued before the Superior Court that the court lacked subject matter jurisdiction to hear his case, on the theory that jurisdiction lay exclusively in the District Court by operation of section 22 of the Revised Organic Act of 1954 and section 1612(a) of title 48 of the United States Code. The Superior Court denied his motion to dismiss in a November 10, 2014 order. Trial took place from August 18 through 25, 2015. The jury found Willis guilty of conspiracy to defeat or evade tax in violation of 33 V.I.C. § 1522 (Count 1) and aiding and abetting willful failure to collect or pay over tax pursuant to 14 V.I.C. § 11 and 33 V.I.C § 1523 (Count 2). As to Count 3, fraud and false statements in violation of 33 V.I.C. § 1525(2), the jury returned a “not guilty” verdict. For the purposes of sentencing, the Superior Court, in an October 1, 2015, judgment and commitment, merged Count 2 with Count 1 and stayed the imposition of a separate sentence for the conviction on Count 2.

¶ 7 On September 25, 2015, Willis filed a timely notice of appeal,<sup>2</sup> asserting that there was insufficient evidence to convict him, that he is immune from criminal liability under executive

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<sup>2</sup> Former V.I. S. Ct. R. 5(a)(1), as in effect when the appeal was taken in this case, provided that “[a] notice of appeal filed after the announcement of a judgment or order - but before entry of the judgment or order - is treated as filed on the date of and after the entry of judgment.” Current V.I. R. APP. P. 5(b)(1), provides that “[a] notice of appeal filed after the announcement of a decision, sentence, or order—but before entry of the judgment or order—is treated as filed on the date of and after the entry of judgment.” Because the appellate rules provisions applicable at the time this appeal was commenced and briefed were located in the V.I. Supreme Court Rules but have since been redesignated

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immunity principles, and that the Superior Court erroneously instructed the jury. However, Willis neglected to assert in his opening brief that the Superior Court had erred in rejecting the subject matter jurisdiction argument he had raised below in his motion to dismiss, effectively abandoning that argument on appeal. *See* V.I. R. APP. P. 22(m) (providing that “[i]ssues that were . . . (2) raised or objected to but not briefed . . . are deemed waived for purposes of appeal,” but also that the Supreme Court may nevertheless address such an issue on appeal “that affects substantial rights”). As a result, on appeal, this Court directed the parties to brief the issue of whether the exercise of jurisdiction in this matter by the Superior Court was proper, in light of the jurisdictional analysis undertaken and ruling made by the Superior Court in *People v. Willis*, 60 V.I. 60, 67-80 (V.I. Super. Ct. 2014). The People argued that the Superior Court had jurisdiction over the matter, and Willis conceded. Immediately following oral arguments, Willis filed with this Court a “Motion for Leave to Withdraw Assertions in his Brief in Favor of the Superior Court’s Jurisdiction as Improvidently Filed and to Assert that the Superior Court Lacked Jurisdiction.” Although we generally do not allow the filing of motions asserting new legal authorities after oral argument, we granted the motion because issues affecting subject matter jurisdiction may be asserted at any time. *Martinez v. Colombian Emeralds, Inc.*, 51 V.I. 174, 187 (V.I. 2009).

## II. JURISDICTION AND STANDARD OF REVIEW

¶ 8 We have jurisdiction over “all appeals from the decisions of the courts of the Virgin Islands established by local law[.]” 48 U.S.C. § 1613a(d); *see also* 4 V.I.C. § 32(a) (granting this Court jurisdiction over “all appeals arising from final judgments, final decrees or final orders of the

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as the V.I. Rules of Appellate Procedure, and because the substantive content of the current rules is the same as their predecessors, for convenience, citations to the currently-effective rules are used throughout this opinion.

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Superior Court”). Because the Superior Court’s October 1, 2015 judgment and commitment constitutes a final order, this Court has jurisdiction over this appeal. See *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 434 (V.I. 2013). Generally, the “trial court’s application of law is subject to plenary review, while findings of fact are reviewed for clear error.” *Brathwaite v. People*, 67 V.I. 609, 613 (V.I. 2017). We exercise plenary review over matters concerning the Superior Court’s exercise of subject matter jurisdiction. See *In re Guardianship of Smith*, 54 V.I. 517, 520 (V.I. 2010); *Judi’s of St. Croix Car Rental v. Weston*, 49 V.I. 396, 399 (V.I. 2008).

### III. DISCUSSION

¶ 9 On appeal, Willis challenges the merits of his convictions on numerous grounds, including purportedly defective jury instructions, the statute of limitations, separation of powers principles, and the sufficiency of the evidence. However, it is well-established that prior to reaching the merits of a case, we must determine whether we have subject matter jurisdiction over the dispute, including whether the Superior Court properly exercised jurisdiction over this case in the first instance. See *V.I. Gov’t Hosps. & Health Facilities Corp. v. Gov’t of the V.I.*, 50 V.I. 276, 279 (V.I. 2008); see also *Rivera-Moreno v. Gov’t of the V.I.*, 61 V.I. 279, 304 (V.I. 2014) (noting that this Court possesses “an independent obligation to determine that the Superior Court properly exercised jurisdiction.”). Having considered the parties’ positions on jurisdiction, we conclude that the Superior Court properly exercised jurisdiction over this matter. Furthermore, as explained in detail below, we find Willis’ arguments on the merits unpersuasive and affirm his convictions on both counts.

#### A. The Superior Court’s Jurisdiction

¶ 10 “Under the 1954 Revised Organic Act, 48 U.S.C. § 1612, the District Court of the Virgin Islands had ‘jurisdiction over federal questions, regardless of the amount in controversy, and

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general original jurisdiction over questions of local law, subject to the exclusive jurisdiction of the local courts over civil actions where the amount in controversy was less than \$500.” *Id.* at 358. However, in passing the 1984 amendments to the Revised Organic Act, “Congress vested traditional federal jurisdiction—federal question and diversity—in the district court, and permitted the Government of the Virgin Islands to establish exclusive jurisdiction in the territorial court over local matters.” *Bluebeard’s Castle, Inc. v. Gov’t of the V.I.*, 321 F.3d 394, 401 (3d Cir. 2003). Subsequently, by act of the territorial legislature, on October 1, 1991, the Territorial Court assumed jurisdiction over all civil matters in accordance with title 4, section 76(a) of the Virgin Islands Code and on January 1, 1994, the court’s jurisdiction was expanded to include all criminal matters. *Browne v. People*, 50 V.I. 241, 255 n.16 (V.I. 2008). Today, “the relative jurisdictions of the territorial and district courts in the Virgin Islands mirror the division of authority between state and Article III district courts.” *Bluebeard’s Castle*, 321 F.3d at 400.

¶ 11 However, the territorial legislature’s power to vest jurisdiction in the Superior Court is limited to those “causes in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.” 48 U.S.C. § 1611(b). In turn, § 1612(a) provides, in relevant part, that “[t]he District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands.” Thus, the operative question is whether Willis’ violations of the territorial gross receipts tax laws constitute violations of “the income tax laws applicable to the Virgin Islands” within the meaning of § 1612(a).

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¶ 12 In answering this question, “the appropriate inquiry is to apply the rules of statutory construction to determine what Congress intended at the time it enacted this provision,” *see Bryan v. Fawkes*, 61 V.I. 201, 231 (V.I. 2014) (collecting cases). Generally, the interpretation of any statute begins with plain and ordinary meaning of the statutory language. *Thomas v. People*, 69 V.I. 913, 923 (V.I. 2018). However, “[t]echnical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to their peculiar and appropriate meaning.” *Id.* Additionally, even “where a statutory scheme is plain and internally consistent, no statute should be read literally if such a reading is contrary to its objective and this Court must consider whether applying the statute’s literal language leads to absurd consequences or is otherwise inconsistent with the Legislature’s intent.” *Heyliger v. People*, 66 V.I. 340, 350 (V.I. 2017).

¶ 13 Here, given the long and complicated history of taxation in the Virgin Islands and of the relationship between the jurisdiction of the federal and territorial courts, any attempt to construe the meaning of §1612(a) necessitates a thorough review the history, context, and expressions of congressional intent surrounding its enactment. Indeed, as discussed in detail below, considering the unambiguous statements of congressional intent found in both the legislative history surrounding the passage of the 1984 amendments to the Revised Organic Act, and in the very text of the amendments themselves, it is apparent that, as used in 48 U.S.C. §1612(a), the phrase “income tax laws applicable to the Virgin Islands” is a term of art, specifically referring to the provisions of the U.S. Internal Revenue Code made applicable to the Virgin Islands under the “mirror tax” system.<sup>3</sup> Accordingly, we begin with a discussion of the overall intentions of

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<sup>3</sup> In its order denying Willis’ motion to dismiss for lack of jurisdiction, the Superior Court compared the Black’s law definition of “income tax” with the statutory definition of “gross receipts tax,” to conclude that a gross receipts tax is

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Congress in passing the 1984 amendments as outlined in previous decisions of both this Court and the Third Circuit, before turning to the more specific question of what precisely Congress meant by “income tax laws applicable to the Virgin Islands,” in §1612(a). *See Edwards v. HOVENSA, LLC*, 497 F.3d 355, 358 (3d Cir. 2007) (“A brief analysis of the jurisdiction of the District Court of the Virgin Islands is necessary to put the issue before us in perspective.”).

¶ 14 Following the lead of the Third Circuit, this Court has previously described the effect of the 1984 amendments as a Congressional authorization for “the Virgin Islands Legislature to end the District Court's role as a territorial court by divesting it of jurisdiction over actions brought under Virgin Islands law that do not fall within the District Court's federal question, diversity, or supplemental civil and criminal jurisdiction.” *Hodge v. Bluebeard's Castle, Inc.*, 62 V.I. 671, 682 (V.I. 2017) (citing 48 U.S.C. §1612(a) through (c)). Furthermore, we observed that “[t]he District Court now exercises the same jurisdiction as any other federal district court, with a few exceptions such as continuing concurrent jurisdiction with the Superior Court over local crimes that are related to federal crimes and proceedings related to the income tax laws of the Virgin Islands.” *Id.* at n.5.

¶ 15 In previous decisions that have required the court to ascertain Congress’s purpose in enacting the 1984 amendments, the Third Circuit has repeatedly turned to the remarks of Senator Weicker, which were offered as a “full explanation of the provisions of [the] committee amendment,” and were read into the record without objection. 130 Cong. Rec. S23,787 (daily ed. Aug. 10, 1984). For example, in *Parrott v. Gov't of the V.I.*, 230 F.3d 615, 620 (3d Cir. 2000), the court explained that the purpose of 48 U.S.C. § 1613 is to ensure “that the relations between the

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not an income tax. However, as explained below, we conclude that, as used in § 1612(a) the phrase “income tax” should not be considered in isolation, but must instead be considered in context as part of the legal term of art: “income tax laws applicable to the Virgin Islands.”

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local courts of the Virgin Islands and the federal courts . . . shall be the same as the relation between the state courts and the federal courts. . . .” (quoting 130 Cong. Rec. S10,527 (daily ed. Aug. 10, 1984) (statement by Sen. Weicker)). And, in determining that the jurisdictional divestiture provisions of the 1984 amendments were not self-executing, the Third Circuit relied on Senator Weicker’s explanation that “[t]he decision as to whether jurisdiction over strictly local causes should be vested in the district court or the local courts will be made by local law.” *Estate of Thomas Mall, Inc. v. Territorial Court of the V.I.*, 923 F.2d 258, 263 (3d Cir. 1991) (quoting 130 Cong. Rec. S10,527 (daily ed. Aug. 10, 1984)). Finally, the court has identified as one of the main purposes of the 1984 amendments Congress’ intention “to put an end to the ‘situation of both the district court and the local court having jurisdiction over strictly local causes.’” *United States v. Gillette*, 738 F.3d 63, 70 (3d Cir. 2013) (quoting 130 Cong. Rec. S23,789 (daily ed. Aug. 10, 1984)).<sup>4</sup>

¶ 16 Thus, while neither this Court nor the Third Circuit has yet had occasion to specifically consider what Congress meant by “income tax laws applicable to the Virgin Islands,” or what Congress intended to accomplish by including this language in §1612(a), there is ample precedent to show us precisely where to look for guidance. Indeed, an examination of the Congressional record reveals three details of Senator Weicker’s explanation that are dispositive of the question presented here. Each of these details will be discussed, in turn.

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<sup>4</sup> We note that, in its jurisdictional analysis, the Superior Court placed undue emphasis on the Third Circuit’s decisions in *Pan Am. World Airways, Inc. v. Duly Authorized Gov’t of Virgin Islands*, 459 F.2d 387, (3d Cir. 1972), *Excavation Const. No. One Contracting Corp. v. Quinn*, 673 F.2d 78, 81 (3d Cir. 1982), and *Birdman v. Office of the Governor*, 677 F.3d 167, 177 (3d Cir. 2012). First, two of these cases were decided prior to the enactment of the 1984 amendments to the Revised Organic Act which drastically altered the overall jurisdictional relationship between the federal and territorial courts. But more importantly, none of these cases touched upon the specific question presented in this matter: whether the territorial gross receipts tax constitutes an “income tax law applicable to the Virgin Islands” within the meaning of § 1612(a).

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¶ 17 In describing the purpose and intended effect of the proposed amendment to §1612(a),

Senator Weicker explained, in relevant part:

In analogy to § 31 of the Organic Act of Guam, 48 U.S.C. § 1421i(h), the district court will also have exclusive jurisdiction in all proceedings under the income tax laws applicable to the Virgin Islands, except certain ancillary laws enacted by the legislature of the Virgin Islands. This provision is based on the consideration that since the income tax laws applicable to the Virgin Islands are the provisions of the Internal Revenue Code uniformity of interpretation requires that questions involving the interpretation of those laws be litigated only in the Federal courts. This provision appears to be necessary in view of the characterization of the income tax laws of the Virgin Islands as a local Territorial tax which is reviewable in the district court only by virtue of local legislation. *Dudley v. Commissioner of Internal Revenue*, 258 F.2d 182 (3rd Cir. 1958). Another reason for this provision is the fact[ ] that this bill would abolish the concurrent jurisdiction of the district court over causes based on local law, if local law has vested jurisdiction over them in the local courts. See Section 22 (b).

130 Cong. Rec. S23,789 (daily ed. Aug. 10, 1984).

¶ 18 First, and most simply, this explanation includes the statement that “the income tax laws applicable to the Virgin Islands *are* the provisions of the Internal Revenue Code. . . .” This statement clarifies, without ambiguity, precisely what Congress understood the operative statutory language to mean. As used and understood by Congress, the phrase “income tax laws applicable to the Virgin Islands” did not mean any law pertaining to any tax on any form of income—as a literal reading of the statute might suggest—but rather specifically referred to those portions of the Internal Revenue Code made applicable to the Virgin Islands pursuant to the Naval Services Appropriation Act of 1939 which created the system of taxation now known as the “mirror code.”

¶ 19 Moreover, the *Congressional Record* not only reveals precisely *what* Congress meant by “income tax laws applicable to the Virgin Islands,” but further explains *why* Congress believed it necessary to grant the district court exclusive jurisdiction over this area of the law. That is, “[u]niformity of interpretation requires that questions involving the interpretation of *those laws* be

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litigated only in Federal courts.” In this case, “those laws” refers to the “the provisions of the Internal Revenue Code” mentioned in the previous line. And, given that one overarching purpose of the 1984 amendments was to permit the territorial legislature to divest the district court of jurisdiction to hear cases based in local law, Congress was particularly worried by language included in the Third Circuit’s decision in *Dudley v. Commissioner of Internal Revenue*, 258 F.2d 182 (3rd Cir. 1958) finding “that the tax here in dispute [a provision of the mirror code] is actually not a tax of the United States but a territorial income tax.” So, Senator Weicker explained that in order to maintain uniformity in the law, it appeared necessary to expressly provide for the district court’s exclusive jurisdiction in cases involving the interpretation of the mirror code “in view of the [Third Circuit’s] characterization of the income tax laws of the Virgin Islands as a local Territorial tax which is reviewable in the district court only by virtue of local legislation.” 130 Cong. Rec. S23,789 (daily ed. Aug. 10, 1984).

¶ 20 Thus, given that Congress’ clear objective in establishing the district court’s exclusive jurisdiction over this area of law was to ensure the uniformity of interpretation of the provisions of the Internal Revenue Code, we see no Congressional purpose that would be served by counting the territorial gross receipts tax among the “income tax laws applicable to the Virgin Islands.” There exists no possibility of concern over the uniformity of interpretation of the gross receipts tax because it is purely a creature of local legislation and is not borrowed from, or patterned on, any provision of the Internal Revenue Code. Additionally, our interpretation is further bolstered by the other stated purposes of Congress in enacting the 1984 amendments discussed above: (1) to make the relationship between the territorial courts and the district court more like the relationship between state courts and the courts of the United States, and (2) to empower the territorial legislature to divest the district court of jurisdiction over *purely local* matters.

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¶ 21 The Superior Court based its jurisdictional determination, in part, on the fact that the gross receipts tax is local law. And while, on the surface, §1612(a) does not draw a distinction between laws enacted by the territorial legislature and provisions of the Internal Revenue Code applicable through the mirror tax system, it is also undeniable that one of Congress' chief purposes in adopting the 1984 amendments was to grant the local, territorial courts jurisdiction over questions of local, territorial law. *See Gillette*, 738 F.3d at 70 (quoting 130 Cong. Rec. S23,789 (daily ed. Aug. 10, 1984)) (observing Congress' intention "to put an end to the 'situation of both the district court and the local court having jurisdiction over strictly local causes. . ."). Stated plainly, the gross receipts tax provisions of the Virgin Islands Code are precisely the type of *purely local laws* enacted by the territorial legislature over which Congress intended to vest jurisdiction in the *local courts*.

¶ 22 Finally, to the extent that any doubt remains, Senator Weicker also explained that the exclusive jurisdiction provision of §1612(a) was intended to be analogous in function to its counterpart in the Organic Act of Guam; specifically, 48 U.S.C. §1421i(h).<sup>5</sup> Section 1421i(h)(1) provides, in relevant part: "the District Court of Guam shall have exclusive original jurisdiction over all judicial proceedings in Guam, both criminal and civil, regardless of the degree of the offense or of the amount involved, with respect to the Guam Territorial income tax." Fortunately, whereas Congress failed to specify the meaning of the phrase "income tax laws applicable to the Virgin Islands" in the text of the Revised Organic Act of the Virgin Islands, Congress did include in the Organic Act of Guam a definition of the phrase "Guam territorial income tax." "The income-

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<sup>5</sup> "In analogy to § 31 of the Organic Act of Guam, 48 U.S.C. § 1421i(h), the district court will also have exclusive jurisdiction in all proceedings under the income tax laws applicable to the Virgin Islands." 130 Cong. Rec. S23,789 (daily ed. August 10, 1984) (statement of Sen. Weicker).

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tax laws in force in Guam pursuant to subsection (a) of this section shall be deemed to impose a separate Territorial income tax, payable to the government of Guam, which tax is designated the “Guam Territorial income tax.” 48 U.S.C. § 1421i(b). In turn, subsection (a), patterned off of the Virgin Islands’ mirror tax provision, states that “[t]he income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam.” 48 U.S.C. § 1421i(a). Synthesizing these provisions together then, the “Guam territorial income tax,” over which the district court has exclusive jurisdiction, refers specifically to the provisions of the Internal Revenue Code made applicable to Guam through its own mirror tax system. Thus, given that the text of the Organic Act of Guam clarifies that the district court has exclusive jurisdiction only over actions related to the provisions of its own mirror code, and given that Congress intended for §1612(a) to function “in analogy” to its Guam-focused statutory counterpart, it is clear that Congress, in using the phrase “income tax laws applicable to the Virgin Islands,” understood that phrase as a term of art, referring specifically to the provisions of the Internal Revenue Code made applicable to the Virgin Islands by virtue of the mirror tax system.<sup>6</sup>

¶ 23 When considered together and viewed in the proper historical context, these three aspects of the legislative history embodied in Senator Weicker’s explanation paint a clear picture of the purpose and intended effect of the 1984 amendments to §1612(a). Indeed, in *Birdman v. Office of the Governor*, 677 F.3d 167 (3d Cir. 2012), the Third Circuit turned to these same remarks to support its conclusion that the exclusive jurisdiction provision of §1612(a) applied only as to the

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<sup>6</sup> We recognize that the Ninth Circuit Court of Appeals has held that the Superior Court of Guam lacked jurisdiction over local income tax rebates because of the relevant exclusive jurisdiction statute related to the “Guam Territorial Income Tax.” *Govt. of Guam v. Super. Ct. of Guam*, 998 F.2d 754, 755 (9th Cir. 1993). There, however—unlike the local Virgin Islands gross receipts taxes—the Guam economic development tax rebates at issue were exemptions from the mirrored income taxes, which are, of course, “Guam Territorial Income Tax[es]” over which the Guam District Court has exclusive jurisdiction.

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local courts and not other United States district courts, because “[t]he Virgin Islands income tax is analogous to a federal tax; thus the Virgin Islands local courts lack jurisdiction.”<sup>7</sup> Considering these remarks—(1) that the “income tax laws applicable to the Virgin Islands” are the provisions of the Internal Revenue Code; (2) that the purpose of the exclusive jurisdiction provision is to maintain uniformity of interpretation of those provisions of the Internal Revenue Code; and (3) that §1612(a) was intended to function “in analogy” to its counterpart in the Organic Act of Guam—in their proper historical context as described in the previous decisions of this Court and the Third Circuit, we are compelled to conclude that in using the phrase “income tax laws applicable to the Virgin Islands” in §1612(a), Congress intended to refer specifically to the provisions of the Internal Revenue Code that apply to the Virgin Islands through the mirror tax system. This conclusion harmonizes the statutory language with both the stated intentions of Congress in amending §1612(a), and with Congress’ overarching purpose in enacting the 1984 amendments generally: to give local courts jurisdiction over local law.

¶ 24 Accordingly, because we conclude that the territorial gross receipts tax does not constitute an “income tax law applicable to the Virgin Islands” within the meaning of § 1612(a), we hold that the Superior Court properly exercised jurisdiction over this criminal matter charging Willis with violations of the territorial gross receipts tax laws.

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<sup>7</sup> “The legislative history of the 1984 amendments to the Revised Organic Act further bolsters our interpretation of § 1612(a). The Senate record reiterates that ‘the income tax laws applicable to the Virgin Islands are the provisions of the Internal Revenue Code.’ 130 Cong. Rec. S23,782, 23,789 (daily ed. Aug. 10, 1984). Thus, ‘uniformity of interpretation requires that questions involving the interpretation of those laws be litigated only in the Federal courts,’ plural. *Id.* That Congress meant ‘Federal courts’ as opposed to local courts is apparent in what follows: ‘This provision appears to be necessary in view of the characterization of the income tax laws of the Virgin Islands as a local Territorial tax which is reviewable in the district court only by virtue of local legislation.’ *Id.* (citing *Dudley v. Comm’r*, 258 F.2d 182 (3d Cir.1958)).” *Birdman v. Office of the Governor*, 677 F.3d 167, 177 (3d Cir. 2012).

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¶ 25 Turning to the merits of the case, Willis makes several arguments on appeal, each of which will be addressed, in turn, below. For the reasons that follow, we affirm Willis' conviction on both counts.

### B. Jury Instructions

¶ 26 First, Willis asserts that the Superior Court committed several errors in its instructions to jury. However, as Willis failed to object to the jury instructions at trial, we review the instructions only for plain error. *Monelle v. People*, 63 V.I. 757, 763 (V.I. 2015). Thus, the judgment of the Superior Court will not be reversed unless Willis demonstrates (1) an error, (2) that is plain, (3) that affects substantial rights. *Id.* "Even then, this Court will only reverse where the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Francis v. People*, 52 V.I. 381, 390–91 (V.I. 2009) (internal quotation marks omitted).

¶ 27 Willis argues that Superior Court erred in instructing the jury that the People were required to prove that he conspired to evade or defeat the gross receipts tax "with intent to defraud the Government of the Virgin Islands of money or property" because the quoted language does not appear in the text of 33 V.I.C. § 1522. In support, Willis cites *Kawashima v. Holder*, 565 U.S. 478 (2012), in which the Supreme Court of the United States considered "whether aliens who commit certain federal tax crimes are subject to deportation as aliens who have been convicted of an aggravated felony." *Id.* at 480. Even on the premise that this decision has any relevance to the question presented here—and it does not—Willis has failed to explain how the Superior Court's addition of the challenged language affected, in any way, either his substantial rights or the fairness and integrity of the judicial proceedings. Thus, Willis has failed to demonstrate that the addition of this language constituted plain error warranting reversal.

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¶ 28 Paradoxically, Willis next argues that the Superior Court erred in failing to instruct the jury that the People were required to prove that Willis acted with the “specific intent to defraud or to defeat or evade a tax.” As discussed in the previous paragraph, the Superior Court did instruct the jury that the People were required to prove that he conspired to evade or defeat the gross receipts tax “with intent to defraud the Government,” and therefore Willis’ argument is without factual or legal merit.

¶ 29 Willis further contends that the Superior Court erred in failing to specifically instruct the jury on the statute of limitations.<sup>8</sup> However, even if the court did not separately instruct the jury on the statute of limitations, the court did provide the jury with a copy of the second amended information listing the elements the prosecution was required to prove including, as to both counts, that the crimes occurred “on or about the period between January 1, 2002 through February 25, 2008.” Thus, considering the jury instructions as a whole, we cannot conclude that the Superior Court’s failure to separately instruct the jury on the statute of limitations constituted plain error. *See Freeman v. People*, 61 V.I. 537, 544 (V.I. 2014) (“A challenge alleging reversible error in jury instructions must be considered in light of the complete jury instructions and the whole trial record.”).

¶ 30 Next, Willis argues that the Superior Court erred in failing to instruct the jury that the prosecution was required to prove that Willis’ false tax clearance letters were material, citing *Neder v. United States*, 527 U.S. 1 (1999). However, even if the court’s failure to mention materiality in this context could rise to level of plain error, that error would nevertheless be harmless and cannot justify reversal in this case. As the High Court observed in *Neder*: “In general,

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<sup>8</sup> Willis fails to offer any example of what, in his opinion, an appropriate instruction would be.

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a false statement is material if it has a natural tendency to influence, or [is] capable of influencing, the decision of the decision making body to which it was addressed. In a prosecution [for evading or defeating a tax], several courts have determined that any failure to report income is material. Under either of these formulations, no jury could reasonably find that [the defendant's] failure to report substantial amounts of income on his tax returns was not "a material matter." *Id.* at 16. Applying this same rationale, we conclude that because the tax clearance letters issued by Willis plainly influenced the relevant decision making body's decision to issue Balbo a business license, no jury could reasonably conclude that the letters were not material. Thus, Willis has failed to demonstrate any plain error in the Superior Court's jury instructions affecting substantial rights sufficient to warrant reversal.

### C. Other Arguments

¶ 31 Next, Willis argues, in vague and confusing terms, that his conviction violates the principle of separation of powers enshrined in the Revised Organic Act. It appears that the main thrust of this argument is that Willis was simply exercising his discretion as director of the Bureau of Internal Revenue and was not aware that he was breaking the law. However, we agree with the People that this argument is "not credible and wholly without merit." The evidence of record establishes that Willis signed and issued, in his capacity as director of the B.I.R., multiple tax clearance certificates stating that Balbo Construction had satisfied its gross receipts tax liability, at a time when Willis knew this to be false. Willis has not, and indeed cannot, point to any authority in support of the facially preposterous claim that issuing official government documents—here tax clearance letters—containing known falsehoods represents an appropriate exercise of discretion.

¶ 32 Additionally, Willis asserts that the charges against him were "void *ab initio*" because, in the context of tax crimes, government officials must be charged under 33 V.I.C. § 1533 rather than

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§ 1522. Willis cites our decision in *Velazquez v. People*, 65 V.I. 312 (2016), for the proposition that “where two statutes criminalize a conduct, . . . the more specific one applies.” However, this seriously misstates the rule articulated in that case. In *Velazquez*, we considered which of two apparently conflicting statutes controlled where one statute required that persons bringing firearms into the territory report the firearms immediately, while another section of the code generally provided that any action statutorily required to be performed on a Sunday—a legal holiday in the Virgin Islands—is instead required to be performed the following Monday. *Id.* at 318-19. There we explained that “when a party contends that there exist two conflicting statutes, and uncertainty lingers, casting doubt on which statute is controlling, we emphasize that . . . the more specific statute takes precedence over the more general one, unless it appears the Legislature intended for the more general to control.” *Id.* at 319. In this case, however, there is no conflict or apparent contradiction between the provisions of § 1522—criminalizing conspiracy to evade or defeat taxes generally—and § 1533, which outlines various tax crimes specifically committed by government employees. Although there may be some potential overlap between the two statutes, “the power to make decisions to charge a particular crime is reposed within the discretion of the prosecutor,” and Willis has failed to offer any relevant argument as to why the prosecutor’s election to charge him under § 1522 was in any way improper or prejudicial in this case. *See Castillo v. People*, 59 V.I. 240, 275 (V.I. 2013).

¶ 33 Willis’ next assertion, that the Superior Court erred in failing to grant his motion for judgment of acquittal, is similarly meritless. Willis appears to argue that the court erred in failing to submit to the jury the issue of whether the prosecution was barred by the relevant six-year statute of limitations, and specifically argues that his conviction must be overturned because the last overt act committed in furtherance of the conspiracy—the filing of Balbo’s false tax returns on February

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25, 2008—was “not in the information” and “not submitted to the jury.” This argument fails for two reasons. First, Willis has failed to offer any authority in support of the proposition that specific details such as the last overt act must be charged in the information. *See* V.I. R. APP. P. 22(m) (providing that “[i]ssues... only adverted to in a perfunctory manner or unsupported by argument and citation to legal authority are deemed waived for purposes of appeal”). Second, Balbo’s gross receipts tax returns were admitted into evidence at trial and were therefore properly submitted to the jury.

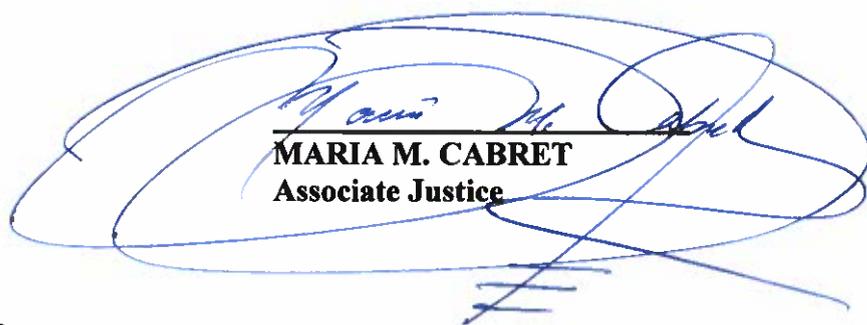
¶ 34 Finally, Willis presents two arguments as to the sufficiency of the evidence. First, he argues that there is insufficient evidence to convict him of conspiracy to defeat or evade the gross receipts tax because he lacked the requisite *mens rea*, as he did not think that his actions were criminal and never entered an agreement with Balbo to defeat the tax. However, the evidence demonstrates that Willis acted knowingly and willfully. Castor testified that because of his friendship with Willis, he asked Willis to help him with obtaining the tax clearance letters—which Willis did—even though both Castor and Willis were aware that Castor was delinquent on his taxes. Second, Willis argues that there is insufficient evidence to sustain his conviction for aiding and abetting Castor’s violation of 33 V.I.C. § 1523 because Castor pled guilty to violating § 1524 rather than § 1523 and, according to Willis, there is no evidence in the record of any violation of § 1523. However, because Willis failed to raise this issue in any of his arguments concerning the sufficiency of evidence before the trial court, instead arguing only that the evidence failed to demonstrate that Willis acted with the requisite *mens rea*, Willis waived this argument on appeal. *See* V.I. R. APP. P. 22(m) (“Issues that were . . . not raised or objected to before the Superior Court . . . are deemed waived for purposes of appeal. . .”).

**IV. CONCLUSION**

¶ 35 Because the territorial gross receipts tax does not constitute an “income tax law of the Virgin Islands” subject to the exclusive jurisdiction of the District Court, the Superior Court properly exercised jurisdiction over this matter. Additionally, because each of Willis’ various assertions of error is either meritless or waived for the reasons discussed above, the Superior Court’s October 1, 2015, judgment and commitment is affirmed.

Dated this 11<sup>th</sup> day of July, 2019.

**BY THE COURT:**

  
**MARIA M. CABRET**  
Associate Justice

**ATTEST:**

**VERONICA J. HANDY, ESQ.**  
Clerk of the Court

By:   
Deputy Clerk

Dated: 7/11/19

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**SWAN, Associate Justice, concurring.**

¶36 Appellant, Louis Willis, was convicted after a criminal trial in the Superior Court of the Virgin Islands (“Superior Court”) and, in this appeal, seeks to have the jury’s verdict reversed. However, Willis does not argue that the Superior Court lacked subject matter jurisdiction over this criminal case. Rather, this Court, upon noticing the challenge to the trial court’s subject matter jurisdiction in the record, ordered the parties to brief the issue. *See Estate of Skepple v. Bank of Nova Scotia*, 69 V.I. 700, 718-21 (V.I. 2018) (stating that the four requirements to a valid judgment are: (1) subject matter jurisdiction, (2) personal jurisdiction, (3) the issue decided was the issue presented, (4) the court otherwise acted in accordance with due process of law).<sup>1</sup> From this Court’s earliest decisions, we have applied the rule that, before we may consider an appeal, we must satisfy ourselves that subject matter jurisdiction exists to consider the case, even if the parties are in agreement to its existence. *Virgin Islands Gov’t Hosp. & Health Facilities Corp. v. Gov’t of the*

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<sup>1</sup> This Court has repeatedly said that the parties may not stipulate to the law and that it is the substance of the pleading that controls the court’s actions, not mere labels of the parties. As such, this Court, when presented with a colorable challenge to the subject matter jurisdiction of the Superior Court in the record, has an obligation to review the issue on appeal. *H&H Avionics, Inc. v. V.I. Port Auth.*, 52 V.I. 458, 460 (V.I. 2009) (“Although the parties agree that this court lacks . . . jurisdiction . . . , their agreement does not relieve the court of the need to conduct an independent analysis of the jurisdictional question.” (quoting *Wisconsin Bell, Inc. v. TCG Milwaukee, Inc.*, 301 F. Supp. 2d 893, 895-96 (W.D. Wis. 2002)); *Smith v. Gov’t of the V.I.*, 67 V.I. 797, 802 (V.I. 2017) (“[I]t is the substance and not the caption of a document that controls.” (quoting *Moorhead v. Mapp*, 62 V.I. 595, 601 n.6 (V.I. 2015))); *Bryan v. Fawkes*, 61 V.I. 416, 466 n.30 (V.I. 2014) (quoting *Anthony v. FirstBank V.I.*, 58 V.I. 224, 228 n.5 (V.I. 2013)); *see Adam v. Saenger*, 303 U.S. 59, 62 (1938) (“If it appears on its face to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself. But in a suit upon the judgment of another state the jurisdiction of the court which rendered it is open to judicial inquiry, and when the matter of fact or law on which the jurisdiction depends was not litigated in the original suit it is a matter to be adjudicated in the new suit founded upon the judgment.” (emphasis added) (citing *Hanley v. Donoghue*, 116 U.S. 1 (1885); *Knowles v. Logansport Gaslight & Coke Co.*, 86 U.S. (19 Wall.) 58 (1873); *Settlemier v. Sullivan*, 97 U.S. (7 Otto) 444 (1878); *Thompson v. Whitman*, 85 U.S. (18 Wall.) 457, (1873))); *see, e.g., Skepple*, 69 V.I. at 732 n.25 (“While Skepple has not presented an affidavit and no hearing was held, BNS’s own proof of service of process upon Skepple plainly demonstrated the factual inadequacy of the attempted service of process. Therefore, neither an affidavit from Skepple showing contrary facts nor a hearing were necessary in this specific case.”); *Toussaint v. Stewart*, 67 V.I. 931, 948-49 (V.I. 2017) (finding error when the trial court failed to interpret an affirmative defense as a counterclaim according to the substance of the allegations); *Sachs v. Sachs*, 265 F.2d 31, 33 (3d Cir. 1959) (noting the trial court “treated defendant’s prayer as a counterclaim, which in reality it was”); *see generally Gov’t of the V.I. v. UIW-SIU*, 64 V.I. 312, 320-21 (V.I. 2016) (holding that statutes of limitations are claims processing rules that do not affect a court’s jurisdiction and are subject to waiver); V.I.R. Civ. P. 15(c)(1)(B); FED. R. Civ. P. 15(c)(1)(B).

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*V.I.*, 50 *V.I.* 276, 279 (*V.I.* 2008) (“Before this Court can decide the merits of the instant appeals, we must first determine if we have jurisdiction over this matter.”). This Court, being an appellate court, is a court of limited jurisdiction and must be satisfied of both the trial court’s and its own subject matter jurisdiction before it considers the merits of an appeal. *See People v. Rios*, S. Ct. Crim. No. 2007-0112, 2008 WL 5605714, at \*1 (*V.I.* Nov. 14, 2008) (unpublished) (citing *Gov’t of the V.I. ex rel. Larsen v. Ruiz*, 145 F. Supp. 2d 681, 689 (D.V.I. App. Div. 2000)).<sup>2</sup>

¶37 The Revised Organic Act of 1954, as amended (“1954 Act”),<sup>3</sup> is the *de facto* constitution of the Virgin Islands, and the grant of jurisdiction to the courts of this territory contained in the 1954 Act supersedes statutes passed by the Legislature of the Virgin Islands (“Legislature”). *Hodge v. Bluebeard’s Castle, Inc.*, 62 *V.I.* 672, 682 (*V.I.* 2015); *Gov’t of the V.I. v. Crooke*, 54 *V.I.* 237, 247 (*V.I.* 2010).<sup>4</sup> As Willis argued at the trial level, because subsection 22(a) of the 1954 Act provides that the District Court of the Virgin Islands (“District Court”) has exclusive subject

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<sup>2</sup> The standard of review as to the question of the existence of the Superior Court’s subject matter jurisdiction is not altered by this procedural history. Questions relating to either this Court’s or the Superior Court’s subject matter jurisdiction are subject to plenary review. *Hansen v. O’Reilly*, 62 *V.I.* 494, 507 (*V.I.* 2015) (quoting *Brunn v. Dowdye*, 59 *V.I.* 899, 904 (*V.I.* 2013)); *Pichardo v. Benjamin*, S. Ct. Civ. No. 2007-0061, 2008 WL 6054386, at \*2 (*V.I.* Apr. 16, 2008) (*per curiam*) (unpublished).

<sup>3</sup> An expansive annotated legislative history of the jurisdictional statutes of the courts of the Virgin Islands setting forth, *inter alia*, the history of amendments regarding the jurisdiction of those courts, under both federal and territorial law, is attached hereto as Appendix A and explicitly incorporated herewith. While a case making a conclusion about jurisdiction is of little value if it is not anchored in the actual statutory language, having the exact statutory language available for reference enables just such an evaluation. Obviously, simply because any number of provisions are included in the appendix does not dictate that they will be relied upon in the ultimate analysis and decision.

<sup>4</sup> *See generally Gov’t of the V.I. v. Christensen*, 673 F.2d 713, 715-16 (3d Cir. 1982) (“A territorial government is entirely the creation of Congress, and its judicial tribunals exert all their powers by authority of the United States. When a territorial government enacts and enforces criminal laws to govern its inhabitants, it is not acting as an independent political community like a State, but as an agency of the federal government.’ Thus, in a federal territory and the nation ‘there is but one system of government, or of laws operating within its limits.’ Territory and nation are not two separate sovereigns to whom the citizen owes separate allegiance in any meaningful sense, but one alone. . . . ‘[A] territory . . . does not have independent sovereignty but derives such powers as its government possesses directly from congressional grant . . . .’” (quoting *United States v. Wheeler*, 435 U.S. 313, 321 (1978); *Gov’t of the V.I. v. Dowling*, 633 F.2d 660, 669 (3d Cir. 1980); and citing *Domenech v. Nat’l City Bank*, 294 U.S. 199, 24-05 (1934))).

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matter jurisdiction “with respect to the income tax laws applicable to the Virgin Islands,” 48 U.S.C. § 1612(a) (emphasis added)—and since a gross receipts tax is an income tax—the Superior Court was without original subject matter jurisdiction to conduct the trial, and assuming such a conclusion is mandated by the plain language of the statute, the judgment and commitment under which he was sentenced was void. *See Skepple*, 69 V.I. at 718 (“A valid judgment requires, first, that the court that issued it ‘had cognizance of the class of case to which the one adjudged belonged’; it must have subject matter jurisdiction.” (quoting *Reynolds v. Stockton (Reynolds)*, 140 U.S. 254, 268 (1891); and citing *Bredin v. Bredin*, 140 F. Supp. 132, 136 (D.V.I. 1956); *Isaac v. Isaac*, 25 V.I. 36, 39 (V.I. Super. Ct. 1990))).

¶38 Although I agree with the majority’s analysis and also agree that the Superior Court possessed subject matter jurisdiction authorizing it to conduct the trial, I contend that the majority, while claiming to rely upon the “plain language” of the statute in question, ignores the actual words of subsection 22(a) in its analysis and places the focus, instead, almost exclusively on case law interpretations and on the legislative history, as if these are the primary means by which the plain meaning of the statutory language is determined—as opposed to using the legislative history as providing the context necessary to clarify ambiguous language in the statute that may be open to interpretation. *See Crandon v. United States*, 494 U.S. 152, 158 (1990) (recognizing that the entire process of statutory interpretation is controlled by the presumption that the ordinary meaning of the chosen words manifests the legislative intent); *e.g.*, *In re Sherman*, 49 V.I. 452, 456 (V.I. 2008) (noting that, where the plain language of a statute discloses the legislative intent, the interpretive inquiry is over); *see also United States v. Lanier*, 520 U.S. 259, 265 n.5 (1997).

¶39 Indeed, the majority explicitly states that “the unambiguous statements of congressional intent found in both the legislative history surrounding the passage of the 1984 amendments to the

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Revised Organic Act, and in the very text of the amendments themselves” lead them to their conclusions, emphasizing that their primary focus of analysis is directed elsewhere—not focused on the actual text used and utilizing legislative history to provide context for determining the meaning of that text. Because one of the primary animating principles underlying this “Plain Meaning” rule of statutory interpretation is that legislatures are presumed to have expressed their intent through the words of the statute as written, *see Ubiles v. People*, 66 V.I. 572, 590 (V.I. 2017) (citing *Haynes v. Otley*, 61 V.I. 547, 561 (V.I. 2014); *Bryan v. Fawkes*, 61 V.I. 416, 462 (V.I. 2014); *Rohn v. People*, 57 V.I. 637, 646 n.6 (V.I. 2012); *Murrell v. People*, 54 V.I. 338, 352 (V.I. 2010); *Rosenberg v. XM Ventures*, 274 F.3d 137, 141 (3d Cir. 2001)), I believe the majority’s analysis is an inappropriate application of the rules of statutory construction and invites arbitrary interpretation (and application) of statutes.

¶40 This Court, like the United States Supreme Court, has recognized, if the plain language of the statute discloses the legislative intent, that is the end of the interpretive inquiry, and there is no need or justification for a court to go beyond the words of the statute as written. *See, e.g., F.B.I. v. Abramson*, 456 U.S. 615, 648 (1982) (O’Connor, J., dissenting) (quoting *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95-96 (1820) (“Where there is no ambiguity in the words, there is no room for construction.”)); *see also SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348, 1358 (2018) (“[P]olicy considerations cannot create an ambiguity when the words on the page are clear.” (citing *SEC v. Sloan*, 436 U.S. 103, 116-117 (1978))); *In re Sherman*, 49 V.I. at 456. Yet, in today’s opinion, the majority inverts the process by which the meaning of any statute is to be understood, thereby creating ambiguity in statutory analysis and inviting judicial legislation in its application,

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a principle of decision I cannot support.<sup>5</sup> Therefore, while joining the majority's analysis, I view it as an interpretation that merely buttresses the appropriate statutory Plain Meaning analysis.

¶41 Additionally, subsections 22(a) and 22(c) of the 1954 Act are both addressed to the subject matter jurisdiction of the trial courts of the Virgin Islands, providing that: (1) the District Court's subject matter jurisdiction "with respect to the income tax laws applicable to the Virgin Islands" is exclusive and (2) its subject matter jurisdiction relating to violations of Virgin Islands criminal statutes arising out of the same course of conduct giving rise to a prosecution for violations of federal law is concurrent with local, territorial courts established by the Legislature. 48 U.S.C. § 1612(a), (c) (emphasis added). Because a proper understanding of the legislative intent of any

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<sup>5</sup> This rule of statutory interpretation giving primacy to the plain meaning of a statute is, *inter alia*, an application of the principle that laws in derogation of individual rights guaranteed by the Constitution are subject to strict construction. *Wilberger*, 18 U.S. at 95 ("To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated."); *Bank of Columbia v. Okley*, 17 U.S. (4 Wheat.) 235, 241-42 (1819) ("We readily admit, that the provisions of this law are in derogation of the ordinary principles of private rights, and, as such, must be subject to strict construction."). The underlying principle for the rule of strict construction of laws in derogation of individual rights, *e.g.*, criminal laws and laws applying penalties or forfeitures, is that a narrow application is most appropriate because the law favors free exercise of an individual's rights and because the courts are not the proper branch of government for passing laws, which is the practical effect of an expansive judicial interpretation of a statute. *Wilberger*, 18 U.S. at 95 ("The rule that penal laws are to be construed strictly . . . is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment."); *Western Union Tel. Co. v. Kansas*, 216 U.S. 1, 44 (1910) ("We are not at liberty to read into the statute terms not found therein or necessarily implied, with a view to limiting the tax to local business, which the legislature, in the terms of the act, impose upon the entire business of the company."); *but see generally Southern P. Co. v. Jensen*, 244 U.S. 205, 221 (1912) (Holmes, J.) ("I recognize without hesitation that judges must and do legislate, but they do so only interstitially; they are confined from molar to molecular motions. A common-law judge could not say, I think the doctrine of consideration a bit of historical nonsense and shall not enforce it in my court."); BENJAMIN A. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 15-16 (2d photo. reprint. 1961) (Yale University Press 1921) ("One weighty task of the system of the application of law consists then in this, to make more profound the discovery of the latent meaning of positive law. Much more important, however, is the second task which the system serves, namely the filling of gaps which are found in every positive law in greater or less measure.' You may call this process legislation, if you will. In any event, no system of *jus scriptum* has been able to escape the need of it." (citation omitted)). Therefore, because the courts are not equipped with the capacity to legislate, they may only interpret a statute to apply according to its express language and by necessary implication; inserting limiting terms that are not necessarily implied and venturing into legislative history and debates when no ambiguity exists to create a meaning to a statute is the equivalent of legislating. *Western Union*, 216 U.S. at 44.

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given statute is garnered from the linguistic indicators of the language utilized and the subject matter of the legislation, *National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 666 (2007) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context with a view to their place in the overall statutory scheme.” (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000); and citing *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989))), I first discuss subject matter jurisdiction as it relates to how the varying terminology of the topic operates to limit a court’s authority to act so as to provide the appropriate context in which to evaluate the plain language of the statute in question for its Plain Meaning. See BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 81 (2d photo. reprint. 1961) (Yale University Press 1921) (“[S]tatutes are to be viewed, not in isolation or *in vacuo*, as pronouncements of abstract principles for the guidance of an ideal community, but in the setting and the framework of the present-day conditions . . .”). Following this discussion of subject matter jurisdiction as it relates to the statute in question, I elucidate my own Plain Meaning analysis based on proper respect for the role of the legislative branch of government and the limited role of the judiciary—a coordinate, co-equal branch of government—in ascertaining the plain meaning of the acts of the legislative branch of government.

## I. DISCUSSION

¶42 I first note that this Court must more forcefully and consistently emphasize to the Superior Court that—before considering any error in the jury instructions, evidentiary rulings, or the sufficiency of the evidence—the judges must first consider the relevant statutory language because the accuracy of the jury instructions, relevance of evidence, and sufficiency of the

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evidence are dictated by the content of the statute. *Ubiles*, 66 V.I. at 590.<sup>6</sup> Furthermore—and even more importantly, as here—the very power of the court to act is clarified by considering and analyzing the plain language of the statute.<sup>7</sup>

### A. Subject Matter Jurisdiction

¶43 “Jurisdiction” is an expansive legal concept, and the use of the term should be studied carefully to determine which aspect of “jurisdiction” is being addressed. Perhaps the Supreme Court of the United States said it best when it stated, “It is as easy to give a general and

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<sup>6</sup> CARDOZO, *supra* note 4, at 14 (“Before we can determine the proportions of a blend, we must know the ingredients to be blended. Our first inquiry should therefore be: Where does the judge find the law which he embodies in his judgment?”); *see also Jacobson v. Massachusetts*, 197 U.S. 11, 23 (1905) (“What, according to the judgment of the state court, are the scope and effect of the statute? What results were intended to be accomplished by it? These questions must be answered.”); *Coffin v. United States*, 156 U.S. 432, 458 (1895) (“[W]e must first ascertain, with accuracy, in what each consists of.”); *Duggins v. People*, 56 V.I. 295, 307 (V.I. 2012) (noting that, in determining the applicability of a statute of limitations, “we were required to determine the elements of a violation of” the crime charged (citing *Miller v. People*, 54 V.I. 398 (V.I. 2010))); *Inniss v. Inniss*, 65 V.I. 270 (V.I. 2016) (conducting a thorough review of all cases interpreting the laws governing division of marital property to determine if the definition by implication that had been adopted by the courts was sound); *Coastal Air Trans. v. Royer*, 64 V.I. 645, 652 n.8 (V.I. 2016) (counseling against relying on case law as authority when it mechanically and uncritically applied provisions of the Restatements); *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 543 (V.I. 2015) (rejecting past interpretation of section 76 of title 24 of the Virgin Islands Code as not comports with the plain language of the statute).

<sup>7</sup> To say an issue is jurisdictional is to refer to a court’s adjudicatory capacity to either adjudicate the subject matter of the case or the rights in question as they relate to the parties, if a court is acting *in personam*, or to the *res*, if the court is acting *in rem*. *Edward v. GEC, LLC*, 67 V.I. 745, 754 (V.I. 2017); *Prosser v. Pub. Services Comm’n*, 56 V.I. 391, 405 (V.I. 2012) (“[A] statute is ‘jurisdictional’ only if ‘it governs a court’s adjudicatory capacity, that is, its subject-matter or personal jurisdiction,’ and that other statutes, even if couched in mandatory language are not jurisdictional if they do not intend to limit the authority to hear the case.” (quoting *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011))); *see also Vanderbilt v. Vanderbilt*, 354 U.S. 416, 418 (1957) (holding that a court has no power to adjudicate personal rights and obligations without first acquiring personal jurisdiction over the person of the defendant); *Vanterpool v. Gov’t of the V.I.*, 63 V.I. 563, 572 (V.I. 2015); *First Am. Dev. Group/Carib, LLC v. WestLB AG*, 55 V.I. 594, 611 (V.I. 2011) (noting that “[t]o say a statute is ‘jurisdictional’ is to say that ‘it governs the court’s adjudicatory capacity, that is, its subject-matter or personal jurisdictional’ (quoting *Henderson*, 562 U.S. at 435)). In contrast, to state that a statute is merely a “claims-processing” rule means that the intent of the limitation is “to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times,” but the intent is not to limit the court’s power—“jurisdiction”—to hear the matter. *First Am. Dev.*, 55 V.I. at 611 (quoting *Henderson*, 562 U.S. at 435). “Where a party timely raises a claims processing rule that was violated by its opponent, we have no choice but to dismiss based on it.” *Prosser*, 56 V.I. at 403 n.9 (citing *Gov’t of the V.I. v. Martinez*, 620 F.3d 321, 328-29 (3d Cir. 2010)); *cf. Brown v. People*, 49 V.I. 378, 382-83 (V.I. 2008) (holding that a notice of appeal filed after the deadline set by court rule is subject to an excusable neglect analysis to extend the time for filing).

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comprehensive definition of the word jurisdiction as it is difficult to determine, in special cases, the precise conditions on which the right to exercise it depends.” *Cooper v. Reynolds (Cooper)*, 77 U.S. (10 Wall.) 308, 316 (1870). The right of judicial jurisdiction “has reference to the power of the court over the parties, over the subject matter, over the *res* or property in contest, and to the authority of the court to render the judgment or decree . . . .” *Id.* at 316.<sup>8</sup> “It is well settled that express statutory authorization is required for an appeal by the government in a criminal case.” *Gov’t of the V.I. v. Christensen*, 673 F.2d 713, 815 (3d Cir. 1982) (citing *United States v. DiFrancesco*, 449 U.S. 117, 131 (1980); *United States v. Scott*, 437 U.S. 82, 84-85 (1976)), and, when the legislative branch has prescribed the subject matter jurisdiction of a court, its jurisdiction is limited to only those powers enumerated in the act of the legislature. *United States v. More*, 7 U.S. (3 Cranch) 159, 173 (1805) (“[A]s the jurisdiction of the court has been described, it has been regulated by congress, and an affirmative description of its powers must be understood as a regulation, under the constitution, prohibiting the exercise of other powers than those described.”).<sup>9</sup>

¶44 Because subject matter jurisdiction is a court’s power “over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status

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<sup>8</sup> See also *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94 (1998) (“Jurisdiction is power to declare the law.”); *Reynolds*, 140 U.S. at 268 (“‘Jurisdiction’ may be defined to be the right to adjudicate concerning the subject-matter in the given cause.”); *Grignon’s Lessee v. Astor*, 43 U.S. (2 How.) 319, 338 (1844) (quoting *United States v. Arredondo*, 31 U.S. (6 Pet.) 691, 709 (1832); *Ex parte Watkins*, 28 U.S. (3 Pet.) 205 (1830); *Kendall v. United States*, 37 U.S. (12 Pet.) 524, 622-23 (1839)).

<sup>9</sup> *Cooper*, 77 U.S. at 316 (“By jurisdiction over the subject matter is meant the nature of the cause of action and of the relief sought; and this is conferred by the sovereign authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred.”); *Boswell’s Lessee v. Otis*, 50 U.S. (9 How.) 336, 348 (1850) (“It is limited to the cases enumerated in the statute.”); e.g., *Gaines v. Fuentes*, 92 U.S. (2 Otto) 10, 18-19 (1875); *Bushnell v. Kennedy*, 76 U.S. (9 Wall.) 387, 391 (1869).

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of a thing,” BLACK’S LAW DICTIONARY 870 (8th ed. 2004); *Mississippi Pub. Co. v. Murphree*, 326 U.S. 438, 445 (1946) (A court’s “power to decide the issues in the suit . . . is jurisdiction of the subject matter.”); *City of New York v. Miln*, 36 U.S. (11 Pet.) 102, 133-34 (1837), parties to litigation may not stipulate to either its presence or absence. *Williams v. People*, 58 V.I. 341, 347 (V.I. 2013).<sup>10</sup> More succinctly, when a court lacks subject matter jurisdiction, it lacks the power to act, and no action by the parties can give such power. *Kempe’s Lessee v. Kennedy*, 9 U.S. (5 Cranch) 173, 186 (1809) (“Their error was not in rendering a judgment against a person who was not proved by indictment to have committed the crime, but who, if guilty, they had no power to try. The proceedings were clearly *coram non jure*.”).<sup>11</sup> Therefore, the subject matter jurisdiction of a court may be considered at any time during a proceeding. *Prosser v. Pub. Services Comm’n*, 56 V.I. 391, 404 (V.I. 2012). It is for this important reason that this Court ordered briefing on this issue.<sup>12</sup>

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<sup>10</sup> See also *People’s Bank of Belleville v. Calhoun*, 102 U.S. 256 (1880); see generally *Mississippi & Rum River Boom Co. v. Patterson*, 98 U.S. (8 Otto) 403, 406 (1878) (“Objections to jurisdiction of the court below, when they go to the subject-matter of the controversy and not to the form merely of its presentation or to the character of the relief prayed, may be taken at any time. They are not waived because they were not made in the lower court.”). Such limitations, however, do not foreclose the possibility of setting a statute of limitations after which time even a void judgment cannot be challenged. See *O’Neil v. Northern Colo. Irrigation Co.*, 242 U.S. 20, 26 (1916) (citing *Barker v. Harvey*, 181 U.S. 481 (1901); *Soper v. Lawrence Brothers Co.*, 201 U.S. 359, 367-68 (1906); *Montoya v. Gonzales*, 232 U.S. 375, 378 (1914)); see also *Skillern’s Ex’rs v. May’s Ex’rs*, 10 U.S. (6 Cranch) 267, 268 (1810) (holding that a case before a court upon the mandate of an appellate court is not open to have the jurisdiction of the lower court examined); see generally *Williams*, 58 V.I. 350-51 (noting that the issuance of the mandate in an appeal is the formal document that divests the appellate court of appellate jurisdiction and vests personal and subject matter jurisdiction in the trial court once again).

<sup>11</sup> See also *Scott v. McNeal*, 154 U.S. 34, 43 (1894) (“The absolute nullity of administration granted upon the estate of a living person has been directly adjudged . . .”); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 719 (1838) (“[A]pppearance does not cure the defect of judicial power, and it may be lied on by plea, answer, demurrer, or at the trial or hearing, unless it goes to the manner of bringing the defendant into court, which is waived by submission to the process.”).

<sup>12</sup> Fundamentally, courts must act according “to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.” *Pennoyer v. Neff*, 95 U.S. (5 Otto) 714, 733 (1878). If a court acts without legislative authorization, its actions are void. *In re Smith*, 54 V.I. 517, 526-27 (V.I. 2010) (holding that orders entered by a court lacking subject matter jurisdiction are void); see *People v. Pratt*, 50 V.I.

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¶45 When reviewing a challenge to the validity of a trial court's order, there are certain presumptions that apply with regards to challenges to the trial court's jurisdiction. Courts of general jurisdiction, *Cooper*, 77 U.S. at 316 ("By jurisdiction over the subject matter is meant the nature of the cause of action and of the relief sought; and this is conferred by the sovereign

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318, 321 (V.I. 2008) ("It is well established that the [prosecution] cannot appeal a criminal judgment 'unless statutory authority expressly and clearly permits such appeal.'" (citing *People v. George*, 49 V.I. 504, 506-07 (V.I. 2008))); see also *Ableman v. Booth*, 62 U.S. (21 How.) 506, 515 (1858) (noting that a court's judgment must be within its subject matter jurisdiction to be valid); *United States v. Ferreira*, 54 U.S. (13 How.) 40, 46 (1851) ("If [a court] acts at all, it acts under the authority of the law and must obey the law."); *Lanier*, 520 U.S. at 265 n.5; *Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964); *Hill v. Colorado*, 530 U.S. 703, 732 (2000); *United States v. Fontaine*, 697 F.3d 221, 226 (3d Cir. 2012); *Gov't of the V.I. v. Civil*, 591 F.2d 255, 84 n.4 (3d Cir. 1979); *People v. James*, 54 V.I. 45, 48 (V.I. Super. Ct. 2010); cf. *Prosser*, 56 V.I. at 405 ("[P]rocedural errors—no matter how egregious—will not constitute jurisdictional defects." (quoting *In re Smith*, 54 V.I. at 526)); *First Am. Dev. Group/Carib, LLC v. WestLB AG*, S. Ct. Civ. No. 2012-0023, 2012 WL 1526100, at \*1 (V.I. Apr. 30, 2012) (per curiam) (unpublished) (holding that a court's rules can neither expand nor contract its subject matter jurisdiction). The reasons for this are twofold. First, every court derives its power to act from the law as it exists. See *Hollingsworth v. Barbour*, 29 U.S. (4 Pet.) 466, 470 (1830) ("The circuit court of Washington county could take cognizance of the case presented to them by the complainant, by no principle of the common law, or rule of a court of equity. The powers to do so must be conferred by some law of Kentucky, within which the complainant must have brought himself, or the proceedings would be void for want of jurisdiction of the court."); see also *Lessee of Hickey v. Stewart*, 44 U.S. (3 How.) 750, 762 (1845) ("According to the decision in the case, *Henderson v. Poindexter's Lessee*, 25 U.S. (12 Wheat.) 543, 544 (1827), above referred to, Stark's claim, when submitted by his heirs to the Court of Chancery, was utterly void; and no power having been conferred by Congress, on that court, to take or exercise jurisdiction over it for the purpose of imparting to it legality, the exercise of jurisdiction was a mere usurpation of judicial power, and the whole proceeding of the court void."). Second, under the Constitution, the most basic protection provided to the people is the due process right to be free from arbitrary deprivation of life, liberty, or property. *Jackson v. Virginia*, 443 U.S. 307, 314 (1979). Therefore, we must address the Superior Court's very capacity to act in the first instance. *Rivera-Moreno v. Gov't of the V.I.*, 61 V.I. 279, 304 (V.I. 2014) (citing *In re Smith*, 54 V.I. at 525-26). An early exposition as to the significance of subject matter jurisdiction was the case of *Elliot v. Lessee of Peirsol*, 26 U.S. 328, 340-41 (1828). In that case, the Court explained first that, where a court acts without authority, its judgments are void and of no legal effect. Second, it explained that "the jurisdiction of any Court exercising authority over a subject, may be inquired into in every Court." *Id.* at 340-41. The Court found the orders of the state court to be void because the state legislature had not conferred on the state court the power to order the acts done. *Id.* at 340-41. Therefore, if a court lacked subject matter jurisdiction when issuing a judgment, that judgment and "the proceedings are void and a mere nullity, and confer no right, and afford no justification, and may be rejected when collaterally drawn into question." *Thompson v. Tolmie*, 27 U.S. (2 Pet.) 157, 163 (1829); see generally *Rhode Island*, 37 U.S. at 718 ("However late this objection has been made or may be made in any cause in an inferior or appellate court of the United States, it must be considered and decided, before any court can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction. Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit, to adjudicate and exercise any judicial power over them; the question is, whether on the case before the court, their action is judicial or extra-judicial; with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, then the court has jurisdiction; what shall be adjudged or decreed between the parties, and with which is the right of the case, is judicial action, by hearing and determining it." (citing *Arredondo*, 31 U.S. at 691; *Watkins*, 28 U.S. at 193)).

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authority which organizes the court, and is to be sought for in the general nature of its powers, or in authority specially conferred.” (emphasis added)); e.g., 4 V.I.C. § 76(b) (“[T]he Superior Court shall have original jurisdiction in all criminal actions.”), are presumed to have jurisdiction over both the cause of action and the parties, which by extension includes a presumption that process was served correctly. *Milliken v. Meyer*, 311 U.S. 457, 462 (1940). This presumption is dispositive absent contradiction in the record or contradiction by extrinsic evidence. *Hanley v. Donoghue*, 116 U.S. 1, 5 (1885). As such, on appeal from a court of general jurisdiction, absent a situation in which the appellate court, through the course of determining an appeal, notices a lack of subject matter jurisdiction plainly implicated in the record, it is the obligation of the party challenging the trial court’s jurisdiction to do so affirmatively.

¶46 In contrast to courts endowed with general jurisdiction, there are courts of limited subject matter jurisdiction, also called special subject matter jurisdiction.<sup>13</sup> These are courts whose authority over controversies, the “subject,” are limited to specific categories of cases. BLACK’S L. DICT., at 869 (“[L]imited jurisdiction[:] Jurisdiction that is confined to a particular type of case or that may be exercised only under statutory limits and prescriptions. – Also termed special

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<sup>13</sup> See generally *Kempe’s Lessee*, 9 U.S. at 185 (“All courts from which an appeal lies are inferior courts in relation to the appellate court before which their judgment may be carried; but they are not therefore inferior courts in the technical sense of those words. They apply to court of a special and limited jurisdiction, which are erected on such principles that their judgment, taken alone, are entirely disregarded, and the proceedings must show their jurisdiction. The courts of the United States are all of limited jurisdiction, and their proceedings are erroneous, if the jurisdiction be not shown in them.”); *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 378 (1821) (“The second section of the third article of the constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the Court of the Union in two classes of case. In the first, their jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehend ‘all cases in law and equity arising under this constitution, and the laws of the United States, and treaties made, or which shall be made, under their authority.’ . . . In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended ‘controversies between two or more States, between a State and citizens of another State,’ ‘and between a State and foreign States, citizens or subjects.’ If these be the parties, it is entirely unimportant what may be the subject of the controversy. Be it what it may, the parties have a constitutional right to come into the Courts of the Union.”); *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 93 (1807) (“Courts which originate in the common law possess a jurisdiction which must be regulated by their common law, until some statute shall change their established principles; but courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction.”).

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jurisdiction.”). Courts of limited or specific jurisdiction do not benefit from a presumption of jurisdiction, and proof of jurisdiction of both the subject matter and the person must appear in the record. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (“It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” (citing *Turner v. Bank of N.A.*, 4 U.S (4 Dall.) 8, 11 (1799); *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 182-83 (1936)). In fact, absent record evidence establishing such, these courts are presumed to lack both subject matter and personal jurisdiction. *Kokkonen*, 511 U.S. at 377 (“It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” (citing *Turner*, 4 U.S at 11; *McNutt*, 298 U.S. at 182-83)).

¶47 Furthermore, the powers of courts of limited jurisdiction are constrained to the subject matter and/or territory designated by statute. *Crooke*, 54 V.I. at 246 (“It is well established that ‘the powers of courts of local or special jurisdiction are restricted to the subject matter or territory designated by statute.’” (quoting 3A NORMAN J. SINGER & J. D. SHAMBIE SINGER, SUTHERLAND STATUTES & STATUTORY CONSTRUCTION § 67:3 (6th ed. 2003))). The fact that a court of general jurisdiction, or a judge appointed thereto, is hearing a matter does not convert a statutory grant of limited subject matter jurisdiction into a grant of general jurisdiction. *Boswell’s Lessee v. Otis*, 50 U.S (9 How.) 336, 348 (1850) (“Under the assumption of a special power, it cannot be made general by any supposed necessity, beyond the provisions of the act.”).<sup>14</sup> By extension, then, “[w]hen a senior judicial officer elects to hear a case that is traditionally within the purview of

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<sup>14</sup> See also *Williamson v. Berry*, 49 U.S. (8 How.) 495, 537 (1850) (“In such cases, the court will not deviate from the letter of the act, nor make an order partly founded upon its original jurisdiction, and partly upon the statute.”).

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more junior judicial officers, the same procedural rules apply.” *Brown v. Brown*, 59 V.I. 583, 588 (V.I. 2013) (citations omitted). Therefore, the basis for both personal and subject matter jurisdiction must be specifically pled, and found as a matter of fact, in the record of a court of limited jurisdiction. *Kokkonen*, 511 U.S. at 377 (same (citing *Turner*, 4 U.S at 11)).<sup>15</sup>

¶48 For purposes of determining whether subject matter jurisdiction has been sufficiently pleaded, if the plaintiff provides allegations that, if true, establish a violation of law and justify the court acting in accordance with its jurisdictional competences, *i.e.*, personal jurisdiction, domicile jurisdiction (in matters of family law),<sup>16</sup> or subject matter jurisdiction, the pleading is sufficient. *United States v. Arredondo*, 31 U.S. (6 Pet.) 691, 710 (1832) (“The power to hear and determine a cause is jurisdiction; it is ‘*coram iudice*,’ whenever a case is presented which brings this power into action . . . .”); see 4 V.I.C. §§ 2(a) (“The judicial power of the Territory is vested in a court of general jurisdiction . . . to be designated the ‘Superior Court of the Virgin Islands . . . . Each court

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<sup>15</sup> See *Edward*, 67 V.I. at 755; see also *Galpin v. Page*, 85 U.S. (18 Wall.) 350, 366-67 (1873) (“The rule is different with respect to courts of special or limited authority; as to them there is no presumption of law in favor of their jurisdiction; that must affirmatively appear by sufficient evidence or proper averment in the record, or their judgments will be deemed void on their face.”); *Turner*, 4 U.S. at 11 (“And the fair presumption is (not as with regard to a Court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather) that a cause is without its jurisdiction till the contrary appears.”); *McNutt*, 298 U.S. at 182-83. (“If the jurisdiction be not alleged in the proceedings, their judgments and decrees are erroneous, and may, upon writ of error or appeal, be reversed for that cause. But they are not absolute nullities.” (quoting *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 376 (1940); and citing *McCormick v. Sullivant*, 23 U.S. (10 Wheat.) 192 (1825); *Des Moines Navigation Co. v. Iowa Homestead Co.*, 123 U.S. 552, 557 (1887); *Dowell v. Applegate*, 152 U.S. 327, 340 (1894); *Evers v. Watson*, 156 U.S. 527, 533 (1895); *Cutler v. Huston*, 158 U.S. 423, 430 (1895)); cf. *Chicot County*, 308 U.S. at 376; *Stoll v. Gottlieb*, 305 U.S. 165 (1938).

<sup>16</sup> See generally 16 V.I.C. § 106(a) (providing the requirements that presumptively establish the domicile of a marriage to be in the Virgin Islands by stating “In an action for the dissolution of the marriage contract or for a legal separation the plaintiff therein must be an inhabitant of the Virgin Islands who is domiciled therein at the commencement of the action and who has resided therein continuously and uninterruptedly for at least six weeks prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose. Evidence of the six weeks’ residence as aforesaid shall be presumptive proof of domicile.”); see *Granville-Smith v. Granville-Smith*, 349 U.S. 1, 75 (1955); *Alton v. Alton*, 207 F.2d 667 (3d Cir. 1953); *Perrin v. Perrin*, 408 F.2d 107 (3d Cir. 1969) (noting domicile is the basis of divorce jurisdiction in the U.S.).

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is a court of record.”); 76(b) (“[T]he Superior Court shall have original jurisdiction in all criminal actions.”). Similarly, if there is credible evidence in the record establishing these facts, subject matter jurisdiction existed in the trial court. *E.g.*, *Powell v. People*, 2019 VI 2, ¶46 n.5 (V.I. Jan. 16, 2019) (Swan, J., concurring) (citing *Tindell v. People*, 56 V.I. 138, 147-48 (V.I. 2012)); *M. Davis v. People*, 69 V.I. 619, at \*17 n.23 (V.I. 2018) (Swan, J., concurring) (citing *Tindell*, 56 V.I. at 147-48).<sup>17</sup>

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<sup>17</sup> See also *A. Davis v. People*, 69 V.I. 600, 617 (V.I. 2018) (Swan, J., concurring); *cf. Harvey v. Tyler*, 69 U.S. (2 Wall.) 328, 341 (1864) (“It is impossible to come to any other conclusion from this statute, than that the county courts of Virginia were courts of general jurisdiction; and were inferior only in the sense that their judgments might be revised by some appellate tribunal. They were in no sense courts of special jurisdiction, and were unlike county courts in other States,—Kentucky, for example, in reference to which a Kentucky decision has been quoted to us,—which had no common law or chancery jurisdiction, whose principal functions were ministerial, in reference to the roads, bridges, and finances of the county, to which are sometimes added those judicial functions which relate to wills and the administration of the estates of decedents. These all differ widely from the county courts of Virginia, which have all those powers of general jurisdiction usually found in circuit courts, courts of common pleas, courts of chancery, and others of similar character. In reference to all these the general rule is, that every presumption not inconsistent with the record, is to be indulged in favor of their jurisdiction; and their judgments, however erroneous, cannot be questioned, when introduced collaterally, unless it be shown affirmatively that they had no jurisdiction of the case.” (citing *Kempe’s Lessee*, 9 U.S. at 173; *Voorhees v. Bank of U.S.*, 35 U.S. (10 Pet.) 449 (1836); *Watkins*, 28 U.S. at 193; *Grignon’s Lessee*, 43 U.S. at 319); 4 V.I.C. § 76(a) (“[T]he Superior Court shall have original jurisdiction in all civil actions regardless of the amount in controversy; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and changes of name; to establish paternity; to legitimize children and to make orders and decrees pertaining to the support of relations.”); 16 V.I.C. § 127(b) (“Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.”); 4 V.I.C. § 172 (“Except as otherwise provided by this chapter, the Family Division of the Superior Court shall have original jurisdiction: (a) Concerning any child living or found within the geographical limits of its jurisdiction: (1) who is neglected or abused; (2) whose occupation, behavior, condition, environment or associations are such as to injure or endanger his welfare or that of others; (3) who is a ‘person in need of supervision’; (4) who is alleged to have committed a delinquent act within the territory; except that any child sixteen years and over, charged with an offense under Title 20 of the Virgin Islands Code, other than under section 504 thereof, shall be within the jurisdiction of the Traffic Division of the Superior Court. (b) For the treatment or commitment to any mental institution of a mentally defective or mentally disordered or emotionally disturbed child under procedures consistent with Title 19, chapter 31 of the Virgin Islands Code. (c) Concerning any adult, living or found within the geographical limits of the court’s jurisdiction, alleged to have committed or to have attempted to commit a delinquent act within the territory prior to having become eighteen years of age. (d) To determine the custody or guardianship of the person of any child living within the judicial division, for adoption or other care provision and to determine parental rights in connection with such proceedings. (e) For judicial consent for the marriage of a child when such consent is required by law.”); 16 V.I.C. § 101 (“[Spouses] may maintain an action against the other for legal separation or the dissolution of the marriage contract . . . .”); see generally 4 V.I.C. § 79(a) (“The Superior Court shall be comprised of criminal, civil, traffic, family, magistrate judge’s, conciliation and small claims divisions. The court may create such additional divisions as the public interest requires. The presiding judge shall from time to time designate and assign judges to sit in the various divisions of the court in each of the judicial divisions of the Territory as the business of the court may require.”).

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¶49 Subject matter jurisdiction can further be described as exclusive or concurrent, a distinction applicable to subsection 22(a) of the 1954 Act. *See Miles v. Illinois Cent. R.R. Co.*, 315 U.S. 698, 713-14 (1942); *e.g.*, *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 396 (1821). Exclusive jurisdiction is the power of a trial court “to adjudicate an action or class of actions to the exclusions of all other courts.” *Martinez v. Colombian Emeralds, Inc.*, 51 V.I. 174, 182 (V.I. 2009) (quoting BLACK’S L. DICT., at 889).<sup>18</sup> Concurrent jurisdiction is “jurisdiction that might be exercised simultaneously by more than one court over the same subject matter and within the same territory, a litigant having the right to choose the court in which to file the action.” *Id.* at 181-82 (quoting BLACK’S L. DICT., at 868). For example, it is presumed that state and territorial courts have concurrent jurisdiction with federal courts to decide matters of federal law. *Id.* at 182-83 (quoting *Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 823 (1990)).<sup>19</sup> Finally, while usually associated with acquisition of personal jurisdiction, the *in personam/in rem* distinction is, under certain circumstances, also relevant to the inquiry of the existence of subject matter jurisdiction. *See In re Najawicz*, 52 V.I. 311, 334 (V.I. 2009) (“[A]n *in personam* action enables a judge to

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<sup>18</sup> *E.g.*, *Gaines*, 92 U.S. at 17-18 (“Some cases there are, it is true, in which from their nature, the judicial power of the United States, when invoked, is exclusive of all State authority. Such are cases in which the United States are parties,—case of admiralty and maritime jurisdiction, and cases for enforcement of rights of inventors and authors under the laws of Congress.” (citing *The Moses Taylor*, 71 U.S. (4 Wall.) 411, 429 (1866); *Railway Co. v. Whitton*, 80 U.S. (13 Wall.) 270, 288 (1871))).

<sup>19</sup> *See generally Claflin v. Houseman*, 93 U.S. 130, 136 (1876) (“[E]very citizen of a State is a subject of two distinct sovereignties, having concurrent jurisdiction in the States, -- concurrent as to place and persons, though distinct as to subject matter. Legal or equitable rights, acquired under either system of laws, may be enforced in any court of either sovereignty competent to hear and determine such kind of rights and not restrained by its constitution in the exercise of such jurisdiction.”).

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issue orders that indirectly affect a defendant's extraterritorial property even though the judge lacks in rem jurisdiction to issue orders that affect such extraterritorial property directly."<sup>20</sup>

### B. Statutory Interpretation<sup>21</sup>

¶50 Under the Constitution, the most basic protection provided to the people is the due process right to be free from arbitrary deprivation of life, liberty, or property. *Jackson v. Virginia*, 443 U.S. 307, 314 (1979). "Due process of law is a summarized constitutional guarantee of respect for those personal immunities which, as Mr. Justice Cardozo twice wrote for the Court, are 'so rooted in the traditions and conscience of our people as to be ranked as fundamental,' or are 'implicit in the concept of ordered liberty.'" *Rochin v. California*, 342 U.S. 165, 168 (1952) (quoting *Snyder*

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<sup>20</sup> *E.g.*, *Corbett v. Nutt*, 77 U.S. (10 Wall.) 464, 475 (1870) ("A court could not by the mere force of its decree transfer title to land lying without its jurisdiction from the party in whom it was vested by the will of Mrs. Hunter. A court of equity acting upon the person of a defendant may control the disposition of real property belonging to him situated in another jurisdiction, and even in a foreign country. It may decree a conveyance and enforce its execution by process against the defendant, but neither its decree nor any conveyance under it, except by the party in whom the title is vested, is of any efficacy beyond the jurisdiction of the court."); *see also Johnson v. Powers*, 139 U.S. 156, 159 (1891) ("A judgment *in rem* binds only the property within the control of the court which rendered, and a judgment *in personam* binds only the parties to the judgment, and those in privity with them."); *Hanson v. Denckla*, 357 U.S. 235, 246 n.12 (1958) ("Founded on physical power, the *in rem* jurisdiction of a state court is limited by the extent of its power and by the coordinate authority of sister States. The basis of the jurisdiction is the presence of the subject property within the territorial jurisdiction of the forum state." (citing *McDonald v. Mabee*, 243 U.S. 90, 91 (1917); *Rose v. Himley*, 8 U.S. (4 Cranch) 241, 277 (1808); *Overby v. Gordon*, 177 U.S. 214, 221-22 (1900)); *Mississippi & Mo. Ry. Co. v. Ward*, 67 U.S. (2 Black) 485, 495-96 (1862); *see generally Rose*, 8 U.S. at 276 ("It is conceded that the legislation of every country is territorial; that beyond its own territory, it can only affects its own subjects or citizens. It is not easy to conceive a power to execute a municipal law, or to enforce obedience to that law without the circle in which the law operates. A power to seize for the infraction of a law is derived from the sovereign, and must be exercised, it would seem, within those limits which circumscribe the sovereign power."); *Estate of Ludington v. Jaber*, 54 V.I. 678, 681 (V.I. 2011) (discussing property rights *in personam*); *Dyndul v. Dyndul*, 541 F.2d 132, 378 n.2 (3d Cir. 1976); BLACK'S L. DICT., at 1332 (defining "res" as "An object, interest, or status, as opposed to a person <jurisdiction of the res—the real property in Colorado>").

<sup>21</sup> When engaging in statutory interpretation, the court must first gain context. *See Commonwealth v. Bean*, 80 Mass. 52, 53 (Mass. 1859) ("We are first to ascertain, by a careful examination of the statute, what act the legislature had in view, and intended to make penal, and then see if that act, thus ascertained, is charged in the compliant or indictment. If there is nothing in the context or in other parts of the statute, or in statutes *in pari materia*, to control or modify the sense and meaning of the terms in which the offence is defined, then it may be presumed that the terms in the compliant are used in the same sense with those in the statute, and whatever that prohibits the complaint charges. In such a case, the offence may be described and charged in the words of the statute. Otherwise, it may be necessary to frame the complaint in such terms as to designate the offence intended with precision."); *e.g.*, *Wallace v. People*, 2019 VI 24, ¶88 (Swan, J., concurring).

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*v. Massachusetts*, 291 U.S. 97, 105 (1934); *Palko v. Connecticut*, 301 U.S. 319, 325 (1937)). States and self-governing territories are at liberty to define crimes and regulate court jurisdiction and procedures according to what they believe constitutes fair public policy except when, in doing this, their actions offend “some principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental.” *Almendarez-Torres v. United States*, 523 U.S. 224, 228 (1998); *Snyder*, 291 U.S. at 10-5; *see also Rochin*, 342 U.S. at 168. That is to say, courts must act within the limits of due process. *Skepple*, 69 V.I. at 721 (stating that the fourth requirement of a valid judgment is that the court otherwise acted in accordance with due process of law).

¶51 It bears repeating that the entire process of statutory interpretation is controlled by the presumption that the ordinary meaning of the chosen words manifests the legislative intent. *Lanier*, 520 U.S. at 265 n.5; *Crandon*, 494 U.S. at 158. Therefore, all endeavors of statutory interpretation begin with a thorough consideration of the statutory language, the statutory design, and the object of and policy underlying the statute, controlled by a presumption that the ordinary meaning of the chosen words manifests the legislative intent. *Crandon*, 494 U.S. at 158 (citing *K-mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *Pilot Life Ins. Co. v. Dedeauz*, 481 U.S. 41, 51 (1987)). While “[r]egard for [the] purposes [of the statute] should infuse the construction of the legislation if it is to be treated as a working instrument of government and not merely as a collection of English words,” *United States v. Dotterweich*, 320 U.S. 277, 280 (1943), laws must be read, understood, and applied in light of the practical affairs of people in society as it exists and in such a manner as to effectuate the purpose of the statute, not undermine it. *See Commonwealth v. Regan*, 64 N.E. 407, 407 (Mass. 1902) (“The statute imposes a penalty and it should be construed in a reasonable, practical way rather than so as to make the business impossible or a lottery.”). The rules and canons of statutory interpretation and construction have the overarching objective that

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[a]ll laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter.

*Gov't of the V.I. v. Berry*, 604 F.2d 221, 225 (3d Cir. 1979) (quoting *United States v. Kirby*, 74 U.S. (7 Wall.) 482, 486-87 (1868)). Therefore, courts must assume that the legislature intends for the entirety of the statutory language, as well as the whole statutory scheme, to be effective, unless to do so would lead to unjust or absurd results or would otherwise undermine the legislative intent. *Cornelius v. Bank of Nova Scotia*, 67 V.I. 806, 822 (V.I. 2017) (citing *Gilbert v. People*, 52 V.I. 350, 356 (V.I. 2009)); see also *Dupigny v. Tyson*, 66 V.I. 434, 440 (V.I. 2017); *In re Visteon Corp.*, 612 F.3d 210, 226 (3d Cir. 2010).

¶52 Although such a statement is a gross over simplification, it is commonly said to be “black-letter law” that, if the plain language of the statute discloses the legislative intent, the interpretive inquiry is at an end.<sup>22</sup> While this rule of statutory construction is an easy starting point, one should be mindful that, though a literal interpretation of statutory language is preferred, “the intention prevails over the letter” requiring that a literal reading of any statute be avoided if such a reading would be contrary to its objective, *i.e.*, legislative intent. *United States v. Wells*, 519 U.S. 482, 491 (1997); *Gilbert*, 52 V.I. at 356 (quoting *Gov't of the V.I. v. Knight*, 989 F.2d 619, 626 (3d Cir. 1993)). Essentially, the language of a statute must be considered as the conclusive statement of

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<sup>22</sup> See generally *CARDOZO*, *supra* note 4, at 14 (“There are times when the source [of the law] is obvious. The rule that fits the case may be supplied by the constitution or by statute. If that is so, the judge looks no farther. The correspondence ascertained, his duty is to obey. The constitution overrides a statute, but a statute, if consistent with the constitution, overrides the law of judges. In this sense, judge-made law is secondary and subordinate to the law that is made by legislators. . . . [Although, t]here are gaps to be filled.”); *e.g.*, *Willberger*, 18 U.S. at 95-96; *In re Sherman*, 49 V.I. at 456.

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legislative intent, unless the legislature has unequivocally shown its intent to be the contrary. *E.g.*, *Wells*, 519 U.S. at 498-99; *Lopez v. People*, 60 V.I. 534, 537 (V.I. 2014). Certainly, “the surest way to misinterpret a statute is to follow its literal language without reference to its purpose.” *Viacom Int’l, Inc. v. FCC*, 672 F.2d 1034, 1040 (2d Cir. 1982).

¶53 Regarding the operational mechanics of interpretation, if statutes are interrelated—such as a licensing scheme or, as here, the jurisdictional provisions of the 1954 Act and the jurisdictional provisions passed by the Legislature—they must be read in reference to each other, *i.e.*, *in pari materia*. *Phillip v. People*, 58 V.I. 569, 590 (V.I. 2013).<sup>23</sup> Interpretations that are unjust or lead to absurd results must be avoided because they are inconsistent with legislative intent. *Gilbert*, 52 V.I. at 356. An interpretation that renders a statute (or any part or language thereof) inoperative, nonsensical, or superfluous, or that defies rationality is absurd. *Dupigny*, 66 V.I. at 440 (citing *United States v. Fontaine*, 697 F.3d 221, 228 (3d Cir. 2012)).

¶54 Further, penal statutes are to be interpreted and construed strictly, but “they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptance, or in that sense in which the legislature obviously used them, would comprehend. The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction.” *Wiltberger*, 18 U.S. at 95-96; *see also Ward v. People*, 58 V.I. 277, 287 (V.I. 2013) (citing *People v. Henley*, 1 V.I. 397, 398

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<sup>23</sup> I take a moment to recognize the truly unique situation presented here. Congress, in its 1984 amendments to the 1954 Act, *post* at A-96-A-97, specifically provided that the District Court “shall have general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands.” 48 U.S.C. § 1612(b). By doing this, Congress gave the Legislature the authority to terminate the jurisdiction of the District Court. As such, any understanding of the jurisdiction of the District Court must be understood by reference to the changes in the jurisdiction of the Superior Court. *See Gov’t of the V.I. v. Rodriguez*, 423 F.2d 9, 11-12 (3d Cir. 1970) (quoting 1 BISHOP, NEW CRIM. L. § 291b, p. 165 (8th ed. 1892)).

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(D.V.I. 1937)); *Sonson v. People*, 599 V.I. 590, 608 (V.I. 2013). If a penal statute is ambiguous, that ambiguity must be resolved in favor of lenity to the criminal defendant. *Ward*, 58 V.I. at 286-87 (explaining the “rule of lenity”); see also *United States v. Enmons*, 410 U.S. 396, 411 (1973). Specifically, only when a statute is genuinely susceptible to two (or more) constructions, can the statute be said to be ambiguous. What is more, “[t]he rule of lenity applies only if, ‘after seizing everything from which aid can be derived,’ . . . we can make ‘no more than a guess as to what [the legislature] intended.’” *Wells*, 519 U.S. at 499 (quoting *Reno v. Koray*, 515 U.S. 50, 65 (1995); and citing *Smith v. United States*, 508 U.S. 223, 239 (1993); *Lardner v. United States*, 358 U.S. 169, 178 (1958)).

¶55 That being said—and as much as these rules tend to invite lawyers and judges to misadventure in the application of the rules and canons of construction—the failure to define a term does not *ipso facto* mean a statute is ambiguous.<sup>24</sup> Therefore, prior to venturing into considerations of legislative history and comments of legislators in the debates prior to the adoption of a given piece of legislation, determination of the plain meaning of any statute begins

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<sup>24</sup> Regarding a failure to define a term and ambiguity in interpretation, see generally *Jones v. United States*, 526 U.S. 227, 239 (1999) (“[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.” (citations omitted)); *United States v. Harriss*, 347 U.S. 612, 618 (1954) (Similarly, if the “general class of offenses can be made constitutionally definite by a reasonable construction of the statute, this Court is under a duty to give the statute that construction.”); *Almendarez-Torres*, 523 U.S. at 238 (“However, the doctrine of constitutional doubt—that doctrine of statutory construction requiring courts to adopt a constitutional interpretation of a statute when the language is susceptible to such construction and all aides in determining the meaning of the statute leave only a guess as to which of the possible interpretations was intended by the legislature to adopt the constitutional interpretation—should only be applied when a statute is “genuinely susceptible to two constructions after, and not before, its complexities are unraveled. Only then is the statutory construction that avoids the constitutional question a ‘fair’ one.”).

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with, indeed, requires a thorough consideration of, first, the statutory language, *i.e.*, a consideration of the definitions of the words used.<sup>25</sup>

¶56 Clarification of the intended meaning of words and phrases that may be necessary is gleaned from other linguistic indicators such as subject matter, context,<sup>26</sup> structure, and placement, and a word's meaning is "construed according to the common and approved usage of the English language." *Dupigny*, 66 V.I. at 440 (citing *Almendarez-Torres*, 523 U.S. at 228); *Miller v. Sorenson*, 67 V.I. 861, 871 (V.I. 2017) (quoting 1 V.I.C. § 42; and citing *Ubiles*, 66 V.I. at 591).

If such application of the relevant definitions of the actual statutory language leaves the need for further clarification, history of amendments, the statutory design, the object of and policy

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<sup>25</sup> Even in distinguishing whether a statute is a criminal punishment or a regulatory sanction, legislative labels do not control, as the focus is on the actual content of the statute, the language used; and a statute nominally entitled a civil penalty may be subject to the same statutory construction and constitutional due process restrictions that any other criminal statute would be subject. *United States v. Salerno*, 481 U.S. 739, 747 (1987) ("To determine whether a restriction on liberty constitutes impermissible punishment or permissible regulation, we first look to legislative intent. *Schall v. Martin*, 467 U.S. [253,] 269 [(1984)]. Unless Congress expressly intended to impose punitive restrictions, the punitive/regulatory distinction turns on 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable to it, and whether it appears excessive in relation to the alternative purpose assigned [to it].'" (citation omitted)).

<sup>26</sup> "Legislative history," in its broadest conceptual sense, and the common law, *see* U.S. CONST. amend. IX ("In suits at common law, . . . the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined . . . than according to the rules of the common law."), inform, that is "provide context," for choosing among definitions of elastic words. When engaging in statutory interpretation, the court must first gain context. *See Bean*, 80 Mass. at 53 ("We are first to ascertain, by a careful examination of the statute, what act the legislature had in view, and intended to make penal, and then see if that act, thus ascertained, is charged in the complaint or indictment. If there is nothing in the context or in other parts of the statute, or in statutes *in pari materia*, to control or modify the sense and meaning of the terms in which the offence is defined, then it may be presumed that the terms in the complaint are used in the same sense with those in the statute, and whatever that prohibits the complaint charges. In such a case, the offence may be described and charged in the words of the statute. Otherwise, it may be necessary to frame the complaint in such terms as to designate the offence intended with precision."). However, at the outset of such a statutory analysis, any reference to such sources is used for the specific and limited purpose of providing context to enable the court to, *inter alia*, choose which of many definitions of a given word in a given statute is appropriate, not for the purpose of giving meaning to the entire statute and, thus, ignoring the statute's plain language. *See generally Rodriguez*, 423 F.2d at 11-12 ("A statute is simply a fresh particle of legal matter dropped into the previously-existing ocean of law. It is subject to all the old attractions, and the old winds and lunar influences, precisely as were the several particles of the ocean before. Or, to speak without a metaphor, the new statutory rule is to be limited, extended, and governed by the same common-law principles, and to the same extent, as were the common-law rules themselves before the statute was passed." (quoting 1 BISHOP, NEW CRIM. L. § 291b, p. 165 (8th ed. 1892))).

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underlying the statute, and other matters of legislative history are to be considered. *Crandon*, 494 U.S. at 158; e.g., *Heyliger v. People*, 66 V.I. 340, 354-56 (V.I. 2017) (reviewing the history of amendments of a statutory provision after considering the text of the statute when determining the meaning of items in a series where the serial comma, also called the Oxford comma, was omitted).

¶57 Courts presume the legislature “incorporates the common-law meaning of the terms it uses if those ‘terms . . . have accumulated settled meaning under . . . the common law.’” *Wells*, 519 U.S. at 491 (citations omitted).<sup>27</sup> Likewise, when statutory language utilizes “elastic” words, i.e., words with several and varying definitions, the meaning of these words is gleaned from the context and surrounding language. *Lopez*, 60 V.I. at 537-38. Additionally, “[w]hen the Virgin Islands Legislature adopts a statute that is identical or similar to one in effect in another state, Virgin Islands Courts will typically adopt the original jurisdiction’s construction of the statute prevailing at the time of its adoption.” *Rivera-Moreno v. Gov’t of the V.I.*, 61 V.I. 279, 295-96 (V.I. 2014) (citing *Chinnery v. People*, 55 V.I. 508, 519 n.6 (V.I. 2011); *Bryan*, 61 V.I. 416)). Even absent evidence that the Legislature adopted a statute from a specific jurisdiction, decisions from jurisdictions interpreting statutes with like purposes and similar language are considered persuasive. *Id.* at 296.

¶58 Words and phrases defined by statute must be applied first when determining the meaning of the plain language of the statute, and in the instance of a legislature’s failure to provide a

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<sup>27</sup> Cf. *United States v. Gypsum Co.*, 438 U.S. 422, 436 (1978) (“We start with the familiar proposition that ‘[t]he existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.’” (citations omitted)); *Morissette v. United States*, 342 U.S. 246, 251-52 (1952) (“Crime, as a compound concept, generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand, was congenial to an intense individualism and took deep and early root in American soil. As the state codified the common law of crimes, even if their enactments were silent on the subject, their courts assumed that the omission did not signify disapproval of the principle but merely recognized that intent was so inherent in the idea of the offense that it required no statutory affirmation. Courts, with little hesitation or division, found an implication of the requirement as to offenses that were taken over from the common law.”).

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definition by statute, any commonly understood, specific legal or technical meaning must be utilized, failing which the words of the statute are given their commonly understood, “Dictionary Meaning.” *Wells*, 519 U.S. at 491; *Ubiles*, 66 V.I. at 594 (citing 1 V.I.C. § 42); e.g., *Mahabir v. Heirs of George*, 63 V.I. 651, 660 (V.I. 2015); *Cascen v. People*, 60 V.I. 392, 403 (V.I. 2014); see also 1 V.I.C. §§ 41-42. Words in singular form include the plural, words of masculine gender include the feminine, and words in present tense include the future tense, and vice versa. 1 V.I.C. § 41.<sup>28</sup> Beyond basic admonitions such as the foregoing, the focus when determining the exact relevant meaning of a given word must be on the context, structure, placement, and other linguistic indicators in the statute. *Ubiles*, 66 V.I. at 590; e.g., *Gilbert*, 52 V.I. at 356 (discussing the legal effect of the grammatical meaning of an adjective).

¶59 To interpret an undefined word or phrase according to its plain meaning—that is to say, to give the word its relevant meaning in context—requires that, first, the words of the relevant provision be read in the common understanding of the average person from whose lexicon the language is taken. *United States v. Bhagat Singh Thind*, 261 U.S. 204, 209 (1923) (“The words of the statute are to be interpreted in accordance with the understanding of the common man from whose vocabulary they were taken.” (citing *Maillard v. Lawrence*, 57 U.S. (16 How.) 251, 261 (1853)).<sup>29</sup> It should be noted that, generally, “the location of a provision within the Code is not

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<sup>28</sup> Likewise, Congress has provided that “in determining the meaning of any act” “words importing the singular include and apply to several persons, parties, or thing,” “words importing plural include the singular,” words importing the masculine gender include the feminine,” “words in the present tense include the future,” and “the words ‘person’ and ‘whoever’ include corporations, companies, associations, firms, partnerships, societies, and joint stock companies.” 1 U.S.C. § 1; see also 1 V.I.C. §§ 41 (defining person and whoever), 43 (providing that words granting authority to three or more people must be construed as giving authority to a majority of them).

<sup>29</sup> Cf. *Screws v. United States*, 325 U.S. 91, 99 (1945) (Rutledge, concurring) (“[Defendants] were not puzzled to know for what they were indicted, as their proof and their defense upon the law conclusively show. They simply misconceived that the victim had no federal rights and that what they had done was not a crime within the federal power to penalize. That kind of error relieves no one from penalty.” (footnote omitted)).

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determinative, and . . . [location] should not defeat an otherwise clear and substantive provision which may have simply been assigned to an improper Title.” *Knowles v. Knowles*, 354 F. Supp. 239, 243-44 (D.V.I. 1973) (citing 1 V.I.C. § 44); *see also* 1 V.I.C. § 45 (identifying what is not part of the law even though contained in the Code, such as descriptive headings or catchlines except that section numbers are part of the law).<sup>30</sup> That being said, though a provision’s location within a code or a section’s heading in a statute are precluded from being dispositive of the interpretation, this limitation should not be employed as a tool of statutory interpretation that would require a provision of any statute to be read contrary to its legislative intent. *Todman v. Todman*, 13 V.I. 599, 606 n.4 (D.V.I. 1977). Rather, the various provisions governing interpretation make clear that statutes are to be read so as to fully effect the legislative intent, and the headings, location, etc. are guides in determining legislative intent that may provide clarity to otherwise ambiguous statutory language and enable the court to determine the plain meaning of a statute. *Strathearn S.S. Co. v. Dillon*, 252 U.S. 348, 354 (1920); *United States v. Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805); *Cornell v. Coyne*, 192 U.S. 418, 430 (1904); *see also Rohn*, 57 V.I. at 646 n.7; *see generally, e.g.*, 1 V.I.C. §§ 44-45.

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<sup>30</sup> *First Am. Dev.*, 55 V.I. at 603 (“Headings and titles are not meant to take the place of the detailed provisions of the text. Nor are they necessarily designed to be a reference guide or synopsis. Where the text is complicated and prolific, headings and titles can do no more than indicate the provisions in a most general manner; to attempt to refer to each specific provision would often be ungainly as well as useless. As a result, matters in the text which deviate from those falling within the general pattern are frequently unreflected in the headings and titles. Factors of this type have led to the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text. . . . For interpretive purposes, they are of use only when they shed light on some ambiguous word or phrase. They are but tools available for resolution of a doubt. But they cannot under or limit that which the text makes plain.” (quoting *Brotherhood of R.R. Trainmen v. Balt. & Ohio R.R.*, 331 U.S. 519, 528-29 (1947); and citing *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008); *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998)); *e.g.*, *Najawicz*, 52 V.I. at 324-25 (applying this principal to the headings of section 33 of title 4); *see generally* 1 V.I.C. § 44 (The organization of the V.I. Code is “made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction shall be drawn therefrom.”).

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¶60 Having set forth the law relevant to subject matter jurisdiction and thoroughly elucidated the general rules of statutory interpretation, I now address the Plain Meaning of subsection 22(a) of the 1954 Act, 48 U.S.C. § 1612(a).

**C. The Exclusive “Income Tax Jurisdiction” of the District Court Under Section 22 of the 1954 Organic Act, as Amended**

¶61 It must first be recognized that this matter presents for consideration an amendment of a grant of jurisdiction, as the present version of subsection 22(a) of the 1954 Act was a substitution of the previous version of section 22 added in 1984, *post* at A-96-A-97, and when a court is granted jurisdiction, absent express repeal, that jurisdiction will not be interpreted to have been rescinded by a subsequent grant of similar jurisdiction to another tribunal or agency. *Crooke*, 54 V.I. at 246 (“When jurisdiction is once granted it will not be deemed to have been taken away by similar jurisdiction grant to another tribunal unless the statute is repealed.” (quoting 3A SUTHERLAND, STATUTORY CONSTRUCTION § 67:3)). If faced with the task of interpreting statutes providing time limits and other limitations that could be understood to limit a court’s jurisdiction, its very power to act, statutory requirements should only be held to be jurisdictional if there is a clear indication the legislature intended the statutory provision to operate as a limitation on the court’s adjudicatory capacity—the jurisdictional intent must be clear. *First Am. Dev. Group/Carib, LLC v. WestLB AG*, 55 V.I. 594, 602 (V.I. 2011) (quoting *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011)); *Brooks v. Gov’t of the V.I.*, 58 V.I. 417, 424 (V.I. 2013) (citing *Henderson*, 526 U.S. at 435-36). Determining jurisdictional intent requires that the statutory language be considered for the meaning of the express text in light of the context in which it is located and relevant historical treatment. *Brady v. Cintron*, 55 V.I. 802, 815 (V.I. 2011). When there is no clear label, then courts consider the structure of the statute and whether long-standing judicial precedent “compels the

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conclusion” that the statute imposes a jurisdictional limit. *Id.* If the express language unambiguously prescribes the jurisdictional limits, no further inquiry is necessary. *Id.*

¶62 The relevant portion of subsection 22(a) of the 1954 Organic Act provides as follows:

- (a) The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and that of a bankruptcy court of the United States. The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. . . .

48 U.S.C. § 1612(a) (emphases added). As originally enacted, section 22 of the 1954 Act provided that the District Court had “general original jurisdiction” over breaches of laws enacted by the Legislature “exclusive jurisdiction over which is not conferred by this Act upon” the Superior Court. *Post* at A-95-A-96. This language did not change with the amendment in 1978. *Post* at A-96. Then, effective January 3, 1985, section 22 was amended to provide three new subparts. *Post* at A-96-A-97. In subsection 22(b), Congress provided that the District Court was to have general original jurisdiction over all causes arising under Virgin Islands law “the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands.” *Post* at A-97. Simultaneously, Congress, in subsection 22(a), provided for the District Court to “have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands . . . .” *Post* at A-96. It is the legal interaction of these two provisions that must be considered when determining the plain meaning of subsection 22(a) and ultimately the scope of the subject matter jurisdiction of the District Court—also, by implication, the subject matter jurisdiction of the Superior Court.

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¶63 The first clause of subsection 22(a) plainly grants to the District Court subject matter jurisdiction equivalent to that granted to federal courts established under Article III of the Constitution. However, the second clause of this subsection expands upon this grant of subject matter jurisdiction to include exclusive subject matter jurisdiction over proceedings, both civil and criminal and irrespective of the degree of the crime, “with respect to the income tax laws applicable to” this Territory. 48 U.S.C. § 1612(a) (emphasis added). This second grant of exclusive “Income Tax Jurisdiction” in subsection 22(a) of the 1954 Act to the District Court is then immediately qualified by an exception that prosecutions pursuant to “ancillary laws” “relating to” income tax laws “enacted by” the Legislature are not within the District Court’s grant of subject matter jurisdiction. *Id.* (emphasis added).

¶64 “Law,” the singular form of “laws,” has multiple definitions, but the definition most appropriate when such word is modified by the words “income tax” is “the set of rules or principles dealing with a specific area of the legal system.” BLACK’S L. DICT., at 900; *see also id.* (“A statute <Congress passed a law>”). Alternatively, law is said to be “A rule of conduct established by custom, agreement, or authority,” “A body of such rules,” “A piece of enacted legislation.” COMPACT AMERICAN DICTIONARY: A CONCISE DICTIONARY OF AMERICAN ENGLISH 473 (1998). A “tax” being a “monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue” and being modified with the adjective “income,” “income tax” then logically is “a tax on an individual’s or entity’s net income.” BLACK’S L. DICT., at 1497.<sup>31</sup>

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<sup>31</sup> *See generally* BLACK’S L. DICT., at 1496 (“Most broadly, the term embraces all government impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises. Although a tax is often thought of as being pecuniary in nature, it is not necessarily payable in money.”); *id.* (“‘Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs. This definition of taxes, often referred to as ‘Cooley’s definition,’ has been quoted and indorsed, or approved, expressly or otherwise, by many different courts. While this

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Income is the “money or other form of payment that one receives, usu. periodically, from employment, business, investments, royalties, gifts, and the like.” *Id.*, 778.<sup>32</sup> “Net income” is the “Total income from all sources minus deductions, exemptions, and other tax reductions. Income tax is computed on net income. Also termed net earnings.” *Id.*, 779. Further, to say that a thing is “applicable” is to say that it “can be applied,” it is “appropriate” to apply. COMPACT AM. DICT., at 40. Therefore, the District Court has exclusive subject matter jurisdiction over criminal prosecutions pursuant to income tax laws taxing any person’s “net income” that are appropriately applied in the Virgin Islands and to its residents and/or citizens.

¶65 The excepting clause that follows this declaration qualifies the scope of this exclusive Income Tax Jurisdiction relating to “income tax laws applicable to” this Territory by removing from the scope of the District Court’s “Income Tax Jurisdiction” those “ancillary laws” “relating to” those laws, having been “enacted by the Legislature of the Virgin Islands,” taxing any person’s net income. To describe a law as “ancillary” is to say that it is “Supplementary, subordinate.” BLACK’S L. DICT., at 95; COMPACT AM. DICT., at 31 (“1. Subordinate. 2. Auxiliary; helping.”). To “relate” or to say something is “related” is to say that the things “have connection, relation, or reference.” COMPACT AM. DICT., at 695. So, an ancillary law relating to income taxes in the Virgin Islands is a “set of rules or principles dealing with a specific area of the legal system” that

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definition of taxes characterizes them as ‘contributions,’ other definitions refer to them as ‘imposts,’ ‘duty or impost,’ ‘charges,’ ‘burdens,’ or ‘exactions’; but these variations in phraseology are of no practical importance.” (quoting 1 THOMAS M. COOLEY, *The Law of Taxation* § 1, at 61-63 (Clark A. Nichols, 4th ed. 1924)); COMPACT AM. DICT., at 829 (“A contribution for the support of a government required of persons, groups, or businesses within the domain of that government.”); *id.*, 423 (defining “income” as “The amount of money or its equivalent received in exchange for labor or services, from the sale of goods or property, or as profit from investments.”); *id.* (defining “income tax” as “A tax levied on net income.”).

<sup>32</sup> The Supreme Court has defined income as any “accession[] to wealth, clearly realized, and over which the taxpayer has complete dominion.” *Commissioner of Internal Revenue v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955); *cf.* 26 U.S.C. § 61(a)(2).

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is “supplementary,” “subordinate,” or “helping” to controlling laws that “have connection, relation, or reference” to “the income tax enacted by the Legislature of the Virgin Islands,”<sup>33</sup> and prosecutions arising out of such laws are not within the subject matter jurisdiction of the District Court, even if they may be in some broader, tangential sense related to “income tax laws.”

¶66 Certainly, Congress’s choice to categorize the District Court’s Income Tax Jurisdiction as exclusive demonstrates the intent that the District Court be the only court in which prosecutions for violations of criminal income tax laws be prosecuted in the Virgin Islands. Furthermore, the phrase “income tax laws applicable to the Virgin Islands” plainly includes the “Mirror Tax Code,” created when Congress passed the Naval Services Appropriation Act of 1939 making the federal Internal Revenue Code applicable to the Virgin Islands. 48 U.S.C. § 1397 (1984); *e.g.*, *Vitco, Inc. v. Gov’t of the V.I.*, 560 F.2d 180, 185 (3d Cir. 1977); *Chicago Bridge & Iron Co. v. Wheatley*, 430 F.2d 973, 977 (3d Cir. 1970).

¶67 However, Congress chose the expansive language of “applicable to” rather than saying income tax laws “of the Virgin Islands” or “enacted by the Virgin Islands” or utilizing language specifically stating that exclusive jurisdiction existed over “all income tax prosecutions arising from or conflicting with the provisions of the Internal Revenue Code made specifically applicable to the Virgin Islands.” This indicates a legislative expectation of future implementation of income taxes by the Legislature. In light of this choice of language, the plain legislative intent underlying the exclusive Income Tax Jurisdiction granted to the District Court was to make that court the exclusive court in which all matters applying income tax laws in the Virgin Islands are to be heard.

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<sup>33</sup> BLACK’S L. DICT., at 567 (defining enact as “to make into law by authoritative act; to pass <the statute was enacted shortly before the announced deadline>.”); *id.*, 900 (“enacted law” “law that has its source in legislation”); COMPACT AM. DICT., at 280 (“To make (a bill) into law.”).

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¶68 In contrast, a “gross-receipts tax” is “a tax on a business’s gross receipts, without deduction for costs of goods sold, or allowance for expenses or deductions.” BLACK’S L. DICT., at 1497; *see also id.* (defining “gross receipts” as “the total amount of money or other consideration received by a business taxpayer for good sold or services performed in a year, before deductions.” (citing 26 U.S.C. § 448; C.F.R. § 1.448-IT(f)(2)(iv))). By comparison, an “income tax” is a tax on “net income,” which is the “total income from all sources minus deductions, exemptions, and other tax reductions. Income tax is computed on net income. Also termed net earnings.” *Id.*, 779. To say that a gross-receipts tax, a tax on the total amount of money earned prior to deductions, is an “income tax,” a tax on income after appropriate deductions, applicable to the Virgin Islands is to stretch and expand the language of the statute beyond its intent and beyond its breaking point.

¶69 While the gross-receipts tax relates to income in the broadest general sense, the Virgin Islands gross receipts tax does not implement a tax on net income and does not attempt to supplement the Mirror Tax Code enacted by Congress, a situation that would give rise to the need for the District Court to uniformly apply the laws passed by the Legislature so as to avoid conflicts between those laws and the Mirror Code. Simply, a gross-receipts tax is not an income tax applicable to, or enacted by, the Virgin Islands. The tax in question is not an income tax and does not relate to or bear on the application of the Mirror Code (or any other “income tax” provision); this prosecution falls outside the District Court’s exclusive Income Tax Jurisdiction provided for in subsection 22(a) of the 1954 Act. As such, the Superior Court, acting pursuant to the authority

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granted it by the Legislature, *e.g.*, 4 V.I.C. § 76(b), validly exercised subject matter jurisdiction over this prosecution, and the judgment and commitment is not void.<sup>34</sup>

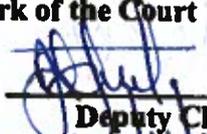
## II. CONCLUSION

¶70 Because I conclude the Superior Court properly exercised subject matter jurisdiction in this case and agree with the conclusions of the majority as to Willis's other challenges, I join the majority in affirming the convictions. However, because the purpose of the rules and canons of interpretation is to provide a singular method of coming to an understanding of enactments of the Legislature so as to avoid widely varying conclusions among different judges and courts, I write separately. In statutory interpretation, the ends do not justify the means.

Dated this 11th day of July, 2019

  
IVE ARLINGTON SWAN  
Associate Justice

ATTEST:  
VERONICA J. HANDY, ESQ.  
Clerk of the Court

By:   
Deputy Clerk II

Dated: 7/11/19

<sup>34</sup> Having considered the language as written—and as used in context—had there been any ambiguity to the statute, I would next consider the history of amendments to this section. *E.g., Heyliger*, 66 V.I. at 354-56. As I have already concluded that the language of the statute is dispositive, I simply note that the history of amendment further supports the conclusion that a gross-receipts tax is not an income tax within the meaning of subsection 22(a). *See post* at A-95-A-97.

**Appendix A**  
**VIRGIN ISLANDS JUDICIARY AND ITS JURISDICTION**

For a better understanding of the evolution of the courts of the Virgin Islands and their grants of jurisdiction, *see generally Ballentine v. United States*, Civ. No. 1999-130, 2001 WL 1242571, at \*1-4 (D.V.I. Oct. 15, 2001) (unpublished) (discussing the courts and judicial procedure of the Virgin Islands prior to U.S. acquisition in 1917); *Clen v. Jorgensen*, 265 F.120 (3d Cir. 1920) (discussing judicial procedure and jurisdiction of courts of the Virgin Islands under the 1917 Act and the 1921 Codes); *Soto v. United States*, 273 F.628 (3d Cir. 1921) (same); *Ballentine*, 2001 WL 1242571, at \*45 (discussing judicial procedure and jurisdiction of courts of the Virgin Islands under the 1936 Act); *People v. Price*, 181 F.2d 394, 398-99 (3d Cir. 1950) (discussing judicial procedure and jurisdiction of courts of the Virgin Islands from 1925-1950); *Vooys v. Bentley*, 901 F.3d 172, 176-84 (3d Cir. 2018) (discussing judicial procedure and jurisdiction of courts of the Virgin Islands from the implementation of the 1954 Act to present, including amendments).

**1. Colonial Law for the Danish West India Islands of April 6, 1906**

[Preamble]<sup>1</sup>

By virtue of section 17 in Law of this date concerning alterations in the Colonial Law for the Danish West India Islands of 27 November 1863 We have issued the following Colonial Law for the Danish West India Islands.

Colonial Law of April 6, 1906, *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution, at 1 (1995 & Supp. 2018) (preceding V.I. CODE ANN. tit. 1).

Section 67.

The Common and Statute Law of Denmark shall as hitherto be applicable in the colonies, as more accurately defined by the Laws and Ordinances.

*Id.* at 22.

Section 68.

The exercise of the Judiciary Authority can only be regulated by Laws or Ordinances.

*Id.*

Section 69.

The Judges are in their calling only to be guided by the Laws. They cannot be dismissed except by a judgment; neither can they be removed against their wish, except in such cases where an alteration of the Courts of Justice be effected, or where they are also entrusted with administrative duties. A Judge who has attained his 65<sup>th</sup> year may, however, be dismissed, but without loss of his income.

*Id.*

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<sup>1</sup> *See generally* BLACK'S LAW DICTIONARY 1294 (9th ed. 2009) ("An introductory statement in a constitution, statute, or other document explaining the document's basis and objective").

Section 73.

Every person who is apprehended for any breach of the Laws shall within 24 hours after his apprehension be brought before a Judge. If it be found that the person apprehended cannot immediately be discharged or released, the Judge shall give an award, deciding whether the person is to be imprisoned or if he may be released on bail, stating the nature and amount of bail; this award shall be given as soon as possible, at the farthest within 3 days after the apprehension, and shall be accompanied by a statement of the reasons on which it is based.

The award passed by the Judge can immediately and separately be appealed by the party concerned to a court of higher instance. The appeal shall be prosecuted in the manner as a private suit, with summons, however, as for an extra-court, and the plaintiff shall be exempted from using stamp-paper as well as from paying court-fees. He must be given an opportunity to consult a lawyer regarding such an appeal, and fresh evidences may be produced in the Upper Court.

No one can be committed to custody for an offence that could only warrant punishment by fines of simple imprisonment.

*Id.* at 23.

Section 74.

The dwelling is inviolable. House-inquisition, seizure and examination of letters and other papers, can where no Law or Ordinance warrants special exception, only be effected in virtue of a warrant emanating from a Court of Justice.

*Id.*

**2. Treaty of Acquisition**

Article 6.

Danish citizens residing in said islands may remain therein or may remove therefrom at will, retaining in either event all their rights of property, including the right to sell or dispose of such property or its proceeds; in case they remain in the Islands, they shall continue until otherwise provided, to enjoy all the private, municipal and religious rights and liberties secured to them by the laws now in force. If the present laws are altered, the said inhabitants shall not thereby be placed in a less favorable position in respect to the above mentioned rights and liberties than they now enjoy. Those, who remain in the islands, may preserve their citizenship in Denmark by making before a court of record, within one year from the date of the exchange of ratifications of this convention, a declaration of their cession to preserve such citizenship; in default of which declaration they shall be held to have renounced it, and to have accepted citizenship in the United States; for children under

eighteen years the said declaration may be made by their parents or guardians. Such election of Danish citizenship shall however not, after the lapse of the said term of one year, be a bar to their renunciation of their preserved Danish citizenship and their election of citizenship in the United States and admission to the nationality thereof on the same terms as may be provided according to the laws of the United States, for other inhabitants of the islands.

Convention Between the United States and Denmark for Cession of the Danish West Indies, U.S.-Den., Aug. 4, 1916, 39 Stat. 1706, T.S. No. 629 (Jan. 25, 1917), *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution, at 31 (1995 & Supp. 2018) (preceding V.I. CODE ANN. tit. 1).

Article 7.

Danish subjects residing in the Islands shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the Islands, pursuant to the ordinary laws governing the same, and they shall have the right to appear before such courts, and to pursue the same course therein as citizens of the country to which the courts belong.

The civil rights and the political status of the inhabitant of the island shall be determined by Congress, subject to the stipulations contained in the present convention.

Danish citizens not residing in the islands but owning property therein at the time of the cession, shall retain their rights of property, including the right to sell or dispose of such property, being placed in this regard on the same basis as the Danish citizens residing in the islands and remaining therein or removing therefrom, to whom the first paragraph of this article relates.

*Id.* at 32.

**3. The Organic Act of the Virgin Islands- 1917 Act of Temporary Governance**

[Section 1.]

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That, except as hereinafter provided, a military, civil, and Judicial powers necessary to govern the West Indian Islands acquired from Denmark shall be vested in a governor and in such person or persons as the President may appoint, and shall be exercised in such manner as the President shall direct until Congress shall provide for the government of said islands: *Provided*, That the President may assign an officer of the Army or Navy to serve as such governor and perform the duties appertaining- to said office: *And provided further*, That the governor of the said islands shall be appointed by and with the advice and consent of the Senate: *And provided further*, That the

compensation of all persons appointed under this Act shall be fixed by the President.

Act of March 3, 1917, Pub. L. No. 380, § 1, 39 Stat. 1132, 1132, *repealed by* Act of Sept. 6, 1966, Pub. L. No. 89-554, § 8(a), 80 Stat. 378, 632, 643.

**Section 2.**

That until Congress shall otherwise provide, so far as compatible with the changed sovereignty and not in conflict with the provisions of this Act, the laws regulating elections and the electoral franchise as set forth in the code of laws published at Amalienborg the sixth day of April, nineteen hundred and six, and the other local laws, in force and effect in said islands on the seventeenth day of January, nineteen hundred and seventeen, shall remain in force and effect in said islands, and the same shall be administered by the civil officials and through the local judicial tribunals established in said islands, respectively; and the orders, judgments, and decrees of said judicial tribunals shall be duly enforced. With the approval of the President, or under such rules and regulations as the President may prescribe, any of said laws may be repealed, altered, or amended by the colonial council having jurisdiction. The jurisdiction of the judicial tribunals of said islands shall extend to all judicial proceedings and controversies in said islands to which the United States or any citizen thereof may be a party. In all cases arising in the said West Indian Islands and now reviewable by the courts of Denmark, writs of error and appeals shall be to the Circuit Court of Appeals for the Third Circuit, and, except as provided in sections two hundred and thirty-nine and two hundred and forty of the Judicial Code, the judgments, orders, and decrees of such court shall be final in all cases.

Act of March 3, 1917, Pub. L. No. 380, § 2, 39 Stat. 1132, 1132, *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution, at 40 (1995 & Supp. 2018) (preceding V.I. CODE ANN. tit. 1).

**4. Ordinance Concerning Marriages, Dec. 13, 1918**

**Section 1.**

The following marriages are prohibited in the District of St. Thomas and St. John, and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

First. The marriage of a man with his grandmother, grandfather, ... wife, wife's grandmother, father's sister, mother's sister, mother, step-mother, wife's mother, daughter, wife's daughter, son's wife, sister', son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter.

Second. The marriage of a woman with her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son's daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's son, husband daughter's son, brother's son, sister's son.

Third. The marriage of any person either of whom has been previously married and whose previous marriage has not been terminated by death or decree of divorce.

Section 2.

Any of such marriages may also be declared to have been null and void by judicial decree.

Section 3.

The following marriages in said District shall be illegal and shall be void from the time when their nullity shall be declared by decree, namely:

First. The marriage of an idiot or of a person adjudged to be a lunatic.

Second. Any marriage the consent to which of either party has been secured by force or fraud.

Third. Any marriage either of the parties to which shall be incapable, from physical causes, of entering into the married state.

Fourth. When either of the parties is under the age of consent which is hereby declared to be sixteen years of age for males and fourteen for females.

Section 4.

A proceeding to declare the nullity of a marriage may be instituted in the case of an infant under the age of consent by such infant, through a next friend, or by the parent or guardian of such infant; and in the case of an idiot or lunatic by next friend. But no such proceedings shall be allowed to be instituted by any person who, being fully capable of contracting a marriage, has knowingly and willfully contracted any marriage declared illegal by the foregoing sections.

Section 5.

If any marriage declared illegal by the foregoing sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of St. Thomas and St. John, such marriage shall be deemed illegal, and may be decreed to be void in said district, in the same manner as if it had been celebrated therein.

**5. Code of Laws of the Municipality of Saint Thomas & Saint John, Virgin Islands of the United States (1921)**

**Title I. Organization**

**Chapter I. of Courts**

Section 1. The judicial power of the Virgin Islands of the United States is hereby declared to be vested in a District Court, Police Courts and Juveniles Courts and a District Court Commissioner.

Section 2. The District Court is a court of general and original jurisdiction in all civil, criminal, admiralty, equity, insolvency and probate matters and causes, unless jurisdiction is conferred on some other court, in which event the jurisdiction of the District Court is concurrent.

Section 3. The Virgin Islands of the United States is divided into three sub-judicial districts as follows:

- (1) The Islands of St. Thomas and St. John together with the surrounding islets, rocks, cays, etc.
- (2) All that part of the Island of St. Croix now known and defined for judicial purposes as Christiansted jurisdiction.
- (3) All that part of the Island of St. Croix now known and defined for judicial purposes as Fredericksted jurisdiction.

Section 4. Three general terms of the District Court shall hereafter be called each year in each sub-judicial district at intervals not exceeding 4 months apart. The sittings of the District Court shall be held at the town of Charlotte Amalie in St. Thomas, and at the towns of Christiansted and Frederiksted in St. Croix.

The judge of the District Court is authorized and directed to hold such special terms of the District Court as may be necessary for the public welfare, or for the dispatch of business of the court in each sub-judicial district, as he may deem necessary.

At least 20 days' notice shall be given by the Judge or the Clerk of the District Court, of the time and place of holding the several general and special terms of the District Court.

Section 5. There shall be appointed by the Governor a Judge for the District Court, who shall hold office for a period of two years, and who shall be eligible for reappointment.

The salary of the District Judge shall be francs twenty-four thousand per year or the equivalent thereof in such currency as may be legal tender.

The salary of the District Judge shall be paid in equal shares from the respective Municipal Treasuries of the Municipalities of St. Thomas and St. John and St. Croix.

The duties of the District Judge are such as are provided in the Ordinances, Acts, Codes, Laws and Decrees in force in the Virgin Islands of the United States.

Section 6. There shall be appointed by the Governor a District Court Commissioner in and for the Municipality of St. Thomas and St. John, provided that no person who has power to issue a warrant of arrest shall be appointed such Commissioner.

The District Court commissioner shall have power to act, under the supervision of the Judge of the District Court in all probate, guardianship, bankruptcy and insolvency matters and may perform all the duties and exercise all the powers imposed or conferred upon the District Judge in probate, guardianship, bankruptcy and insolvency matters and may perform all the duties and exercise all the powers imposed or conferred upon the District Judge in probate, guardianship, bankruptcy and insolvency matters.

The District Court Commissioner shall also have power in the absence of the District Court Judge to grant writs of habeas corpus for the purpose of inquiring into the cause of the restraint of liberty; temporary restraining orders, and writs of arrest in civil causes; writs of attachment including attachments in admiralty; provided, however, all such writs and orders shall be returnable to the District Court Judge and like proceedings shall be had thereon, as if the same had been granted by the District Court Judge in the first instance.

The Commissioner may also review all applications and orders for bail that may be reviewable by the District Court.

The District Court Commissioner shall retain as compensation the fees earned by his office.

Section 7. Upon Recommendation of the Judge of the District Court there shall be appointed by the Governor a Clerk of the District Court.

Section 8. The Judge of the District Court, with the approval of the Governor, may appoint such deputy clerks of the District Court as from time to time may be deemed necessary for the dispatch of such business as may be necessary.

Amendment: "The Clerk of the District Court shall be ex-officio Recorder of Deeds and, as such, shall record all deeds and other instruments required or authorized by law to be recorded."

Section 9. The Clerk of the District Court is the executive of the said court and shall receive an annual salary not exceeding francs fifteen thousand or the equivalent thereof in such currency as may be legal tender. His salary shall be defrayed in equal shares by the respective Municipalities of the Virgin Islands.

Section 10. All deputy clerks of the District Court and other employees shall receive such salary as shall be fixed by annual budget.

Section 11. The Police Courts consist of three in number; one to be held at the town of Charlotte Amalie; and one to be held at the town of Christiansted; and one to be held at

Section 12. The Judge of the District Court, by and with the consent of the Governor may create such additional Police Court District as may from time to time be deemed necessary and may define the jurisdiction boundaries for such newly created sub-districts and police courts.

Section 13. The Governor shall appoint the Judges of the Police Courts, and their annual salary shall not exceed francs ten thousand five hundred each.

Section 14. In addition to the duty of administering the Police Courts, the Police Judges may be assigned to act as deputy clerks of the District Court.

Section 15. The Judge of the District Court, each Police Judge, the Clerk of the District Court and each Deputy Clerk of the District Court shall have power to take acknowledgements of deeds, and administer oaths and affirmations, and shall be notaries public.

In addition to notaries public above provided, the Governor may appoint and commission other notaries public for the District, not exceeding ten in number. Each notary public provided for in this section shall be formally commissioned and shall hold such office for a period of four years. Each additional notary public appointed by the Governor must be a citizen of the United States of the Virgin Islands and must have been a resident of the Virgin Islands for a period of five years immediately preceding his or her appointment. Every person appointed as a notary public must continue to reside within the District during the term of his office, and removal from the District shall vacate his office and is equivalent to resignation.

In no case shall it be legal for a notary public to certify, attest or take an oath for or to an instrument to which he is an interested party. Each additional notary public shall pay to the Colonial Treasury a fee of fifty dollars for such commission and thereafter on the first day of January each year an annual fee of twenty-five dollars. Upon default of payment of the annual fee and representation thereof by the Government Attorney, the Governor shall cancel such appointment.

Each additional notary public must execute an official bond in favor of the Municipality in the penal sum of two thousand five hundred dollars with two resident sureties, who being owners, within the Municipality, of real property of value of five thousand dollars over and above encumbrances thereon, or with any bonding company doing business within the Municipality, which bond must be approved by the Judge of the District Court. Each additional notary public, upon the approval of his or her official bond, and after

having taken official oath, shall transmit each bond and oath, duly signed by him or her, to the office of the Government Secretary, whereupon the Governor may issue a commission.

For the official misconduct or neglect of a notary public he or she and sureties on his or her official bond are liable to the parties injured thereby for all damages sustained. Each notary public shall keep an official record in which a memorandum of all official acts shall be noted and the Judge of the District Court is hereby authorized to inspect the official record of any notary public at any time. At the expiration of the term of office of each additional notary, his official record shall be permanently filed in office of the Clerk of the District Court.

Each notary shall keep an official impression seal bearing his name and the date of expiration of his commission.

Each additional notary shall retain the fees earned by him or her as notary public.

Section 16. That whenever the Judge of the District Court is disqualified in a particular case or unable to act by reason of illness or other cause, he shall at once notify the Governor of such fact, whereupon the Governor shall appoint a special judge to act in the particular cause or during the duration of the inability of the regular judge. Such special judge shall receive francs seventy-five per day for his services, to be defrayed out of maintenance of courts.

Section 17. In case of the disqualification of a Police Judge in a particular cause or inability to act by reason of illness or other cause, such fact shall be made know to the District Judge, who shall thereupon, either administer the Police Court or designate another person to administer such court. The compensation for a special judge to administer a Police Court shall be francs twenty-five per day to be defrayed out of maintenance of the courts.

Section 18. The Police Courts shall exercise jurisdiction, but not exclusive, in the following causes:

- (1) For the recovery for specific personal property, when the value of the same does not exceed two hundred dollars;
- (2) For the recovery of money or damages when the amount claimed does not exceed two hundred dollars;
- (3) To give judgment without action upon confession of the defendant for any of the causes specified in this section.

The Police Courts shall also have jurisdiction, but not exclusive, of the following criminal cases:

- (1) Larceny when the value of the property does not exceed fifty dollars;
- (2) Assault or assault and battery not charged to have been committed with intent to commit a felony, or in the court of a

riot, or with any weapon or upon a public officer when upon duty;

- (3) Of any other misdemeanor;
- (4) Of any offense wherein jurisdiction is specifically conferred upon the Police Court;
- (5) The Judge of the Police Court shall also exercise power as a magistrate and shall be coroner.

Section 19. The jurisdiction conferred by the last section does not extend, however—

- (1) To an action in which the title to real property shall come into question;
- (2) To an action for false imprisonment, libel, malicious prosecution, criminal conversation, seduction upon a promise to marry, in actions of an equitable nature, or in admiralty causes.

Section 20. Every Court of Justice Has power—

- (1) To preserve and enforce order in its immediate presence;
- (2) To enforce order in the proceedings before it or before a person or body empowered to conduct a judicial investigation under tis authority;
- (3) To provide for the orderly conduct of proceedings before it or its officers;
- (4) To compel obedience to its judgments, orders, process, and to the orders of a judge out of court in all actions or proceedings pending therein;
- (5) To control in furtherance of justice, the conduct of its ministerial officers and other persons in any manner connected with a judicial proceeding before it in every matter appertaining thereto.
- (6) To compel attendance of persons to testify in an action or proceeding therein;
- (7) To administer oaths in an action or proceeding pending therein and in all other causes where it may be necessary in the exercise of its powers or the performance of its duties.

Section 21. For the effectual exercise of the powers specified in the last section, the court may punish for contempt in the cases and in the manner provided by law or ordinance.

Section 22. A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

- (1) In an action or proceeding to which he is a party or in which he is directly interested;
- (2) When he is related to either party by consanguinity or affinity within the third degree;
- (3) When he had been attorney in the action or proceeding for either party.

Section 23. A judge may exercise out of court all powers expressly conferred upon a judge as contra distinguished from a court, but not otherwise.

Section 24. Every judicial officer has power—

- (1) To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by law;
- (2) To compel obedience to his lawful orders;
- (3) To compel the attendance of persons to testify in a proceeding pending before him;
- (4) To administer oaths to person, in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and the performance of his duties.

Section 25. For the effectual exercise of the powers conferred in the last section, a judicial officer may punish for contempt in the cases and in the manner provided by law.

Section 26. The sittings of every court of justice are public, except as provided in this section. Upon agreement of the parties to a civil proceeding or action, filed with the clerk or entered upon the journal, the court may direct the trial of an issue of law or fact or any other proceeding therein to be private; and upon such order being made all persons shall be excluded except the officers of the court, parties, their witnesses and counsel.

Section 27. The Judge of the District Court may from time to time promulgate rules of court, for the government of the courts, provided such rule shall not be in conflict with any specific law or ordinance.

Section 28. The Governor shall by executive order, prescribe the fees to be charged by the law courts, sheriffs, notaries and peace officers during the period of one year after this ordinance shall come into force and at the end of the period of one year, the schedule of fees so being charged by the law courts, sheriff, peace officers and notaries shall be submitted to the respective Colonial Councils for final ratification or amendment by the said Councils.

Section 29. There is hereby established in this District a Juvenile Court and each Police Judge shall be ex officio judge of a Juvenile Court, and shall have such powers as are hereinafter provided.

Section 30. Each Juvenile Judge shall have power to commit to a reform school, orphan asylum, to any other public or charitable institution, or the Board of Child Guardians, within the District, any child under sixteen years of age for an indeterminate period not exceeding the time he shall have arrived at the age of eighteen years for the following causes:

- (1) All children who are destitute of suitable homes and adequate means of earning an honest living;

- (2) All children abandoned by their parents or guardians;
- (3) All children living with or in the care of habitually drunken, vicious, or ...persons;
- (4) All children kept in vicious or immoral associations;
- (5) All children habitually begging or receiving alms;
- (6) All children known by their language or life to be vicious or incorrigible.

Section 31. The Juvenile Courts shall have power to hold to answer to the District Court, any juvenile charged with a felony, said juvenile to be sentenced, by said District Court, to a reform school; also to arrange for the temporary care of such juveniles, pending investigation or judgment by the court.

Section 32. There is hereby created in and for each Municipality in the Virgin Islands, a board to be known as "The Board of Children's Guardians," composed of the Government Attorney, the Director of Police and one woman citizen of such Municipality, to be appointed by the Governor. Each of said Board of Children's Guardians shall elect a Chairman and Secretary, and shall have power to conclude arrangements with persons and institutions for the care of dependent children.

Section 33. That the said Board of Children's Guardians shall be the legal guardian of all children committed by the Juvenile Courts, and shall have full power to board them in private families, or in institutions willing to receive them; to bind them out of apprentice them; or give them in adoption to foster parents.

Section 34. The Judge of the Juvenile Courts shall hear and examine all cases relating to children as herein provided on the complaint of any parent, guardian, school teach or any other reliable person.

Section 35. Hereafter the Police Judge shall succeed to the various commissions or boards of which the Judge of the Ordinary Town Court or Police Master is or was a member, and each Police Judge shall act as coroner within his district.

Section 36. This ordinance, when enacted and promulgated shall, for reference purposes, constitute and be known as Chapter One of Title Once of an Ordinance entitled "Ordinance establishing and declaring the Organization of the Judiciary and Education Departments of the Virgin Islands, etc." which was enacted by the Colonial Council of St. Thomas and St. John 20 May, 1920, and sanctioned and approved 17 March, 1921.

Section 37. Chapters One and Three of the Ordinance referred to in Section 36 and the laws and ordinances, pertaining to the Judiciary, in conflict with this act are hereby repealed.

**Ordinance to Control Juvenile Delinquency and to Authorize the Establishment of Juvenile Schools in the Municipality of St. Thomas & St. John, Feb. 26, 1941.**

Section 1.

Children of school age without written excuse of proper authority found on the public streets, roads or places, unaccompanied by parent or guardian, during school hours on days when the schools are in session, shall be taken to the office of the Department of Education and there held until released by order of the Superintendent of Education, or his duly authorized representative.

Section 2.

The Governor is hereby authorized to establish Juvenile Schools, which shall be under the jurisdiction of a Board of Management, hereby created constituting of three members appointed by the Governor by and with the advice and consent of the Municipal Council. The term of office shall be two years and until their successors shall be appointed and qualified.

Section 3.

Juvenile Schools shall receive and institutionalize such juvenile delinquents as may be committed to it by the District Court, the Police Court, the Juvenile Court, or the Board of Children's Guardians, or upon application of a parent or guardian when such application is approved by the Board of Management.

Section 4.

All juvenile committed to the Juvenile School shall remain in custody until arriving at the age of 18 years, unless paroled by order of the Governor, upon recommendation of the Board of Management.

Section 5.

The Superintendent of Education shall provide such instruction as may be prescribed by the Board of Management for the students of the Juvenile Schools, provided that instruction in manual and industrial arts shall be emphasized in order to provide practical education which will enable its students to earn their own livelihood.

Section 6.

With the advice of the Board of Management, the Governor shall promulgate rules and regulations for the conduct and operation of the Juvenile Schools.

Section 7.

That Title 1, Chapter 1, Section 31 of the Code of Laws for the Municipality of St. Thomas and St. John is hereby amended to read as follows:

"Section 31. The Juvenile Court shall have jurisdiction of all offense committed by juveniles. For the purpose of this section a

juvenile is a child under 16 years of age. A special day each week shall be designated by the Police Judge for the trial of such juvenile cases. The public shall be excluded from the courtroom.”

All laws or parts thereof in conflict with this section are hereby repealed.

**Section 8.**

The employment of children under the age of 16 years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited. Violation of this section shall constitute a misdemeanor.

St. Thomas & St. John, U.S.V.I., Ordinance to Control Juvenile Delinquency and to Authorize the Establishment of Juvenile Schools in the Municipality of St. Thomas & St. John (Feb. 26, 1941).

**Title III Civil Procedure**

**Chapter One. Of the Forms of Action**

Section 1.—There shall be no distinction between Actions at Law and Suits in Equity and the forms of all such actions and suits, and, there shall be but one form of action for the enforcement or protection of private rights and the redress or prevention of private wrongs, which shall be denominated a civil action.

Section 2.—In such actions the party complaining shall be known as the plaintiff and the adverse party as the defendant.

**Chapter Two. Of the Time of Commencement of Civil Actions**

Section 1.—Civil actions shall only be commenced within the periods prescribed in this title after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute. But the object that the action was not commenced within the time limited shall only be taken by answer or demurrer.

Section 2.—The periods prescribed in the preceding section for commencement of actions shall be as follows:

(A) Within twenty years,—

First. Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it shall appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within twenty years before the commencement of the action: Provided, In all cases where a cause of action has already accrued, and the period prescribed in this section within which an action may be brought has expired or will expire within twenty years from the approval of this act, an action may be brought on such cause of action within two years from date of the approval of the act.

Second. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States.

Third. An action upon a sealed instrument.

(B) Within six years,—

First. An action upon a contract or liability, express or implied, excepting those mentioned in (A Third) of this section.

Second. An action upon a liability created by statute, other than a penalty or forfeiture.

Third. An action for waste or trespass upon real property.

Fourth. An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof.

(C) Within three years,—

First. An action against a sheriff, peace officer or coroner, upon a liability incurred by the doing of an act in his official capacity or in virtue of his office; or by the omission of an official duty, including the nonpayment of money collected upon an execution. But this action shall not apply to an action for an escape.

Second. An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the People or Municipality, except where the statute imposing it prescribes a different limitation.

(D) Within two years,—

First. An action for libel, slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on contract and not herein especially enumerated.

Second. An action upon a statute for a forfeiture or penalty.

(E) Within one year,—

An action against the sheriff, peace officer, or other officer for the escape of a person arrested or imprisoned on civil process.

Section 3.—An action for any cause not herein provided for shall be commenced within ten years after the cause of action shall have accrued.

Section 4.—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 shall be deemed to have accrued from the last item proved in the account on either side.

Section 5.—The limitations prescribed in this chapter shall apply to actions brought in the name of any public corporation in the district, or for its benefit, in the same manner as to actions by private parties.

Section 6.—An action shall be deemed commenced when the complaint is filed and the summons issued.

Section 7.—If, when the cause of action shall accrue against any person who shall be out of the district or concealed therein, such action may be commenced within the terms herein respectively limited, after the return of such person into the district or the time of his concealment; and if, after such cause of action shall have accrued, such person shall depart from and reside out of the district, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

Section 8.—If any person entitled to bring an action mentioned in this chapter, or to recover real property or for a penalty or forfeiture, or against a sheriff or other peace officer for an escape, be at the time the cause of action accrued, either,—

First. Within the age of twenty-one years; or

Second. Insane; or

Third. Imprisoned on a criminal charge, or in execution under sentence of a court for a term less than his natural life.

The time of such disability shall not be a part of the time limited for the commencement of the action, but the period within which the action shall be brought shall not be extended in any case longer than two years after such disability ceases.

Section 9.—If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his personal representatives, after the expiration of the time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representatives after the expiration of that time, and within six months after the issuing of letters testamentary or of administration.

Section 10.—When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Section 11.—No person shall avail himself of a disability unless it existed when his right of action accrued.

Section 12.—When two or more disabilities shall exist at the time the right of action accrues the limitation shall not attach until all such disabilities are removed.

Section 13.—No acknowledgement or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged

thereby; but this section shall not alter the effect of any payment of principal or interest.

Section 14.—Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be a bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Section 15.—When the cause of action has arisen in any State, Territory, or country between nonresidents of this District, and by the laws of the State, Territory, or country where the cause of action arose an action can not be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in the District.

### **Chapter Three. Of the Parties to Actions**

Section 1.—Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in section three of this chapter; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of contract.

Section 2.—In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any setoff or other defense existing at the time of or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon valuable consideration before due.

Section 3.—An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is a trustee of an express trust within the meaning of this section.

Section 4.—A wife may receive the wages of her personal labor, and maintain an action therefor in her own name and hold the same in her own right, and she may prosecute and defend all actions for the preservation and protection of her rights and property as if unmarried.

Section 5.—Actions may be commenced and prosecuted by infants, either by guardian or next friend, and by conservators on behalf of the person they represent.

Section 6.—In any action it shall be lawful for the court in which the action is pending to appoint a guardian ad litem to any infant or insane defendant in such action, and to compel the person so appointed to act. By such appointment such person shall not be rendered liable to pay costs of action; and he shall moreover, be

allowed a reasonable sum for his charges as such guardian, to be fixed by the court, and taxed in the bill of costs.

Section 7.—A father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the seduction of a minor daughter, and the guardian for the seduction of a ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

Section 8.—A father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the injury or death of a child, and a guardian for the injury or death of his ward.

Section 9.—An unmarried female over twenty-one years of age may maintain an action as plaintiff for her own seduction, and may recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother, or guardian, as described in section seven of this chapter last preceding, shall be a bar to an action by such unmarried female.

Section 10.—Persons, firms, or corporations, jointly liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action, at the option of the plaintiff.

Section 11.—No action shall abate by the death or disability of a party or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or disability of a party, the court may at any time within two years thereafter, on motion, allow the action to be continued by or against his personal representative or successor in interest.

Section 12.—An action for a wrong shall not abate by the death of any party after the decision has been given therein, but the action shall proceed thereafter in the same manner as in cases where the cause of action survives.

Section 13.—In any action for recovery of specific personal property, if a third person demand of the defendant the same property, the court, in its discretion, on motion of the defendant, and notice to such person and the adverse party, may, before answer, make an order discharging the defendant from liability to either party and substitute such person in his place as defendant. Such order shall not be made but on condition that the defendant deliver the property or its value to such person as the court may direct, nor unless it appears from the affidavit of the defendant, filed with the clerk by the day he is otherwise required to answer, that such person makes such demand without collusion with the defendant. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion.

Section 14.—All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as in this chapter otherwise provided. Any person may be made a defendant who has or claims any interest in the controversy adverse to the plaintiff or who is a necessary party to the complete determination or settlement of the question involved therein.

Section 15.—Of the parties to the action those who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined can not be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or joint interest of many person, or when the parties are numerous and it may be impracticable to bring them all into court, one or more may sue or defendant for the benefit of the whole.

Section 16.—The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court shall cause them to be brought in.

Section 17.—Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter of litigation, in the success of either of the parties or an interest in the matter of litigation, in the success of either of the parties or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding either by joined the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claim of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint setting forth the ground upon which the intervention rests, filed by leave of court and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

**Chapter Four. Of the Manner of Their Commencement**

Section 1.—Civil actions shall be instituted by filing a complaint with the clerk of the court. At any time after the action is commenced plaintiff may cause a summons to be served on the defendant.

Section 2.—The summons shall contain the name of the court in which the complaint is filed, the names of the parties to the action, and the title thereof. It shall be issued by the court or the clerk thereof and directed to the defendant, and shall require him to appear

and answer the complaint as in this section provided, or judgment for want thereof will be taken against him. The defendant shall appear and answer the complaint within twenty days from the date of the service.

Section 3.—There shall also be inserted in the summons a notice in substance as follows:

First. In any action for recovery of money damages only that the plaintiff will take judgment for a sum specified therein if the defendant fail to answer the complaint.

Second. In other actions that if the defendant fail to answer the complaint the plaintiff will apply to the court for the relief demanded therein.

Section 4.—The summons shall be served by delivering a copy thereof, together with a copy of the complaint prepared and certified by the plaintiff, his agent, or attorney, or by the clerk of the court as follows:

First. If the action be against a private corporation, to the president or other head of the corporation, secretary, cashier, or managing agent, or, in case none of the officers of the corporation above named shall reside or have an office in the District, then to any clerk or agent of such corporation who may reside or be found in the District, or if no such officer be found, then by leaving a copy thereof at the residence or usual place of abode of such clerk or agent.

Second. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs and if a guardian has been appointed, to such guardian and to the defendant personally.

Third. If against a minor to such minor personally, and also to his father, mother, or guardian, or if there be none within the District then to any person having the care or control of such minor, or with whom he resides, or in whose serve he is employed.

Fourth. In all cases, to the defendant personally, or if he is not found, to some person of the family above the age of fourteen years at the dwelling house or usual place of abode of the defendant or at the defendant's place of business to the manager thereof.

Section 6.—When service of the summons can not be made as prescribed in the last preceding section, and the defendant after due diligence can not be found within the District, and when that fact appears by affidavit to the satisfaction of the court or judge thereof, or police judge in an action in a police court, and it also appears, that a cause of action exists against the defendant, or that he is a proper party to an action relating to real or personal property in the District the court or judge thereof shall grant an order that service

be made by publication of the summons in either of the following cases:

First. When the defendant is a foreign corporation, and has property within the District, or the cause of action arose therein;

Second. When the defendant, being a resident of the District, has departed therefrom with intent to defraud his creditors or to avoid the serve of the summons, or with like intent keeps himself concealed therein, or has departed from the District and remained absent therefrom six consecutive weeks;

Third. When the defendant is not a resident of the District, but has property therein, and the court has jurisdiction of the subject of the action;

Fourth. When an action is to have a marriage declared void, or for a divorce in the cases prescribed by law;

Fifth. When the subject of the action is personal property in the District, and the defendant has a claim or lien, of interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding the defendant from an interest or lien therein;

Sixth. When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in said District, or satisfy or redeem the same. The summons published shall contain the name of the court and the title of the cause, a succinct statement of the relief demanded, and the date of the order for serve by publication, and the time within which the defendant is required to answer the complaint.

Section 7.—The order shall direct the publication to be made in a newspaper designated by the court or judge as the most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the defendant at his place of residence, unless it shall appear that such residence is neither known to the party making the application nor can with reasonable diligence be ascertained by him. When publication is ordered, personal service of a copy of the summons and complaint out of the District shall be equivalent to publication and deposit in the post office. In either case, the defendant shall appear and answer within thirty days after the completion of such period of publication. In case of personal service out of the District, the summons shall specify the time prescribed in the other for duplication.

Section 8.—The defendant against whom publication is ordered, or his personal representatives, on application and sufficient cause shown, at any time before judgment shall be allowed to defend the action; and the defendant against whom publication is ordered,

or his representatives, may in like manner, upon good cause shown, and upon such terms as may be proper, be allowed to defendant after judgment and within one year after the entry of such judgment on such terms as maybe just; and if the defense be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct. But the title to property sold upon execution issued on such judgment tot a purchaser in good faith shall not be thereby affected.

Section 9.—Whenever it shall appear by the return of the sheriff or officer that the defendant is not found, the plaintiff may deliver another summons to be served, and so on, until serve be had; or the plaintiff may proceed by publication, as in this chapter provided, at his election.

Section 10.—When the action is against two or more defendants, and the summons is served on one or more but not all of them, the plaintiff may proceed as follows:

First. If the action be against defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all and the separate property of the defendant served, and if they are subject to arrest, against the person of the defendants served; or,

Second. If the action be against the defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants; or,

Third. If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants, if the action had been against them, or any of them alone.

Section 11.—Proof of the service of the summons, or of the deposit thereof in the post office, shall be as follows:

First. If the serve or deposit in the post office be by the sheriff or officers, the certificate of such officer, or,

Second. If by any other person, his affidavit thereof, or,

Third. In case of publication, the affidavit of the publisher or his representative, together with a copy of the publication, or,

Fourth. The written admission of the defendant in case of service otherwise than by publication; the certificate, affidavit, or admission must state the time and place of service, and in case of deposit in the post office, the time and place thereof.

Section 12.—From the time of the service of the summons or the allowance of a provisional remedy the court shall be deemed to have acquired jurisdiction and to have control of all the subsequent

proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.

**Chapter Five. Of the Pleadings.**

Section 1.—All the forms of pleading heretofore existing in actions at law and suits in equity are abolished, and hereafter the forms of pleading in causes in law and equity in courts of record and the rules by which the sufficiency of such pleadings is to be determined shall be those prescribed by this code.

Section 2.—The only pleadings on the part of the plaintiff shall be—

- First. The complaint; or,
- Second. The demurrer; or,
- Third. The reply,
- And on the part of the defendant—
- First. The demurrer; or,
- Second. The answer.

**Chapter Six. Of the Complaint.**

Section 1.—The first pleading on the part of the plaintiff shall be the complaint.

Section 2.—The complaint shall contain;

First. The title of the cause, specifying the name of the court and the names of the parties to the action, plaintiff and defendant.

Second. A plain and concise statement of the facts constituting the cause of action, without unnecessary reparation.

Third. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded the amount thereof shall be stated.

**Chapter Seven. Of the Demurrer.**

Section 1.—The defendant may demur to the complaint within the time required by law to appear and answer, and when it appears upon the face thereof, either,—

First. That the court has no jurisdiction of the person of the defendant of the subject of the action; or,

Second. That the plaintiff has no legal capacity to sue; or,

Third. That there is another action pending between the same parties for the same cause; or,

Fourth. That there is a defect of parties plaintiff or defendant; or,

Fifth. That several causes of action have been improperly united; or,

Sixth. That the complaint does not state facts sufficient to constitute a cause of action; or,

Seventh. That the action has not been commenced within the time limited by this code.

Section 2.—The demurrer shall distinctly specify the grounds of objection to the complaint; unless it does so it may be disregarded. It may be taken to the whole complaint or to any of the alleged causes of action stated therein.

Section 3.—If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by the court, and if he omit to do so the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

Section 4.—When any of the matters enumerated in section one of this chapter do not appear upon the face of the complaint the objection may be taken by answer.

Section 5.—If no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same excepting only the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitute a cause of action.

**Chapter Eight. Of the Answer.**

Section 1.—The answer of the defendant shall contain:—

First. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

Second. A statement of any new matter constituting a defense or counterclaim in ordinary and concise language without repetition.

Section 2.—The counterclaim mentioned in the last preceding section must be one existing in favor of the defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the following causes of action.

First. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim.

Second. IN an action arising on the contract, and any other cause of action arising on contract, and existing at the commencement of the action.

The defendant may set forth by answer as many defenses and counterclaims as he may have. They shall each be separately stated and refer to the causes of action which they are intended to answer in such manner that they may be intelligibly distinguished.

Section 3.—The defendant may demur to one or more of the several causes of action stated in the complaint and answer the residue.

Section 4.—Sham, frivolous, and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.

**Chapter Nine. Of the Reply.**

Section 1.—When the answer contains new matter, constituting a defense or counterclaim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer.

Section 2.—The plaintiff may demur to an answer containing new matter when it appears upon the face thereof that such new matter does not constitute a defense or counterclaim; or he may, for like cause, demur to one or more of such defenses or counterclaims and reply to the residue.

Section 3.—If the answer contain a statement of new matter, constituting a defense or counterclaim, and the plaintiff fail to reply or demur thereto within the time prescribed by law or rule of the court, the defendant may move the court for such judgment as he is entitled to on the pleadings.

Section 4.—The defendant may demur to any new matter contained in the reply when it appears upon the face thereof that such matter is not sufficient reply to the facts stated in the answer. Sham, frivolous, and irrelevant replies may be stricken out in like manner and on the same terms as like answers and defense.

**Chapter Ten. Of the General Rules of Pleading.**

Section 1.—Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party, his agent or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or, of there be several parties united in interest and pleading together, by one, at least, of such parties, if such parties be within the district and capable of making the affidavit; otherwise the affidavit may be made by the agent or attorney of the party. The affidavit may also be made by the agent or attorney of the action or defense be founded on a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegation of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney, it must set forth the reason of his making it. When a corporation is a party, the verification may be made by any officer

thereof upon whom service of a summons might be made, and when the People or Municipality, or any officer thereof in its behalf, is a party, the verification may be made by any person to whom all the material allegations of the pleading are known.

Section 2.—When, in the judgment of the court, an answer to an allegation in any pleading might subject the party answering to a prosecution for felony, the verification of the answer to such allegation may be omitted.

Section 3.—The answer or demurrer to the complaint shall be filed with the clerk by the time required to answer, and the demurrer, or reply thereto, as the case may be, must in like manner be filed by the first day of the next term of the court, or within such time as the court may allow after the filing of the answer to the complaint, if the same be filed in term time. A demurrer to a reply must be filed in the manner and within the time required to file a demurrer to an answer. A motion to strike out a pleading for want of verification or subscription, or because several causes of action or defense therein are not pleaded separately, or for other cause, or a sham, frivolous, or irrelevant pleading or redundant matter therein, shall be made within the time for answer such pleading.

Section 4.—A party may set forth in a pleading the items of any account therein alleged, or file a copy thereof, with the pleading verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true. If he do neither, he shall deliver to the adverse party, within five days after a demand thereof in writing, a copy of the account, verified as in this section provided, or be precluded from giving evidence thereof. The court or judge thereof may order a further account when the one filed or delivered is defective.

Section 5.—In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view of substantial justice between the parties.

Section 6.—If irrelevant or redundant matter be inserted in the pleading, it may be stricken out on motion of the adverse party; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge of defense is not apparent the Court may require the pleading to be made definite and certain by amendment.

Section 7.—In pleading a judgment or other determination of a court or officer of special jurisdiction it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Section 8.—In pleading the performance of a condition precedent in a contract it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegations be controverted the party pleading shall be bound to establish on the trial the facts showing such performance.

Section 9.—In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Section 10.—In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic fact for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be controverted the plaintiff shall be bound to establish on trial that it was so published or spoken.

Section 11.—In the actions mentioned in the last section 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 prove the justification or not he may give in evidence the mitigating circumstances.

Section 12.—In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good without setting forth the title to such real property.

Section 13.—The plaintiff may unite several causes of action in the same complaint when they all arise out of—

- First. Contract, express or implied; or
- Second. Injuries, with or without force, to the person; or
- Third. Injuries, with or without force, to property; or
- Fourth. Injuries to character; or
- Fifth. Claims to recover real property, with or without damages for the withholding thereof; or
- Sixth. Claims to recover real property, with or without damages, for the withholding thereof; or
- Seventh. Claims against a trustee by virtue of a contract or by operation of the law.

But the causes of action so united must all belong to one only of these classes, must effect all the parties to the action, and must be separately stated.

Section 14.—Every material allegation of the complaint not controverted by the answer, and every material allegation of new

matter in the answer not controverted by the reply, shall, for the purpose of the action, be taken as true; but the allegation of new matter in a reply is to be deemed controverted by the adverse party as upon a direct denial or the avoidance, as the case may require.

Section 15.—A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient as to such claim or defense.

**Chapter Eleven. Of Mistakes in Pleadings and Amendments.**

Section 1.—No variance between the allegation in a pleading and the proof shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as shall be just.

Section 2.—When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

Section 3.—When, however, the allegation of the cause of action or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

Section 4.—Any pleading may be upon a demurrer, if it be overruled, and it appears that such demurrer was interposed in good faith, the court may, in its discretion, allow the party to plead over, upon such terms as may be proper. If the demurrer be sustained the court may, in its discretion, allow the party to amend the pleading demurred to, upon such terms as may be proper.

Section 5.—After the decision upon a demurrer, if it be overruled, and it appears that such demurrer was interposed in good faith, the court may, in its discretion, allow the party to plead over, upon such terms as may be proper. If the demurrer be sustained the court may, in its discretion, allow the party to amend the pleading demurred to, upon such terms as may be proper.

Section 6.—The court may, at any time before trial, in furtherance of justice, and upon such terms as may be proper, allow any pleading or proceeding to be amended by adding the name of a party, or other allegation material to the cause, and in like manner and for like reasons it may, at any time before the cause is submitted, allow such pleading or proceeding to be amended, by striking out the name of any party, or by correcting a mistake in the name of a

party, or a mistake in any other respect, or when the amendment does not substantially change the cause of action or defense, by conforming the pleading or proceeding to the facts proved.

Section 7.—The court may likewise, in its discretion and upon such terms as may be just, allow an answer or reply to be made or other act to be done after the time limited by this code, or by an order enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect.

Section 8.—When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

Section 9.—When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself without reference to the original or any preceding amended one.

Section 10.—Any pleading not duly verified and subscribed may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse party, be stricken out of the case. When a motion to strike out is allowed, the court may upon such terms as may be proper, allow the party to file an amended pleading, or if the motion be disallowed, and it appear to have been made in good faith, the court may, upon like terms, allow the party to plead over.

Section 11.—The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial right of the adverse party.

Section 12.—The plaintiff and defendant, respectively may be allowed on motion to make a supplemental complaint, answer, or reply, alleging facts material to the case occurring after the former complaint, answer, or reply. Copies of all pleading subsequent to the complaint must be served upon the adverse party or his attorney.

**Chapter Twelve. Of Arrest and Bail.**

Section 1.—No person shall be arrested in any civil action at law, except as provided in this section, provided, however, that no person shall be detained in custody for a longer period than three

months on civil arrest. The defendant may be arrested in the following cases:

First. In an action for the recovery of money or damages when the defendant is about to remove from the District with intent to defraud his creditors, or when the action is for any injury to person, or for willfully injuring or wrongfully taking, detaining, or converting property.

Second. 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 by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in officer in a professional employment.

Third. In an action to recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed, or disposed of, so that it can not be found or taken by the sheriff, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

Fourth. When the defendant has been guilty of a fraud in contracting a 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.

Fifth. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

But no female shall be arrested in any action except for injury to person, character or property.

Section 2.—The mode of proceeding to obtain the arrest of the defendant for any of the causes specified in the section last preceding shall be as provided in this section:

First.—At any time after the commencement of an action at law, and before judgment, the plaintiff in such action shall, in the discretion of the court, or the judge thereof be entitled to a writ of arrest for such defendant whenever he shall make and file with the clerk of the court in which such action is commenced, or is at the time pending, an affidavit that the plaintiff has a sufficient cause of action therein, and that the case is one of those mentioned in the section last preceding; and shall also make and file with such clerk an undertaking with sufficient sureties, in a sum not less than one hundred dollars, and equal to the amount for which the plaintiff prays judgment.

Such undertaking shall be conditioned 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 same be wrongful

or without sufficient cause, not exceeding the amount specified in the undertaking.

Second. The affidavit may be either positive or upon information and belief; but if the latter, it shall state the facts upon which the belief is found. The plaintiff shall also file with his undertaking the affidavits of the sureties therein, from which it must appear that such sureties are residents of the District, and that they are, taken together, worth double the amount of the sum specified in the undertaking over all debts and liabilities and property exempt from execution. No person not qualified to become bail upon arrest is qualified to become surety in an undertaking for an arrest.

Third. The writ of arrest shall be issued by the court or judge, in his or its discretion, and shall require the sheriff forthwith to arrest the defendant and hold him to bail in the amount specified in the undertaking, and that in default thereof he keep him in custody until discharged by law, and to return the writ to the court from which it issued, with his doings indorsed thereon, when required by the plaintiff at any time before the defendant may be arrested, or afterwards whenever the defendant shall have been discharged from the arrest on bail or otherwise.

Fourth. The plaintiff shall deliver or cause to be delivered to the sheriff with the writ a copy of the affidavit upon which the warrant was issued, subscribed by himself or attorney. The sheriff, upon the delivery of the writ, shall endorse thereon the date of the receipt and upon the arrest of the defendant shall deliver to him a copy of the writ and such copy of the affidavit. The sheriff shall execute the writ by arresting the defendant and keeping him in custody until discharged by law.

Section 3.—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 writ of arrest, as provided in this chapter.

Section 4.—The defendant may give bail by causing a written undertaking to be executed in favor of the plaintiff by sufficient sureties, stating their places of residence, to the effect that the defendant shall 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 if he be arrested for the cause mentioned in the third subdivisions of section one of this chapter, an undertaking to the same effect as that provided by section five of chapter thirteen of this Title.

Section 5.—In case of the failure to comply with the undertaking, the bail may be proceeded against by action only.

Section 6.—The bail may be exonerated, either by the death of the defendant or his imprisonment in the penitentiary, or by his legal

discharge from the obligation to render himself amenable to the process.

Suction 7.—Within three days after the execution of the undertaking of the bail the sheriff or deputy having the defendant in custody shall deliver to the plaintiff or his attorney, or such other person as the plaintiff may direct, a certified copy of the undertaking, with the date of the arrest indorsed thereon. In any other case the sheriff may mail such copy within the same time to the plaintiff or his attorney, within the district, or to either of them as the plaintiff may direct. The plaintiff, within ten days from the delivery of such copy, or fifteen days from the mailing of the same, if sent by mail, may serve upon the sheriff or deputy for the defendant in custody a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated form liability. If no notice be served within ten days, the original undertaking shall be filed with the court where the action is pending.

Section 8.—On the receipt of such notice the sheriff or defendant may, within ten days thereafter, give the plaintiff or his attorney notice of the justification of the same or other bail, specifying the place of residence and occupation of the later, before the Judge of the District Court or clerk of the court where the action is pending, at a specified time and place, the time to be not less than five nor more than ten days thereafter. In case other bail be given, there shall be a new undertaking, in the form and to the effect prescribed in section four of this chapter.

Section 9.—The qualifications of bail shall be as follows:

First. Each of them shall be a resident within the district; but no counselor or attorney-at-law, sheriff, deputy sheriff, police officer, clerk of any court shall be permitted to become bail in any action.

Second. Each of them shall be worth the amount specified in the writ of arrest, or the amount to which the same may be reduced as provided in this chapter, over and above all debts and liabilities, and 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 writ, if the whole justification shall be equivalent to that of two sufficient bail.

Section 10.—For the purpose of justification each of the bail shall 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 in his discretion may think proper. The examination shall be reduced to writing and subscribed by the bail, if required by the plaintiff.

Section 11.—If the judge, or clerk shall find the bail sufficient, he shall annex the examination of to the undertaking, indorse his allowance thereon, and cause them to be filed with the clerk of the court in which the action is pending; and the sheriff shall thereupon be exonerated from liability.

Section 12.—The defendant may at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the writ. Thereupon the sheriff shall give the defendant certificate of the deposit made and the defendant shall be discharged out of custody.

Section 13.—The sheriff shall, within ten days after the deposit, pay the same into the court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff or his attorney and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other case of delinquency.

Section 14.—If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section four of this chapter, at any time before judgement, and on the filing of the undertaking and justification with the clerk the money deposited shall be refunded by such clerk to the defendant.

Section 15.—When money shall have been deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court apply the same in satisfaction thereof, and, after satisfying the judgment, shall refund the surpluses, if any, to the defendant. If the judgment be in favor of the defendant the clerk shall refund to him the whole sum deposited and remaining unapplied.

Section 16.—There shall be allowed to the sheriff for the food and maintenance of any defendant arrested under the provisions of this chapter one dollar per day, and the plaintiff shall be liable in the first instance for such expense, and if required by the sheriff shall pay the same weekly in advance; and such expense so paid shall be added to the disbursements taxed or accruing in the case, and be collected as other disbursements.

Section 17.—If the plaintiff shall neglect to pay such expense for three days after a demand of payment, the sheriff may discharge the defendant out of custody.

Section 18.—A defendant arrested may, at any time before judgment, apply on motion to the court or judge thereof in which the action is pending upon notice to the plaintiff, to vacate the writ of arrest.

Section 19.—If a motion be made upon affidavits or other proofs on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those upon which the writ was issued. If upon the hearing of such motion it shall satisfactory appear that there was not sufficient cause to allow the writ, or other good cause which would entitle him to be discharged on habeas corpus, the same shall be vacated, or in case he has given bail the court may discharge the same or reduce the amount thereof on good cause shown.

**Chapter Thirteen. Of the Recovery of Personal Property.**

Section 1.—In an action to recover possession of personal property the plaintiff, at any time after the action is commenced, and before judgment may claim the immediate delivery of such property, as provided in this chapter.

Section 2.—When a delivery is claimed an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:—

First. That the plaintiff is the owner of the property claimed (particularly describing it) or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

Second. That the property is wrongfully detained by the defendant;

Third. The alleged cause of the detention thereof, according to his best knowledge, information and belief;

Fourth. That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure; and

Fifth. The actual value of the property.

Section 3.—The plaintiff may thereupon by an indorsement in writing upon the affidavit, require the sheriff to take the property from the defendant and deliver it to the plaintiff.

Section 4.—Upon the receipt of the affidavit and indorsement thereon, with a written undertaking executed by two or more sufficient sureties approved by the sheriff, to the effect that they are bound 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 defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, indorsement thereon, and undertaking, by delivering the same 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 some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the post office directed to the defendant at the post office nearest him.

Section 5.—The defendant may, within three days after the service of a copy of the affidavit and undertaking give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be 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. And the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they shall justify or new sureties shall be substituted and justified. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

Section 6.—At any time before the delivery of the property to the plaintiff the defendant may, If he do not except to the sureties of the plaintiff, require the return thereof upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to be approved by the sheriff, to the effect that they are bound I double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be 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 be not so required within three days after the taking and service of a copy of the affidavit and undertaking of a defendant, it shall be delivered to the plaintiff, except as provided in section ten of this chapter.

Section 7.—The defendant's sureties, upon a notice to the plaintiff or his attorney of not less than two nor more than six days, shall justify before a Judge of the District Court, or the clerk of the court in which the action is pending, in the same manner as upon bail on arrest. Upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they or others in their place fail to justify at the time and place appointed he shall deliver the property to the plaintiff.

Section 8.—Qualifications of sureties and their justifications shall be the same as prescribed in respect to bail upon an order of arrest.

Section 9.—If the property or any part thereof be concealed in a building or enclosure the sheriff shall publicly demand its delivery. If it be not delivered he shall cause the building or enclosure to be

broken open and take the property into his possession, and if necessary he may call to his aid the power of the district.

Section 10.—When the sheriff shall have taken the property as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

Section 11.—If the property taken be claimed by any other person than the defendant or his agent, and such person made affidavit of his title thereto or his right, to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim by an undertaking, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution. And no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless made as aforesaid; and not withstanding such claim when so made he may retain the property a reasonable time to demand such indemnity.

Section 12.—The sheriff shall file the affidavit, with his proceedings thereon including an inventory of the property taken, with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein, or he may mail or forward the same to the clerk within that time.

**Chapter Fourteen. Of Attachment.**

Section 1.—The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this chapter provided, in the following cases:

First. In an action upon a contract, express or implied for the direct payment of money, and which is not secured by mortgage, lien, or pledge upon real or personal property, or, if so secured, when such security has been rendered nugatory by the act of the defendant.

Second. In an action upon a contract, express or implied for the direct payment of money, and which is not secured by mortgage, lien, or pledge upon real or personal property, or, if so secured, when such security has been rendered nugatory by the act of the defendant.

Section 2.—A writ of attachment shall be issued by the clerk of the court in which the action is pending, whenever the plaintiff or anyone in his behalf shall make and file an affidavit showing:

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First. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counterclaims) upon a contract, express or implied, for the direct payment of money, and that the payment of the same has not been secured by any mortgage, lien, or pledge upon real or personal property; and

Second. That the sum for which the attachment is asked is an actual, bona fide, existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any creditor of the defendant.

Section 3.—Upon filing the affidavit with the clerk, the plaintiff shall be entitled to have the writ issued as soon thereafter as he shall file with the clerk his undertaking, with one or more sureties, in a sum not less than one hundred dollars, and equal to the amount for which the plaintiff demands judgment, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages that he may sustain by reason of the attachment if the same be issued wrongfully or without sufficient cause, not exceeding the sum specified in the undertaking. With the undertaking the plaintiff shall also file the affidavits of these sureties for which affidavits it must appear that such sureties are qualified, and that, taken together, they are worth double the amount of the sum specified in the undertaking, over all debts and liabilities and property exempt from execution. No person not qualified to become bail upon an arrest is qualified to become surety in an undertaking for an attachment.

Section 4.—The writ shall be directed to the sheriff and shall require him to attach and safely keep all the property of such defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses.

Section 5.—The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest and profits thereon, and all other property in the district of such defendant, not exempt from execution, shall be liable to be attached. The sheriff shall note upon the writ the date of its delivery to him, and shall make a full inventory of the property attached, and return the same with the writ.

Section 6.—The sheriff or deputy to whom the writ is delivered shall execute the same without delay, as follows:

First. Real property shall be attached by leaving with the occupant thereof, or if there be no occupant, in a conspicuous place therein, a copy of the writ certified by the sheriff.

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Second. Personal property capable of manual delivery to the sheriff, and not in the possession of a third person, shall be attached by taking it into his custody.

Third. Other personal property shall be attached by leaving a certified copy of the writ, and a notice specifying the property attached, with the person having possession of the same, or if it be a debt, then with the debtor, or if it be rights or shares in the stock of an association or corporation or interest or profits thereof, then with such person or officer of such association or corporation as this code authorizes a summons to be served upon.

Section 7.—From the date of the attachment until it be discharged or the writ executed, the plaintiff as against third persons shall be deemed a purchaser in good faith and for a valuable consideration of the property, real or personal, attached, subject to the conditions prescribed in the next section as to real property. Any person, association, or corporation mentioned in subdivision three of the section last preceding, from the service of a copy of the writ and notice as therein provided, shall, unless such property, stock or debts be delivered, transferred, or paid to the sheriff, be liable to the plaintiff for the amount thereof until the attachment be discharged or any judgment recovered by him be satisfied.

Section 8.—If real property be attached, the sheriff shall make a certificate containing the title of the cause, the names of the parties, a description of such real property and a statement that the same has been attached at the action of the plaintiff and the date thereof. Within ten days from the date of the attachment, the sheriff shall deliver such certificate to the recorder of deeds for the district who shall file the same in his office and record it. When such certificate is so filed for the record the lien in favor of the plaintiff shall attach to the real property described in the certificate from the date of the attachment, but if filed afterwards it shall only attach, as against the third persons from the date of such subsequent filing.

Whenever such lien shall be discharged it shall be the duty of the recorder, when requested, to record the transcript of any order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that such lien has been discharged in the records. The recorder shall also enter on the margin of the page on which the certificate is recorded a minute of the discharge, and the page and book where recorded.

Section 9.—Whenever the sheriff, with a writ of attachment against the defendant, shall apply to any person or officer mentioned in subdivision three of section six of this chapter, for the purpose of attaching any property mentioned therein, such person or officer shall furnish him with a certificate designating the amount and shall give a description of any property in his possession belonging to the

defendant or any debt owing to the defendant, or the number of rights or shares of the defendant in the stock of the association or corporation, with any interest or profits or encumbrance thereon. If such person or officer refuse to do so, or if the certificate when given be unsatisfactory to the plaintiff, he may be required by the court or judge thereof, where the action is pending, to appear before him and be examined on oath concerning the same, and disobedience to such order may be punished as contempt.

Section 10.—If any of the property attached be perishable, the sheriff shall sell the same in the manner in which property is sold on execution. The proceeds thereof and other property attached shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment. Personal property mentioned in subdivision three of section six of this chapter, may be delivered, transferred, or paid to the sheriff without any action, and his receipt therefor shall be a sufficient discharge accordingly.

Section 11.—The sheriff may deliver any of the property attached to the defendant, or to any other person claiming it, upon his giving a written undertaking thereof, executed by two or more sufficient sureties, engaging to redeliver it or pay the value thereof to the sheriff, to whom execution upon a judgment obtained by the plaintiff in that action may be issued.

Section 12.—If an action be brought upon such undertaking against the principal or his sureties, it shall be a defense that the property for which the undertaking was given did not, at the execution of the writ of attachment, belong to the defendant against whom it was issued.

Section 13.—If judgment be recovered by the plaintiff, and it shall appear that the property has been attached in the action and has not been sold as perishable property or discharged from the attachment as provided by law, the court shall order and adjudge the property to be sold to satisfy the plaintiff's demands, and if execution issue thereon, the sheriff shall apply the property attached by him, or the proceeds thereof, upon the execution, and if there be any such property or proceeds remaining after satisfying such execution, he shall, upon demand, deliver the same to the defendant.

Section 14.—If judgment be not recovered by the plaintiff, all the property attached; or the proceeds thereof, or the undertaking thereof, shall be returned to the defendant upon his serving upon the sheriff a certified copy of the order discharging the attachment.

Section 15.—Whenever the defendant shall have appeared in the action he may apply upon notice to the plaintiff to the court or judge where the action is pending or to the clerk of such court, for an order to discharge the attachment upon the execution of the undertaking

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mentioned in the next section; and if the application be allowed, all the proceeds of sales of property remaining in his hand shall be released from the attachment and delivered to the defendant upon his serving a certified copy of the order on the sheriff.

Section 16.—Upon such application the defendant shall deliver to the court or judge to whom the application is made an undertaking executed by one or more sureties, to the effect that the sureties will pay to the plaintiff the amount of the judgment that may be recovered against the defendant in the action. If the plaintiff demand it, the sureties shall be required to justify in the same manner as bail upon an arrest.

Section 17.—The defendant may, at any time before judgment, except where the cause of attachment and the cause of action are the same, apply to the court or judge thereof where the action is pending, to discharge the attachment, in the manner and with the effect as provided in sections eighteen and nineteen of chapter twelve for the discharge of a defendant from arrest.

Section 18.—When the writ of attachment shall be fully executed or discharged, the sheriff shall return the same, with his proceedings indorsed thereon to the clerk of the court where the action was commenced.

Section 19.—The order provided for in section nine of this chapter shall require such person or officer to appear before such court or judge at a time and place therein stated. In the proceedings thereafter, upon such order such person or association or corporation shall be known as the garnishee.

Section 20.—After the allowance of the order and before such garnishee or officer thereof shall be thereby required to appear, or within a time to be specified in the order, the plaintiff may serve upon such garnishee or officer thereof written allegations and interrogatories touching any of the property liable to attachment as the property of the defendant, as provided in subdivision three of section six of this chapter and to which such garnishee or officer thereof is required to give a certificate as provided in section nine of this chapter.

Section 21.—On the day when the garnishee or officer thereof shall be required to appear before the court or judge thereof, he shall return the allegations and interrogatories of the plaintiff to the court or judge with his written answer thereto, unless for good cause shown a further time be allowed. Such answer shall be on oath, and shall contain a full and direct response to all the allegations and interrogatories.

Section 22.—If the garnishee or officer thereof fail to answer, the court or judge thereof, on motion of the plaintiff, may compel him to do so, or the plaintiff may, at any time after the entry for

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judgment against the defendant in the action have judgment against the garnishee for want of such answer. In no case shall judgment be given against the garnishee for a greater amount than the judgment against the defendant in the action.

Section 23.—The plaintiff may except to the answer of the garnishee or officer thereof for insufficiency, within such time as may be prescribed or allowed, and if the same he adjudged insufficient, such garnishee or officer may be allowed to amend his answer on such terms as may be proper, or judgment may be given for the plaintiff as for want of answer, or such garnishee or officer may be compelled to give a sufficient answer.

Section 24.—The plaintiff may reply to the whole or part of the answer within such time as may be prescribed or allowed, and the issue arising thereon shall be tried as ordinary issues of fact between plaintiff and defendant. If the answer be not excepted or replied to within the time prescribed or allowed, it shall be taken to be true and sufficient.

Section 25.—If by the answer it shall appear, or if upon trial it shall be found, that the garnishee, at the time of the service upon him or the officer thereof of the copy of the writ of attachment and notice, and had any property of the defendant liable to attachment as provided in subdivision three of section six of this chapter, and as to which such garnishee or officer thereof is required to give a certificate as provided in section nine of this chapter beyond the amount admitted in the certificate, or in any amount if the certificate was refused, judgment may be given against such garnishee for the value thereof in money. The garnishee may at any time before judgment discharge himself by delivering, paying, or transferring the property to the sheriff.

Section 26.—Executions may issue upon judgments against a garnishee as upon ordinary judgments between plaintiff and defendant, and cost and disbursements shall be allowed and recovered in like manner. Witnesses including the defendant and garnishee or office thereof, may be required to appear and testify upon such proceeding against a garnishee, as upon the trial of issue of fact.

Section 27.—The court or judge thereof in its discretion may, at the time of the application of the plaintiff for the order provided for in section nine of this chapter and at any time thereafter before judgment against the garnishee, or by order restrain the garnishee from paying, transferring, or in any manner disposing of or injuring any of the property of the defendant, alleged by the plaintiff to be in the garnishee's possession, control, or owing by him to the defendant, and disobedience to such order may be punished as contempt.

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28.—The proceedings provided for in chapters twelve, thirteen, and fourteen of this title shall be known as provision remedies.

**Chapter Fifteen. Of Issues and the Mode of Trial.**

Section 1.—Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds:

First. Of Law; and

Second. Of Fact.

Section 2.—An issue of law arises upon a demurrer, to the complaint, answer, or reply, or to some part thereof.

Section 3.—An issue of fact arises:

First. Upon a material allegation in the complaint controverted by the answer; or,

Second. Upon new matter in the answer controverted by the reply; or,

Third. Upon new matter in the reply, except an issue of law is joined thereon.

Section 4.—Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In such cases, the issues of law shall be first tried, unless the court otherwise direct.

Section 5.—A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

Section 6.—An issue of law shall be tried by the court, unless referred as provided in chapter nineteen. An issue of fact shall be tried by a jury, unless tried by the court or referred as provided in chapter nineteen.

Section 7.—A motion to postpone a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and a statement of facts showing that due diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party there upon admit 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 shall not be postponed. The court, when it allows the motion may impose such conditions or terms upon the moving party as may be just.

Section 8.—Jurors for the trial of issues of fact in civil causes shall be selected and summoned in the manner prescribed by Chapter Twelve of Title Five of this Ordinance, and shall have the same qualifications and be entitled to the same exemptions, it being the intent and meaning of this section that but one jury shall be

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summoned for the trial of all actions, civil and criminal, triable by the district court of the district.

Section 9.—Trial juries in civil actions shall be formed in the same manner as provided in Chapter Thirteen of Title Five of this Ordinance. When the action is called for trial, the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the marshal, under the direction of the court, shall summon from the bystanders, or the body of the district, as the court may direct, so many qualified persons as may be necessary to complete the jury.

Section 10.—A preemptory challenge or a challenge for cause may be taken by either party. When there are two or more parties, plaintiffs or defendants, they must join in the challenge or it can not be taken. Either party shall be entitled to three preemptory challenges and no more.

Section 11.—Before a jury was impaneled in a civil action a request for a jury shall be made by the party desiring a jury, which request shall also be accompanied by the fees for such jury, provided however that the court may, on its own motion, order a jury impaneled in any civil action.

### **Chapter Sixteen. Conduct of the Trial.**

Section 1.—When the jury has been completed and sworn, the trial shall proceed in the order prescribed in this section, unless the court for special reasons otherwise direct.

First. The plaintiff shall state briefly his cause of action, and the issue to be tried; the defendant shall then in like manner state his defense or counterclaim.

Second. The plaintiff shall then introduce the evidence on his part, and when he has concluded the defendant shall do the same.

Third. The parties may then respectively introduce rebutting evidence only, unless the court, for good reason and in furtherance of justice, permit them to introduce evidence upon the original cause of action, defense, or counterclaim.

Fourth. Not more than two counsel shall be allowed to address the jury or court on behalf of the plaintiff or defendant, unless otherwise allowed by the court; and the court may limit the time to be consumed by counsel in arguing the cause.

Fifth. When the evidence is concluded, unless the case is submitted by both sides without argument, the plaintiff shall commence and conclude the argument. If the plaintiff waive the opening argument, and the defendant then argue the cause, the

plaintiff shall not be permitted to reply to the argument of the defendant.

Sixth. The court shall then charge the jury, and, if either party require it, and shall at the commencement of the trial give notice of his intention so to do, the charge of the court, so far as it relates to the law and the facts of the case, shall be reduced to writing and given to the jury by the court as written, without any oral explanation. The charge, when reduced to writing, must be filed with the clerk.

Section 2.—Whenever, in the opinion of the court, it is proper that the jury should have a view of real property which is the subject of the litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place, which shall be shown to them by the judge, or by a person appointed by the court for that purpose. While the jury are thus absent no person shall speak to them on any subject connected with the trial.

Section 3.—The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

Section 4.—If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn, and the trial may begin anew; or the jury may be discharged, as the court shall direct, and a new jury then or afterwards formed.

Section 5.—In charging the jury the court shall state to them all matters, of law which it thinks necessary for their information in giving their verdict, but it shall not present the facts of the case, but shall inform the jury that they are the exclusive judges of all questions of fact.

Section 6.—After hearing the charge the jury may either decide in the jury box or retire for deliberation. If they retire they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury thus together separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor make any himself unless by order of the court, except to ask them if they have agreed upon their verdict, and he

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shall not, before the verdict is rendered, communicate to any person the state of their deliberation or the verdict agreed on. Before any officer takes charge of a jury this section shall be read to him, and he shall be then sworn to conduct himself according to its provisions, to the utmost of his ability.

Section 7.—If while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the District, which expense shall be taxed in the cost of the case.

Section 8.—Upon retiring for deliberation the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial (except depositions, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession).

Section 9.—After the jury have retired for deliberation, if they desire to be informed on any point of law arising in the case, they may require the officer having them in charge to conduct them into court. Upon their being brought into court the instruction required shall be given by the court in the presence of or after notice to the parties or their attorneys.

Section 10.—Except as provided in sections three and four of this chapter, or in case of some accident or calamity requiring their discharge, the jury shall not be discharged after the cause is submitted to them until they have agreed upon a verdict and given it in open court, unless by the consent of both parties entered in the journal or unless at the expiration of such period as the court deem proper it satisfactorily appears that there is no probability of an agreement of five-sixths of them and it is thereby declared that five-sixths of the jury may render a verdict in civil action's the same as in criminal actions.

Section 11.—In all cases where a 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 directs.

Section 12.—While the jury are absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. A final adjournment of the court discharges the jury.

Section 13.—When five-sixths of the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. They shall be asked by the court or the clerk

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whether they have agreed upon their verdict, and if the foreman answer in the affirmative he shall, on being required, declare the same.

Section 14.—When a verdict is given and before it is filed, the jury may be polled on the request of either party, for which purpose each shall be asked whether it be his verdict; if more than one-sixth of the jurors answer in the negative, the jury shall be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may against be sent out.

Section 15.—When the verdict is given, and is such as the court may receive, and the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete, and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given.

#### **Chapter Seventeen. Of the Verdict.**

Section 1.—The verdict of a jury is either general or special. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

Section 2.—In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff or if they find in favor of the defendant and that he is entitled to a return 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 detention or taking and withhold such property.

Section 3.—In every action for the recovery of money only or specific real property, the jury in their discretion may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict upon all or any of the issues; and in all cases may instruct them if they render a general verdict, to find upon particular questions of fact, to be stated in writing. The special verdict or finding shall be filed with the clerk and entered in the journal as provided in chapter sixteen.

Section 4.—When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

Section 5.—When a verdict is found for the plaintiff in an action for the recovery of money or for the defendant when a counterclaim

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for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; and they may also, under the direction of the court assess the amount of the recovery when the court gives judgment for the plaintiff on the answer.

#### **Chapter Eighteen. Trial by the Court.**

Section 1.—Upon the trial of an issue of fact by the court, its decision shall be given in writing and filed with the clerk during the term or within six weeks thereafter. The decision shall state the facts found and the conclusion of law separately, without argument or reason therefor. Such decision shall be entered in the journal and judgment entered thereon accordingly. The court may deliver any argument or reason in support of such decision either orally or in writing, separate from the decision, and file the same with the clerk.

Section 2.—The finding of the court upon the fact shall be deemed a verdict, and may be set aside in the manner and for the reasons so far as applicable, and a new trial granted.

#### **Chapter Nineteen. Trial by Referees.**

Section 1.—All or any of the issues of fact in an action may be referred to a referee or referees upon the written consent of the parties.

Section 2.—When the parties do not consent in an action at issue and to be tried without a jury, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

First. When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue or to report upon any specific question of fact involved therein; or,

Second. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or,

Third. When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action; or,

Fourth. When it is necessary for the information of the court in a special proceeding.

Section 3.—A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three.

Section 4.—When the appointment of referees is made by the court or judge, each referee shall be a competent person not interested in the cause at issue and possessing the qualifications of a juror.

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Section 5.—When the referees are chosen by the court each party shall have the right of challenge as to such referees for the cause set out in the preceding, section, except that neither party shall be entitled to a preemptory challenge.

Section 6.—Subject to the limitations and directions prescribed in the order of reference, the trial by referee shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, to preserve order, and to punish all violation thereof upon such trial, and to compel the attendance of witnesses and to punish them for non-attendance or refusal to be sworn or testify, as is possessed by the court.

Section 7.—The report of the referee shall state the facts found. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial and the party offering the same except to the decision rejecting such evidence at the time, the exception shall be noted by the referees, and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous or inadmissible, require the party at whose instance it was taken and reported to pay all costs and disbursements thereby incurred.

Section 8.—The report shall be filed with the clerk. IF it be filed in term time, either party may, within such time as may be prescribed by the rules of the court or by special order, move to set the same aside or for judgment thereon, or such order or proceedings as the nature of the case may require. If the report be filed in vacation, the like proceedings may be had at the next term following.

Section 9.—The court may affirm or set aside the report either in whole or in part. If it affirm the report, it shall give judgment accordingly. If the report be set aside either in whole or in part, the court may make another order of reference as to all or so much of the report as is set aside to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of a jury.

### **Chapter Twenty. Of Exceptions.**

Section 1.—An exception is an objection taken at the trial to decision upon a matter of law, whether such trial be by jury or court, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or time from the calling the action for trial to the rendering the final verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material and affect the substantial rights of the parties.

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Section 2.—The point of the exception shall be particularly stated, and may be delivered, in writing to the judge or entered in his minutes, and at the time or afterwards be corrected until made conformable to the truth.

Section 3.—No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain it, but no more.

Section 4.—The statement of the exception, when settled and allowed, shall be signed by the judge and filed with the clerk and thereafter it shall be deemed and taken to be a part of the record of the cause. No exception need be taken or allowed to any decision upon a matter of law when the same is entered in the journal or made wholly upon matters in writing and on file in the court.

Section 5.—The verdict of the jury, or any order or decision, partially or finally determining the rights of the parties, or any of them or affecting the pleadings, or granting or refusing a continuance or granting or refusing a new trial, or admitting or rejecting evidence, provided objection be made to its admission or rejection at the time of its offer, or made upon ex parte application or in the absence of a party, are deemed excepted to without the exception being taken or stated, or entered in the journal.

#### **Chapter Twenty-one. Of New Trial.**

Section 1.—A new trial is a re-examination of an issue of fact in the same court after a trial and decision or verdict.

Section 2.—The former verdict or other decision may be set aside and a new trial granted, on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party.

First. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which such party was prevented from having a fair trial;

Second. Misconduct of the jury or prevailing party;

Third. Accident or surprise which ordinary prudence could not have guarded against;

Fourth. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

Fifth. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

Sixth. Error in law occurring at the trial and excepted to by the party making the application;

Seventh. Excessive damages appearing to have been given under the influence of passion or prejudice.

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Section 3.—A motion for a new trial, with the affidavits, if any in support thereof, shall, except as hereinafter provided, be filed within three days after giving the verdict or other decision sought to be set aside; but the court may, upon satisfactory showing, extend the time for filing such affidavits. When the adverse party is entitled to oppose the motion by counter affidavits, he shall file the same within three days after the filing of the motion. A motion shall be heard and determined within ten days unless the occur continue the same for advisement or want of time to hear it.

Section 4.—In all cases of motion for a new trial the ground thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court. When the motion is made for cause mentioned in subdivision one, two, three, or four of section two of this chapter, it shall be upon affidavits setting forth the facts upon which such motion is based unless they appear of record in the cause.

Section 5.—If the motion be supported by affidavits, counter affidavits may be offered by the adverse party; and if the cause be newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be shall be produced or good reason shown for their nonproduction; and in the consideration of any motion for a new trial reference may be had to any proceedings in the case prior to the verdict or other decisions sought to be set aside.

#### **Chapter Twenty-two. Of General Provisions.**

Section 1.—Any party may, when the evidence is closed, or at such time thereafter as the court may grant, submit in distinct and concise propositions the conclusions of fact which he claims to be established or the conclusions of law which he desires to be adjudged, or both. They shall be written and handed to the court.

Section 2.—All questions of law, including the admissibility of testimony, the facts preliminary to such 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; and whenever the court is by this code made evidence of fact, the court is to declare such knowledge to the jury, which must be accepted as conclusive.

Section 3.—All questions of fact other than those mentioned in the preceding section shall be decided by the jury and all evidence thereon addressed to them.

#### **Chapter Twenty-three. Of Judgment in General.**

Section 1.—A judgment is the final determination of the rights of the parties in the action.

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Section 2.—Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

Section 3.—In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

#### **Chapter Twenty-four. Of Judgment of Nonsuit.**

Section 1.—A judgment of nonsuit may be given against the plaintiff as provided in this chapter:—

First. On motion of the plaintiff, at any time before trial, unless a counterclaim has been pleaded as a defense;

Second. On motion of either party, upon the written consent of the other filed with the clerk.

Third. On motion of the defendant, when the action is called for trial and the plaintiff fails to appear; or when, after the trial has begun and before the final submission for the cause, the plaintiff abandons it, or when upon the trial, the plaintiff fails to prove a cause sufficient to be submitted to the jury.

Section 2.—A cause not sufficient to be submitted to the jury is one where it appears that the jury were to find a verdict for the plaintiff upon any or all of the issues to be tried, the court ought, if required, to set it aside for want of evidence to support it.

Section 3.—When a judgment of nonsuit is given the action is dismissed, but such judgment shall not have the effect to bar another action for the same cause.

#### **Chapter Twenty-five. Of Judgment on Failure to Answer.**

Section 1.—Judgment may be had upon failure to answer as follows:

When the time for answering the complaint has expired and it appears that the defendant, or one or more of several defendants in the cases mentioned in section ten of chapter four of this title has been duly served with the summons and has failed to answer the complaint, the plaintiff shall be entitled to have judgment against such defendant or defendants.

First. In an action arising upon contract for the recovery of money or damages only; if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted by the court or judge thereof, the court upon the application of the plaintiff made in writing filed with the clerk, shall enter the default of the defendant, and immediately

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thereafter enter judgment for the amount specified in the summons, including the costs of the defendant, or against one or more of several defendants, in cases provided for in section ten of chapter four of this title;

Second. In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons or such further time as may have been granted by the court or judge thereof, the court shall, upon the written motion of the plaintiff being filed, enter the default of the defendant, and thereafter the plaintiff may apply at any time for the relief demanded in the complaint; and the court shall upon such demand, give judgment for the amount claimed in the summons, or the relief demanded in the complaint, unless it be necessary, to enable the court to give judgment or carry the same into effect, to take proof of any matter of fact, in which case the court may order the entry of judgment to be delayed until such proof be taken. The court may hear the proof itself or make an order of reference, or order that a jury be called to inquire thereof. The defendant shall not be precluded, by reason of his default, from offering proof in mitigation of damages;

Third. When the defendant has answered, and admits the plaintiff's claim, but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, on motion, shall have judgment for the excess of his claim over such counterclaim, as for want of answer thereto.

Fourth. When in any action the service of the summons appears to have been made by publication, the court may, in its discretion, order the entry of judgment to be delayed until the plaintiff file with the clerk an undertaking, with one or more sureties, to be approved by the clerk, in an amount equal to the sum for which judgment may be given, upon the condition that the plaintiff will abide by and perform any order of the court requiring restitution to be made to the defendant or his representative in case either of them shall afterwards be admitted to defend the action. The sureties in the undertaking shall have the qualification of bialy and justify as provided in section seven of chapter twelve of this title.

#### **Chapter Twenty-Six. Of Judgment by Confession.**

Section 1.—On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action, before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint.

Section 2.—When the action is against a public corporation or a private corporation, the confession shall be made by the person who at the time sustains the relation to such corporation as would

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authorize the service of a summons upon him. In all other cases the confession shall be made by the defendant in person.

Section 3.—When the action is upon a contract, and against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants against all the defendants thus jointly liable, whether such defendants have been served with the summons or not to be enforced only against their joint property and against the joint and separate property of the defendant making the confession.

Section 4.—The confession and assent thereto shall be in writing, and subscribed by the parties or their attorneys making the same, and acknowledged by each before some officer authorized to take acknowledgements of deeds, but such acknowledgement is not required when the parties or their attorney shall appearing court when the judgment is given. In all cases the confession and assent thereto and the acknowledgment, if any, shall be filed with the clerk.

Section 5.—On the confession of any person capable by this code of being made a party defendant to an action, judgment may be given against such person without action, in favor of anyone, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant in such judgment, or both, if it be in favor of the same person.

Section 6.—The confession shall be made, assented to and acknowledged, and judgment given in the same manner as a confession in an action pending; besides which, the confession shall be verified by oath of the party making it, and shall authorize a judgment to be given for a particular sum. If it be for money due or to become due it shall state plainly and concisely the fact out of which such indebtedness arose, and shall show that the sum confessed therefor is justly due or to become due.

Section 7.—If it be for the purpose of securing the plaintiff in the judgment against a contingent liability, it shall state plainly and concisely the facts constituting such liability and shall show that the sum confessed therefor does not exceed the same. When judgment is given so as to be payable in installments, executions may issue to enforce the payment of such installments, as they become due.

#### **Chapter Twenty-Seven. Of Submitting Controversy Without Action.**

Section 1.—Parties to a question in controversy which might be the subject of an action in a court of record with such parties plaintiff or defendants, may submit the same to the determination of such court without action, as in this chapter provided.

Section 2.—The parties as plaintiff and defendant shall state, in writing, a case containing the facts upon which the controversy depends, and subscribe the same in person or by their attorneys.

Such statement shall be verified by the oaths of the parties, or, where there is more than one plaintiff or defendant, by at least one of each, to the effect that the controversy is real, and the proceeding is taken in good faith to determine the rights of the parties. Where either party to the controversy is a public corporation, or a private corporation, the statement of the case may be subscribed and verified by any person who at the time sustains the relation to such corporation as would authorize the service of a summons upon him.

Section 3.—The statement shall be filed with the clerk of the court and from the date of such filing the court shall have jurisdiction of the controversy as if the same were an action pending after a special verdict found, and shall proceed to hear and determine the same accordingly.

**Chapter Twenty-Eight. Of the Manner of Giving and Entering Judgment.**

Section 1.—All judgements shall be entered by the clerk in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action. If entered in vacation, the entry shall be entitled and dated substantially as follows:

Virgin Islands of the United States  
Municipality of \_\_\_\_\_  
District Court for the District at ..... In  
vacation, after the ..... Term, A.D.  
19..... the ....., A.D. 19 .....

As the fact may be, and such entry shall have the same effect as if entered in term time. In the entry of all judgments, except judgments by default for want of an answer, the clerk shall be subject to the direction of the court.

Section 2.—If a counterclaim established at trial exceed the plaintiff's demand so established, judgment for the defendant shall be given for the excess, or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Section 3.—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 thereof. If the property has been delivered to the plaintiff and defendant claim a return thereof, judgment for the defendant may be for the return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same.

Section 4.—When judgment is given for want of answer, the entry shall state substantially that the defendant has been duly served with the summons and has failed to answer the complaint. When judgment is given on confession, with or without action, on the

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report of referees, or on a controversy, submitted without action the entry shall state in like manner the confession and assent thereto, the report of the referees, or agreed case, as the case may be.

Section 5.—When a decision has been made sustaining or overruling a demurrer, unless the party against whom the decision is made be allowed to amend or plead over, judgment shall be given for the plaintiff or defendant, as the case may be, for such amount or relief or to such effect, as it appears from the pleadings he is entitled to; but if the case is otherwise at issue upon a question of fact, the court may order the entry of judgment to be delayed until such issue be tried or otherwise disposed of.

Section 6.—When judgment is given in any of the cases mentioned in the two sections last preceding, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given. Except as in this section hereinafter provided, when a trial by the court has been had judgment shall be entered by the clerk in conformity with the decision within two days from the time the same is filed; or if the trial be by jury, judgment shall be given by the court in conformity therewith and entered by the clerk within two days from the time the verdict has been received; and in either case within the term at which such judgment is given.

First. When the court is in doubt what judgment ought to be given, it may order the question to be reserved for argument or further consideration and thereupon the entry of judgment shall be delayed until judgment be given;

Second. When, within the time allowed to file a motion for new trial, either party shall file a motion for a particular judgment or for judgment notwithstanding the verdict or decision;

Third. When a motion for new trial is filed within the time prescribed, the entry of judgment shall be thereby delayed until the motion is disposed of;

Fourth. When, upon a trial by the court, its decision is filed in vacation, the entry of judgment shall be delayed until the expiration of the time prescribed to file a motion for a new trial.

Section 7.—When it appears from the pleadings that the court has no jurisdiction of the subject of the action or the person of the defendant, or that the facts stated in the pleadings of the plaintiff or defendant, as the case may be, do not constitute a cause of action or defense thereto, on motion judgment shall be given for the plaintiff or defendant, as the case may be, notwithstanding the verdict or decision.

Section 8.—When a motion for new trial, for a particular judgment, or for a judgment notwithstanding the decision is decided in vacation, the decision shall be in writing and filed with the clerk.

**Chapter Twenty-Nine. Of Lien Judgment and Final Record.**

Section 1.—Immediately after the entry of judgment in any action the clerk shall docket the same in the judgment docket. At any time thereafter, while an execution might issue upon such judgment, and the same remains unsatisfied in whole or in part, the plaintiff, or in case of his death his representative, may file a certified transcript of the original docket in the officer of the recorder of the recording district. Upon the filing of such transcript, the recorder shall docket the same in the judgment docket of his office and note the same in the property register against such property or properties as requested by the judgment creditor. From the date of docketing a judgment, as in this chapter provided, or the transcript thereof, such judgment shall be a lien upon such real property of the defendant, and also provided; that such judgment may be recorded against all after acquired property with like effect, upon the request of the judgment creditor.

Section 2.—Whenever, after the entry of judgment a period of ten years shall elapse without an execution being issued on such judgment, the lien thereof shall expire.

Section 3.—A conveyance of real property or any portion thereof or interest therein shall be void against the lien of a judgment unless such conveyance be recorded at the time of docketing such judgment or the transcript thereof, as the case may be.

Section 4.—Within thirty days after docketing the judgment, the clerk shall prepare and file in his office the judgment roll, as provided in this section:

First. If the complaint has not been answered by any defendant he shall attach together, in the order of their filing, issuing, and entry, the complaint, summons, and proof of service, and a copy of the entry judgment.

Second. In all other cases he shall attach together in like manner the summons and proof of service, the pleadings, bill of exceptions, all orders relating to change of parties, together with a copy of the entry of judgment, and all other journal entries or orders in any way involving the merits and necessarily affecting the judgment.

Third. In all cases the clerk shall attach upon the outside of the judgment roll a blank sheet of paper upon which he shall indorse the name of the court, the term at which judgment was given, the names of the parties to the action and the title thereof, for whom judgment was given, and the amount or nature thereof, and the date of its entry and docketing.

Section 5.—Instead of the judgment roll prescribed in the section last preceding, there shall be a final record made of the cause, as provided in this section:

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First. When in any action it shall appear that the title to real property, or any interest therein, or any easement, franchise, or right in or to the same, is directly determined or affected by the judgment therein, on motion of either party the court shall order that a final record be made of the case and the expense of such record shall be taxed as other disbursements of the action.

Second. In all other actions, on motion of either party, the court shall order that a final record be made of the case at the cost of the party moving for the same.

When a final record is ordered, it shall be made by the clerk within the time prescribed to prepare a judgment roll, by recording the papers and journal entries required in such roll in the order prescribed therefor.

**Chapter Thirty-Seven. General Provision Relating to Actions of an Equitable Nature.**

Section 1.—An action of an equitable nature shall only be commenced within the time limited to commence an action as provided in chapter two of this title, and an action for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for the recovery of the possession of real property. In an action upon a new promise, fraud, or mistake the limitation shall only be deemed to commence from the making of the new promise or the discovery of the fraud or mistake: Provided, this section shall not be construed so as to bar an equitable owner in possession real property from defending his possession by means of his equitable title; and in any action for the recovery of any real property, or the possession thereof, by any person or persons claiming or holding the legal title to the same under such patent against any person or persons in possession of such real property under any equitable title or having in equity the right to the possession in such action, or by complaint of injunction shall not be barred by lapse of time while an action for the possession of such real property is not barred by the provision of chapter two of this title.

Section 2.—Every action of an equitable nature shall be prosecuted in the name of the real party in interest, except as in this section otherwise provided. An executor or an administrator, a trustee of an express trust, or a person expressly authorized to sue by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust within the meaning of this section shall be construed to include a person with whom and in whose name a contract is made for the benefit of another.

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Section 3.—All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs, except as in this chapter otherwise provided. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Section 4.—Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of common or general interest of any persons, or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

Section 5.—When there is more than one defendant in the action, service of only one copy of the complaint shall be required, the same to be served on the defendant designated by the plaintiff or his attorney by a direction indorsed on such summons, but the summons served on the other defendants shall contain a brief statement of the cause of action and relief demanded.

Section 6.—In addition to the cause enumerated in the subdivision of section six of chapter four of this title service of the summons may be made by publication in the following cases:

First. When the subject of the action is real or personal property in the District, and the defendant has or claims a lien or interest actual or contingent therein, or the relief demanded consists wholly or partly in excluding the defendant from any lien or interest.

Second. When the action is for divorce, as hereinafter provided.

Section 7.—The objection to the jurisdiction of the court, or that the complaint does not state facts sufficient to constitute a cause of action, if not taken by demurrer or answer, may be made on the trial.

Section 8.—The counterclaim of the defendant shall be one upon which an action might be maintained by the defendant against the plaintiff in the action; and in addition to the cases specified in the subdivisions of section two of chapter eight of this title, it is sufficient if it be connected with the subject of the action.

Section 9.—The plaintiff in an action of an equitable nature may unite several causes of action in the same complaint, where they all arise out of:

First. The same transaction, or transactions connected with the same subject of action;

Second. Contract, express or implied;

Third. Injuries, with or without force to property;

Fourth. Claims to real property, or any interest therein, with or without an account for the rents and profits thereof;

Fifth. Claims to personal property, or any interest therein, with or without an account for the use thereof;

Sixth. Claims against a trustee by virtue of a contract or by operation of law.

But the causes of action so united must all belong to one of these classes, and must affect all the parties to the action, and not require different places of trial, and shall be separately stated.

Section 10.—The plaintiff in an action may have the defendant arrested and held to bail in like manner and with like effect as provided in the chapter of this title “Of arrest and bail.” A cause of arrest in an action shall be the same as those specified, in section one of chapter twelve of this title, so far as the same may exist, and not otherwise.

#### **Chapter Thirty-Eight. Of the Trial of Issues in Actions of an Equitable Nature.**

Section 1.—The provision of chapter fifteen of this title shall apply to actions of an equitable nature except as in this chapter otherwise or specially provided. Both issues of law and fact shall be tried by the court, unless referred, provided however, the court may, in its discretion, order a jury to inquire into a fact and render a verdict as to such fact.

Section 2.—All issues of fact in actions of an equitable nature may be tried by the court, and the evidence shall be presented and the trial conducted in the same manner as other actions; provided, the court in its discretion, refer the case to a referee pursuant to the provisions of this title. In all such actions the court, in rendering its decision therein, shall set out in writing its findings of fact upon all the material issues of fact presented by the pleadings, together with its conclusions of law thereon; but such findings of fact and conclusions of law shall be separate from the judgment, and shall be filed with the clerk; and shall be incorporated in, and constitute a part of, the judgment roll of the case; and such findings of fact, shall be conclusive. Exceptions may be taken during the trial to the ruling of the court, and also to its findings of fact, and a statement of such exceptions prepared and settled to its findings of fact, and a statement of such exceptions prepared and settled as in an action, and the same shall be filed with the clerk within ten days from the entering of the decree, or such further time as the court may allow.

Section 3.—When the action is called for trial, the trial shall proceed in the order prescribed in subdivisions one, two, three, four and five of section one of chapter sixteen, unless the court for special reasons otherwise directs.

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Section 4.—Upon the trial either party may object to the reading of a deposition or any part thereof, when offered by the other because the witness is incompetent or the testimony is so, or irrelevant, and not otherwise.

Section 6.—The provisions of chapters nineteen (19) and twenty-three (23) of this title shall apply to actions of an equitable nature, but the final determination of the rights of the parties thereto is called a judgment, and any intermediate determination is called an order.

Section 7.—A judgment dismissing an action may be given against the plaintiff in any of the cases specified in subdivisions one, two, and three of section one of chapter twenty-four of this title, except the last clause of subdivision three. Such judgment is a determination of the action, but shall not have the effect to bar another action for the same cause or any part thereof.

Section 8.—Whenever upon the trial it is determined that the plaintiff is not entitled to the relief claimed, or any part thereof, a judgment shall be given dismissing the action and such judgment shall have the effect to bar another action for the same cause or any part thereof, unless such determination be on account of a failure of proof on the part of the plaintiff, in which case the court may, on motion of such plaintiff, give such judgment without prejudice to another action by the plaintiff for the same cause or any part thereof.

Section 9.—The provisions of chapter twenty-five and of section one, two, three and four of chapter twenty-six of this title shall apply to actions of an equitable nature. The provisions of chapter twenty-seven shall apply to controversies which might be the subject of such action.

Section 10.—When upon the submission of such an action of the court is unadvised as to what judgment ought to be given therein, it may reserve the case for further consideration, and may decide the same and give such judgment in vacation by filing the same with the clerk. When a judgment is given in an action of an equitable nature, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given. Sections one, two, four and five of chapter twenty-eight of this title shall apply to actions of an equitable nature. The provisions of chapter twenty-nine of this title shall apply to judgment and the final record or roll thereof.

### **Chapter Thirty-nine. Of the Mode of Enforcing a Judgment in Actions of an Equitable Nature.**

Section 1.—A judgment requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party do not comply therewith, be deemed and taken to be equivalent thereto. The court or judge thereof may

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enforce an order or judgment in an action of an equitable nature, other than for the payment of money punishing the party refusing or neglecting to comply therewith, as for a contempt.

Section 2.—The provisions of chapter thirty of this title shall apply to the enforcement of judgment so far as the nature of the judgment may require or admit of it, but the mode of trial of an issue of fact in a proceeding against a garnishee shall be according to the mode of trial of such issue in an action.

#### **Chapter Forty-Four. Actions to Declare Void or Dissolve the Marriage Contract**

Section 1.—A husband or wife may maintain an action of equitable nature against the other for the dissolution of the marriage contract, or to have the same declared void, as provided in this chapter.

Section 2.—All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a husband or wife then living shall, if solemnized within the district, be absolutely void.

Section 3.—When either of the parties to a marriage shall be incapable of making such contract or assenting thereto for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage shall be void from the time it is so declared by the decree of a court having jurisdiction thereof.

Section 4.—A marriage may be declared void from the beginning at the action of either party, for any of the causes specified in section two of this chapter, and whether so declared or not shall be deemed and held to be void in any action or proceeding whatever in which the same may come in question; but a marriage once declared to be valid by the judgment of a court having jurisdiction thereof, in an action for that purpose, can not afterwards be questioned for the same cause, directly or otherwise.

Section 5.—A marriage shall not be declared void for any of the causes specified in section three of this chapter, except at the action or claim of the party laboring under the disability, or upon whom the force or fraud was imposed or practiced; not at the action or claim of such party if it appears that the parties freely cohabited together as husband and wife after the party had arrived at legal age, acquired sufficient understanding, been restored to reason, freed from the force, or discovered the fraud, as the case may be.

Section 6.—When either husband or wife shall claim or pretend that the marriage is void or voidable, as provided in sections two and three of this chapter, the same may be declared valid and lawful at the action of the other, and in such action the court shall have power,

if the pleadings and proof authorize it, to declare such marriage void from the beginning or from the time of the judgment, or that it is valid and lawful, and binding on the parties thereto.

Section 7.—The dissolution of the marriage contract may be declared at the action of the injured party for any of the following causes;

First. Impotency existing at the time of the marriage and continuing to the commencement of the action;

Second. Adultery;

Third. Conviction of felony;

Fourth. Willful desertion for the period of two years;

First. Cruel and inhuman treatment calculated to impair health or endanger life;

Sixth. Insanity of either spouse occurring after marriage;

Seventh. Habitual gross drunkenness contracted since marriage and continuing for one year prior to commencement of the action;

Eight. Incompatibility of temperament.

Section 8.—When a marriage has been solemnized in the district an action may be maintained to declare it void if the plaintiff is an inhabitant of the district at the commencement of the action. If the marriage has not been solemnized in the district, such an action can only be maintained when the plaintiff has been an inhabitant thereof for six months prior to the commencement of the action.

Section 9.—In an action for the dissolution of the marriage contract the plaintiff therein must be an inhabitant of the district at the commencement of the action and for six months prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose.

Section 10.—In an action for the dissolution of the marriage contract on account of adultery the defendant may admit the adultery and shown in bar of the action:

First. That the act was committed by the procurement or with the connivance of the plaintiff; or,

Second. That the act had been expressly forgiven or impliedly so, by the voluntary cohabitation of the parties after knowledge thereof; or,

Third. That the plaintiff has been guilty of adultery also without the procurement or connivance of the defendant and not forgiven as provided in subdivision second of this section; or,

Fourth. That the action has not been commenced within one year after the discovery of the act by the plaintiff.

When the action is for any of the causes specified in subdivisions third, fourth, fifth, or seventh of section seven of this chapter, the defendant may admit the charge and show in bar of the action that

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the act was committed by the procurement of the plaintiff, or that it has been expressly forgiven; and in case the action is founded on subdivision third of said section, the defendant may also show in bar thereof that the action was not prosecuted within one year after the same occurred to the plaintiff.

Section 11.—After the commencement of an action, and before a judgment therein, the court or judge thereof may, in its discretion, provide by order as follows:

First. That the husband pay, or secure to be paid, to the clerk of the court such an amount of money as may be necessary to enable the wife to prosecute or defend the action, as the case may be;

Second. For the care, custody, and maintenance of the minor children of the marriage during the pendency of the action;

Third. For the freedom of the wife from the control of the husband during the pendency of the action, and the court may restrain either or both parties from disposing of the property of either party pending the action.

Section 12.—Whenever a marriage shall be declared void or dissolved the court shall have the power to further decree as follows:

First. For the future care and custody of the minor children of the marriage as it may deem just and proper having due regard to the age and sex of the children and unless otherwise manifestly improper giving the preference to the party not in fault;

Second. For the recovery from the party in fault, and not allowed the care and custody of such children, such an amount of money, in gross or installments, as may be just and proper for such party to contribute toward the nurture and education thereof;

Third. For the recovery from the party in fault such an amount of money in gross or in installments as may be just and proper for such party to contribute to the maintenance of the other;

Fourth. For the delivery to the wife when she is not the party in fault, of her personal property in the possession or control of the husband at the time of giving the judgment;

Fifth. For the appointment of one or more trustees to collect, receive, expend, manage, or invest, in such manner as the court shall direct, any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;

Sixth. To change the name of the wife when she is not the party in fault.

Section 13.—At any time after a judgment is given the court or judge thereof, upon the motion of either party on notice shall have power to set aside, alter, or modify so much of the judgment as may provide for alimony or for the appointment of trustees for the care

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and custody of the minor children, or the nurture and education thereof, or the maintenance of either party to the action.

Section 14.—A judgment declaring a marriage void or dissolved by the action or claim of either party shall have the effect to terminate such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, until the action has been heard and determined on appeal, and if no appeal be taken, and if he or she does so contract, such party shall be liable therefore as if such judgment had not been given.

Section 14.[As Amended in 1929]<sup>2</sup>—A judgment declaring a marriage void or dissolved by the action or claim of either party shall have the effect to terminate such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, until the action has been heard and determined on appeal, and if no appeal be taken, until the expiration of the period allowed by law to take such appeal; and if he or she does so contract, such party shall be liable therefor as if such judgment had not been given. The within provisions shall be retroactive and all marriage contracts heretofore entered into by divorced persons, in conformity with the within provisions, are valid and binding.

#### **Chapter Forty-Six. General Provisions Concerning Actions**

Section 1.—If an original paper or pleading be lost or withheld by any person, the court or judge thereof may order a verified copy thereof to be filed and used instead of the original.

Section 2.—Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action arises therefrom.

Section 3.—Whenever two or more actions are pending at one time between the same parties and in the same court upon causes which might have been joined, the court may upon the motion of the defendant, order the same to be consolidated. An action is deemed to be pending from the commencement thereof until its final determination upon appeal, or until the expiration of the period allowed to take an appeal.

Section 4.—No natural person is subject to the jurisdiction of the district court of the district unless he appear in the court, or be found within the district, or be a resident thereof, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached. But this section is not to be construed to limit the power of the said court to declare a marriage void or a

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<sup>2</sup> St. Thomas & St. John, U.S.V.I., Ordinance to Amend Section 14, Chapter 44, Title III, of the Code of Laws of the Municipality of Saint Thomas & Saint John, Virgin Islands of the United States (Feb. 21, 1929).

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dissolution thereof when the defendant is a nonresident of the district.

Section 5.—No corporation is subject to the jurisdiction of the district court of the district unless it appear in the court, or have been created by or under the laws of the district, or have an agency established therein for the transaction of some portion of its business, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached.

Section 5.—When the court has jurisdiction of the parties it may exercise it in respect to any cause of action, wherever arising except for the specific recovery of real property situated without the district or for injury thereto.

Section 6.—When the court has jurisdiction of the parties it may exercise it in respect to any cause of action, wherever arising, except for the specific recovery of real property situated without the district or for injury thereto.

Section 7.—Whenever there is more than one referee all must meet, but a majority of them may do any act which might be done by all; and whenever any authority is conferred on three or more persons it may be exercised by a majority of them, upon the meeting of all, unless expressly otherwise provided.

Section 8.—The time within which an act is to be done, as provided in this code, shall be computed by excluding the first day and including the last, unless the last day fall upon a Sunday or other legal holiday, in which case the last day shall also be excluded. The time for the publication of legal notices shall be computed so as to exclude the first day of publication and to include the day on which the act or event of which notice is given to happen or which completes the full period required for publication.

### **Chapter Seventy-Nine. Of Guardians and Wards**

Section 1.—Whenever it becomes the duty of the court to appoint a guardian for a minor, the relatives of such minor, whether male or female, upon application to the court shall in all cases be appointed, the nearest relative having precedence; provided, said applicant shall be of good moral character and be otherwise competent to discharge the duties of guardian to such ward.

Section 2.—The District Court, when it shall appear necessary and convenient, may appoint guardians to minors and others being inhabitants or residents in the District and also such as shell reside without the district and have any estate within the same.

Section 3.—If the minor is under the age of fourteen years the court may nominate and appoint his guardian and if he be above that age he may nominate his own guardian, who, if approve3d by the court, having jurisdiction of the estate, shall be appointed

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accordingly; and if the guardian nominated by such minor shall not be approved by the court, or if the minor shall reside without the district, or if after having been cited by the court, he shall neglect to nominate a suitable person, the court may nominate and appoint the guardian in the same manner as if the minor were under fourteen years of age.

Section 4.—Every guardian so appointed shall have the custody and tuition of the minor and the care and management of his estate, and shall continue in office until the minor shall have arrived at the age of twenty-one years, or until the guardian shall have been discharged according to law; provided, however, the father of the minor, if living, and in case of his death the mother, while she remains unmarried, being themselves respectively competent to transact their own business, shall be entitled to the custody of the person of the minor and the care of his education.

Section 5.—Every such guardian shall:

First. Make a true inventory of all the real estate and of all goods, chattels, rights, and credits of the ward that shall come to his possession or knowledge, and to return the same to the court at such time as the latter may order;

Second. Dispose of and manage all such estate and effects according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and in relation to the custody, education, and maintenance of the ward;

Third. Render, on oath, an account of property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within six months after his appointment, and at such other times as the court shall direct;

Fourth. At the expiration of his trust, settle his accounts in the court with the ward or his legal representatives, and to pay and deliver over all the state and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be legally entitled thereto.

Section 6.—Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child or for a less time. And every mother may, by her last will in writing, appoint a guardian or guardians for any of her children, to continue during the minority of the child or for a less time: Provided, the father of such child or children is dead and has not appointed a guardian, or whenever, by judgment of divorce between such father and mother, the custody of such child or children has been awarded to the mother; and every such testamentary guardian shall have the same powers and perform the

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same duties with regard to the person and estate of the ward as guardian appointed by the court; provided, nothing in this section shall be construed to deprive either the surviving father or mother of the custody of the person of his or her children, such surviving parent being competent to transact his or her own business.

Section 7.—Nothing contained in this chapter shall impair the power of the district court or any court of justice to appoint a guardian to defend the interest of any minor impleaded in such courts or interested in any suit or matter therein pending, nor their power to appoint or allow any person as next friend for a minor to commence, prosecute, or defend any suit in his behalf.

Section 8.—The District Court shall have power to appoint guardians to take care, custody, and management of the estates, real and personal, of all insane person, idiots, and all who are incapable of conducting their own affairs, and the maintenance of their families and the education of their children.

Section 9.—When the relatives or friends of any insane person, or any other persons inhabitants of the District in which such insane person resides, shall apply to the court by petition in writing to have a guardian appointed for him, the court shall cause notice to be given to the supposed insane person of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the court that the person in question is incapable of taking care of himself, the court shall appoint a guardian of his person and estate with the powers and duties hereinafter specified.

Section 10.—Every guardian so appointed for an insane person shall have the care and custody of the person of the ward and the management of all his estate.

Section 11.—When any person resident of the District by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, the District Court shall cause notice to be given to such supposed spendthrift of the time and place appointed for hearing the case, not less than ten days before the time so appointed, and if, after a full hearing, it shall appear to the court that the person complained of comes within the description contained in this section, it shall appoint a guardian of his person and estate with the power and duties hereinafter specified.

Section 12.—After the order of notice has been issued and if a guardian shall be appointed on such application all contracts, excepting for necessities, and all gifts, sales, or transfers of real or personal estate made by such spendthrift after such filing of the order of notice in the officer of the clerk of the District Court, and before the termination of the guardianship, shall be null and void.

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Section 13.—When a guardian shall be appointed for an insane person or spendthrift, the court shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the proceeding.

Section 14.—Every guardian so appointed for a spendthrift shall have the care and custody of the person of the ward and the management of all his estate until the guardian shall be legally discharged.

Section 15.—Every guardian appointed under the provisions of this chapter shall pay all just debts due from his ward out of his ward's personal estate, if sufficient, and if not, out of his ward's real estate, upon obtaining a license for the sale thereof, as provided by law. He shall also settle all accounts of the ward and demand, sue for, and receive all debts due to him, or may, with the approbation of the court, compound for the same and give a discharge to the debtor upon receiving a fair and just dividend of his ward's estate and effects, and he shall appear for and represent his ward in all legal actions and proceedings, unless when another person is appointed for the purpose as guardian or next friend.

Section 16.—The guardian shall also manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if the income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license thereof as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family.

Section 17.—Upon the taking of any inventory, as required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of a deceased testator or intestate; and every guardian shall account for and dispose of the personal estate of his ward in like manner as is directed with respects to executors and administrators.

Section 18.—The District Court on the application of a guardian or any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank, insurance company, or other corporation, or any other personal estate or effects held by him as guardian, and invest the proceeds of such sale, and also of the moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and the court may make such further order and give such

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directions as the case may require for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Section 19.—When any guardian appointed either by a testator or by the court shall become insane or otherwise incapable of discharging his trust, or be unsuitable therefor, the court after notice to such guardian and to all others interested may remove him; and every guardian upon his request, may be allowed to resign his trust when it shall appear to the court proper to allow the same, and upon every such resignation or removal and also upon the death of any guardian, the court shall appoint another in his stead.

Section 20.—The marriage of any female who is under guardianship as a minor shall operate as a discharge of her guardian; and the guardian of any insane person or spendthrift may be discharged by the court when it shall appear, on the application of the ward or otherwise, that such guardianship is no longer necessary.

Section 21.—Upon complaint made to the court by any guardian or by the ward, or by any creditor or other person interested in his estate, or by persons having claims thereto in expectancy, as heir or otherwise, against anyone suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects of the ward, the court may cite and examine such suspected person and proceed with him as to such charge in the same manner as is provided respecting persons suspected of concealing or embezzling effects of a deceased testator or intestate.

Section 22.—When any minor or other person likely to be put under guardianship according to the provisions of this chapter shall reside without the district and shall have any estate therein, any friends of such person or anyone interested in his estate, in expectancy or otherwise, may apply to the District Court, and after notice to all persons interested, to be given in such manner as the court shall order, and after a full hearing and examination, if it shall appear proper the court may appoint a guardian for such absent person.

Section 23.—Every guardian appointed according to the provisions of the preceding section shall have the same powers and duties with respect to any estate of the ward that may be found within the district, and also with respect to the person of the ward if he shall come to reside therein, as are prescribed to any other guardian appointed by force of this chapter.

Section 24.—Every guardian shall be allowed the amount of all his reasonable expenses incurred in the execution of his trust, and shall also have such compensation for his services as the court shall consider just and reasonable.

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Section 25.—When an account is rendered by two or more joint guardians, the court may, in its discretion, allow the same upon the oath of any one of them.

### **Chapter Eighty-One. Of the Records and files of a Police Court**

Section 1.—The records and files of the Police Court are the docket and all papers and process filed in or returned to such court concerning or belonging to any proceeding authorized to be had or taken therein or before the judge who holds such court.

Section 2.—The docket of a Police Court is a book in which must be entered:

First. The title of every action or proceeding commenced in such court, with the names of the parties thereto and the time of the commencement thereof.

Second. The date of making or filing any pleading, and when the same is made orally, a plain statement of the substance thereof and the verification thereto when one is required.

Third. An order allowing a provisional remedy, and the date of issuing and returning the summons or other processes.

Fourth. The time when the parties, or either of them, appear, or their failure to do so.

Fifth. Every postponement of a trial or proceeding, and upon whose application, and for what time.

Sixth. The judgement of the court and when given.

Seventh. The fact of an appeal having been made and allowed, and the date thereof, with a memorandum of the undertaking thereof, and the justification of the sureties therein.

Eighth. Satisfaction of the judgment or of any part thereof.

Ninth. A memorandum of all orders relating to the admission to bail, taking bail, or commitment for want thereof.

Tenth. All other matters which may be material or specially required by any statute.

### **Chapter Eighty-Two. Of General Provisions in Relation to Civil Actions in Police Courts**

Section 1.—A Civil action in a Police Court is commenced and prosecuted to final determination, and judgment enforced therein, in the manner provided in this code for similar actions in courts of record, except as otherwise provided: Provided, Necessary disbursements shall in all case be allowed to the prevailing party.

Section 2.—The summons shall be issued and signed by the Judge and must require the defendant to appear before such Judge at a time and place to be named therein not less than six nor more than twenty days from the date thereof, to answer the complaint of the plaintiff or judgment for want thereof will be taken against him.

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Section 3.—The service of the summons may be made as follows:

First. By delivering a copy thereof to the defendant; or

Second. By delivering a copy of the summons at the usual place of abode of the defendant, with some person of the family above the age of fifteen years; and if a defendant shall refuse to hear the summons read or to receive a copy thereof, a the offer of the officer to read the same or to deliver a copy thereof, such refusal shall be a sufficient serve of the summons; or in the defendant be a corporation, then the president, secretary, or a managing or local agent thereof.

Section 4.—The summons must be served at least five days before the time therein required for the defendant to appear.

Section 5.—Any police officer may serve a summons issued by a Police Court.

Section 6.—If the plaintiff is a nonresident of the District, the judge may require him to give an undertaking, with one or more sureties, for the costs and disbursements of the action before issuing the summons, and if at any time before the commencement of trial the defendant apply therefor, the justice must require such plaintiff to give such undertaking; but if the plaintiff is a resident of the District the judge may, in his discretion, upon a like application on the part of the defendant require such plaintiff to give such undertaking.

Section 7.—The undertaking may be substantially the following form: “I, A.B.” or “We: A, B, and C.C., undertake to pay E.F., the defendant in this action, all costs, and disbursements that may be adjudged to him in this action.” The sureties must possess the qualifications of bail upon arrest, and if required by the defendant must justify in a sum not less than fifty dollars. A deposit of fifty dollars with the Judge or such less sum as he may deem sufficient, is equivalent to giving the required undertaking; and if the undertaking or deposit in lieu thereof is not given or made upon the day the same is demanded the Judge must dismiss the action as for want of prosecution.

Section 8.—In a civil action in a Police Court a plaintiff is entitled to the benefit of the provisional remedies of arrest, attachment, and delivery of personal property claimed in the action, as in like cases in a court of record. All affidavits, orders, and undertaking for such remedies are to be taken or made and filed with the Judge, and such process is to be issued by and made returnable before him.

Section 9.—A writ of attachment or an order for the delivery of personal property claimed in the action may be served and executed by any person authorized to serve a summons.

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Section 10.—The undertaking for an order for the delivery of personal property claimed in the action shall be taken by the Judge who makes the order and he shall require the sureties therein to justify as bail upon arrest; and no exceptions to the sufficiency of such sureties shall thereafter be allowed.

Section 11.—Real property or any interest therein cannot be attached upon a writ of attachment in a civil action in a police court.

Section 12.—Whenever sureties in an undertaking given in a provisional remedy by either party are required to justify, the justification shall be made before the Judge in whose court the action is pending, and upon the notice prescribed in such cases by this code, or upon a shorter notice, to be prescribed by order of the judge.

### **Chapter Eighty-Three. Of the Pleadings in Police Court.**

Section 1.—No formal pleading on the part of either plaintiff or defendant shall be required in a police court; but before any process shall be issued in any action the plaintiff shall file with the Judge the instrument sued on and a statement of the account as of the facts constituting the cause of action upon which the action is founded; and the defendant shall, before the trial is commenced, file the instrument, account, or statement of his set-off or counterclaim relied upon.

Section 2.—When the action is founded on any instrument of writing purporting to have been executed by the defendant, and the debt or damage claimed may be ascertained by such instrument, the same shall be filed with the Judge, and no other statement or pleading shall be required. If the action be upon an account, a bill of the items constituting the cause of action and the amount or sum demanded shall be filed with the justice, but no action shall be dismissed or discontinued for want of any such statement as cause of action, or for any defect or insufficiency thereof, if the plaintiff shall file the instrument or account as a sufficient statement before trial commenced, or when required by the Judge.

Section 3.—If such instrument be alleged to be lost or destroyed, it shall be sufficient for the plaintiff to file with the Judge the affidavit of himself, or some other credible person, stating such loss or destruction and setting forth the substance of such instrument.

### **Chapter Eighty-Four. Of the Postponement of Trial in Police Courts.**

Section 1.—When a cause is at issue upon a question of fact the Judge must, upon sufficient cause shown, on the application of either party, postpone the trial for a period not exceeding sixty days.

Section 2.—An application for the postponement of a trial must not be granted unless the party applying therefor, if required by the adverse party, consent to take the deposition of any witness of such

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adverse party then in attendance upon the court. If the consent is given, the Judge must take such deposition, and the same may be read on the trial, subject to the same objections as if the witness were present and gave the testimony orally.

Section 3.—If it appear on the trial of any cause before a Police Court, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the Judge shall immediately make an entry thereof in his docket and cease all further proceedings in the cause, and shall certify and return to the district court a transcript of all the entries made in his docket relating to the case together with all the process and other papers relating to the action, in the same manner and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution in the same manner as if the action had been originally commenced therein; and the costs shall abide with the event of the action.

#### **Chapter Eighty-Five. Of the Trial in Police Court**

Section 1.—When a cause is at issue, such issue must be tried by the court at such time as the court shall set and within fourteen days.

Section 2.—When an issue of fact is tried by the Police Judge it is not necessary that there should be any special statement of the facts found or law determined on such trial, but it is sufficient for the court to give judgment generally, as the law and the evidence may require, for the plaintiff or the defendant, setting forth therein for what amount, or what relief, or to what effect the same is given.

#### **Chapter Eighty-Six. Of Judgment and Execution in Police Court.**

Section 1.—Whenever a judgment is given in a Police Court in favor of anyone, for the sum of ten dollars, or more, exclusive of costs or disbursements, the party in whose favor such judgment is given, may within one year thereafter, file a certified transcript thereof with the clerk of the district court, and thereupon such clerk shall immediately docket the same in the judgment docket of the district court.

Section 2.—From the time of docketing a judgment in a district court as provided in the last section, the same shall be a lien upon the real property of the defendant, as if it were a judgment of the district court wherein it is docketed.

Section 3.—A party against whom a judgment is given in a Police Court may, upon three days' notice to the adverse party, apply to the Judge of the court to have another judgment given in the Police court, between the same parties and against such adverse party, set-off against such first mentioned judgment.

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Section 4.—There must be no existing right of appeal from judgment proposed as a set-off, and if such judgment was given in another court than the one where the application is made, the party proposing such set-off must produce a transcript of such judgment, certified by the proper Judge, which certificate shall also state how much of the judgment remains unsatisfied, and treat the transcript as given for the purpose of being set-off against the judgment to which it is proposed as a set-off.

Section 5.—The Judge making such transcript and certificate shall make an entry thereof in his docket, and thereafter all proceedings to enforce such judgment shall be stayed, unless the transcript be returned, with the certificate of the proper Judge indorsed thereon, to the effect that it has not been allowed to be set off.

Section 6.—If, upon the hearing of the application, the Judge finds that the judgments are mutual, he shall give judgment allowing the proposed set-off.

Section 7.—If there is any difference in the amount of the two judgments, judgment for the difference must be given in favor of the party owning the largest judgment. If the Judge refuse to allow the set-off, he shall so certify on the transcript and return it to the party making the application.

Section 8.—Although the title to real property may be controverted or questioned in an action in a Police court, the judgment in such action in no way affects or determines such title as between the parties thereto or otherwise.

Section 9.—Execution to enforce a judgment in a Police Court must not be issued against or levied upon the real property of the defendant; but when a judgment given by a Police Court has been duly docketed in the district court thereafter it must be enforced as a judgment of such district court.

Section 10.—An execution issued by a Police Court must be made returnable in thirty days from the date thereof and may be directed to the sheriff or deputy or other officer authorized to act; and must be executed by any of such officers when delivered to him.

Section 11.—At any time before the expiration of the return day of the execution it may be renewed for another period of thirty days, at the request of the plaintiff, by an indorsement to that effect, made by the judge thereon. Such indorsement must be dated, and if any part of such execution has been satisfied, must state the amount then due thereon. An entry of such renewal must also be made in the docket of the Police Judge.

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**Chapter Eighty-Seven. Of Appeals from Police Court in Civil Actions.**

Section 1.—Either party may appeal from a judgment given in a Police Court, in a civil action, when the sum in controversy is not less than ten dollars, or for the recovery of personal property of the value of not less than ten dollars, exclusive of costs in either case, except when the sum is given by confession or for want of an answer, as prescribed in this chapter, and not otherwise.

Section 2.—The appeal is taken to the District Court, and may be taken within thirty days from the date of the entry of the judgment. The party appealing is known as the appellant and the adverse party is the respondent, but the title of the action is not thereby changed.

Section 3.—An appeal is taken by serving the notice thereof on the adverse party or his attorney and filing the original, with the proof of service indorsed thereon, with the justice, and by giving the undertaking or the costs of the appeal as hereinafter provided.

Section 4.—The undertaking of the appellant must be given, with one or more sureties, to the effect that the appellant will pay all costs and disbursements that may be awarded against him on the appeal; but such undertaking does not stay the proceeding unless the undertaking further provides to the effect following, that the appellant will satisfy any judgment that may be given against him in the appellate court on the appeal.

Section 5.—If the judgment appealed from be in favor of the appellant, the proceedings thereon are stayed by the notice of appeal and the undertaking for the costs of the appeal.

Section 6.—When an appeal is taken the Police Court Judge must allow the same and make an entry thereof in his docket, stating whether the proceedings are thereby stayed or not. When the proceedings are stayed, if an execution has been issued to enforce the judgment, the judge must recall the same by written notice to the officer holding the execution, and thereupon it must be returned and all property taken thereon and not sold or released; and if the body of the defendant has been taken on execution he must be discharged from custody.

Section 7.—All sureties in an undertaking under the provisions of this chapter must have the qualification of bail upon arrest; and if required by the adverse party must justify before the judge in like manner.

Section 8.—Within twenty days after the allowance of the appeal the appellant must file with the clerk of the district court a transcript of the cause. The transcript must contain a copy of all the material entries in the Police Court docket relating to the cause of the appeal, and must have annexed thereto all the original papers relating to the cause or the appeal and filed with the judge.

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Section 9.—Upon the filing of the transcript with the clerk of the district court the appeal is perfected, and the action shall be deemed pending and for trial therein as if originally commenced in such court, and the district court shall proceed to hear, try, and determine the same anew, without regarding any error or other imperfection in the original summons and the service thereof, or on the trial, judgment, or other proceeding of the Police Court.

Section 10.—The District Court, on motion of the respondent may, at any time before the action is called for trial, dismiss the appeal, if it satisfactorily appear that the transcript and original papers annexed are incomplete in any material particular, unless upon the cross motion of the appellant it makes a rule upon the Police Court Judge to supply such omission, upon such terms against the appellant as may be just. At any time before the trial the court may dismiss the appeal upon the motion of the appellant.

Section 11.—When an appeal is dismissed the district court must give judgment as it was given in the court below, and against the appellant, for the costs and disbursements of the appeal. When judgment is given in the appellate court against the appellant, either with or without trial of the action, it must also be given against the sureties in the undertaking according to the nature and effect of it. If the appellant fail to file such transcript within the time required, the adverse party may file a transcript of the judgment of the Police Court, and the notice and undertaking on appeal, which, on demand, the Police Court Judge shall deliver to him for that purpose and thereupon have such appeal dismissed and judgment against the appellant and his sureties as provided in this section.

Section 12.—An appeal can not be dismissed on the motion of the respondent, on account of the undertaking therefor being defective, if the appellant, before the determination of the motion to dismiss, will execute a sufficient undertaking, and file the same in the appellate court, upon such terms as may be deemed just.

Section 13.—In all cases of appeal the bill of items of the account sued on, or filed as a counterclaim or set-off, or the abatement of the plaintiff's cause of action, or of the defendant's counterclaim or set-off, or other ground of defense filed before the Police Court, may be amended upon appeal in the appellate court to supply any defect, deficiency, or omission therein, by filing formal pleadings therein when by such amendment substantial justice will be promoted; and in all cases when required by court, or by either party to the action, formal pleadings shall be filed on either side upon the trial of the cause on appeal; when either party requires such formal pleadings, he shall cause to be served on the opposite party a notice thereof in writing, and file the same in the court where the cause is pending on the first day of the term of the such court at

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which such cause is to be tried, but no new item or cause of action not embraced or intended to be included in the original account or statement shall be added by such amendment.

#### **Chapter Eighty-Eight. Of Miscellaneous Provisions Relating to Police Courts.**

Section 1.—No provision in this code in relation to appeals or the right of appeal must be construed so as to prevent either party to a judgment given in a Police Court from having the same reviewed in the District Court for errors in law appearing upon the face of such judgment or the proceedings connected therewith.

Section 2.—A party is entitled to one hour in which to make his appearance after the time specified in the summons, and not otherwise; and if the judge be then actually engaged in other official business she may, on his own motion, postpone further proceedings in the case until such official business has been completed or he can be disengaged therefrom.

Section 3.—Chapter Fifty-Five of this title, defining contempts, and the proceeding for punishing a party guilty of contempt, shall apply to Police Courts, except as in this chapter otherwise specially provided.

Section 4.—The punishment for a contempt in a Police Court shall be by fine or imprisonment, or both; but the fine shall in no case exceed twenty-five dollars, nor the imprisonment ten days.

Section 5.—There shall be no appeal from any action or proceeding in a Police Court wherein the Judge of the District Court administers such Police Court.

#### **Chapter Eighty-Nine. Of Forcible Entry and Detainer.**

Section 1.—No person shall enter upon any land, tenement or other real property, but in cases where entry is given by law; and in such cases the entry shall not be made with force, but only in a peaceful manner.

Section 2.—When a forcible entry shall be made in a peaceable manner and the possession shall be held by force, the person entitled to the premises may maintain an action to recover the possess thereof before the Police Court.

Section 3.—In such action it shall be sufficient to state in the complaint a description of the premises with convenient certainty, that the defendant is in possession thereof, that he entered upon the same with force, or unlawfully holds the same with force, as the case may be, and that the plaintiff is entitled to the possession thereof.

Section 4.—Such action, except as hereinafter specially provided, shall be conducted in all respects as other actions before the Police Court.

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Section 5.—The summons shall be served and returned as in other cases; such service shall be not less than two nor more than seven days before the day of trial appointed.

Section 6.—No continuance shall be granted for a longer period than two days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient security, to be approved by the court, conditioned for the payment of the rent that may accrue if the judgment be rendered against the defendant and all costs.

Section 7.—The execution, should judgment of restitution be rendered, may be in the following form:

To the Sheriff for the District.

Whereas a certain action for the forcible entry and detention (or the forcible detention, as the case may be) of the following described premises, to wit: . . . . . , lately tried before me, wherein . . . . . was plaintiff and . . . . . was defendant, judgment was rendered on the . . . . . day of . . . . . , anno Domini . . . . . , that the plaintiff . . . . . , have restitution of said premises; and also that he recover costs in the sum of . . . . . . In the name of The People you are therefore hereby commanded to cause the defendant to be forthwith removed from said premises, said plaintiff to have restitution of the same; also, that you levy on the goods and chattels of said defendant, and make the costs aforesaid and all accruing costs; and of this writ make legal service and due return.

Witness my hand this . . . . . day of . . . . . , anno Domini . . . . .  
. . . . .

Section 8.—If judgment be rendered against the defendant for the restitution of the real property described in the complaint or any part thereof, no appeal shall be taken by the defendant from such judgment until he shall, in addition to the undertaking now required by laws upon appeal, give an undertaking to the adverse party, with two sureties, who shall justify in like manner as bail upon arrest, for the payment to the plaintiff of twice the rental value of the real property of which restitution shall be adjudged from the rendition of such judgment until final judgment in the action, if such judgment shall be affirmed upon appeal.

Section 9.—The following shall be deemed cases of unlawful holding by force within the meaning of this chapter:

First. When the tenant or person in possession of any premises shall fail or refuse to pay any rent due on the lease or agreement under which he holds or deliver up the possession of the premises for three days after demand made for such possession;

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Second. When, after notice to quit as provided in this chapter, any person shall continue in the possession of any premises at the expiration of the time limited in the lease or agreement under which such person holds, or contrary to any condition or covenant thereof, or without any written lease or agreement therefor.

Section 10.—A notice to quit must be in writing and must be served upon the tenant or person in possession by being delivered to him or left at the premises in case of his absence therefrom.

Section 11.—An action for the recovery of the possession of the premises may be maintained in the cases specified in subdivision second of section nine next preceding, when the notice to quit has been served upon the tenant or person in possession for the period of three days before the commencement thereof, unless the leasing or occupation is for the purpose of farming or agriculture, in which case such notice must be served for the period of ninety days before commencement of such action.

Section 12.—The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against him for the possession of the premises before the expiration of any period for which such tenant or person may have paid the rent of such premises in advance.

Section 13.—When the leasing or occupation is for the purpose of farming or agriculture, the tenant or person in possession shall, after the termination of such lease or occupancy, have free access to the premises to cultivate and harvest or gather any crop or produce of the soil planted or sown by him before the service of notice to quit.

Section 14.—In an action to recover the possession of any land, tenement or other real property, where the entry is forcible or when the possession thereof is unlawfully held by force, the merits of the title shall not be inquired into, and three years quiet possession of the premises immediately preceding the commencement of such action by the party in possession, or those under whom he holds, may be pleaded in bar thereof, unless the estate of such party in the premises is ended.

#### **Chapter Ninety. Of Witnesses, Inspection and Proof of Records and of Private Seals.**

Section 1.—Neither parties nor other persons who have an interest in the event of an action or proceeding are excluded as witnesses; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case, except the latter, the credibility of the witness may be drawn in question.

Section 2.—The following persons shall not be witnesses;

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First. Those of unsound mind at the time of the transaction and of their production for examination;

Second. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Section 3.—A husband shall not be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either during the marriage or afterwards, be, without the consent of the other, examined as to any communications made by one to the other during marriage, but the exception does not apply to a civil action, or proceeding for a crime committed by one against the other.

Section 4.—An attorney shall not, without the consent of his client, be examined as to any communication made by his client to him, or his advice thereon, in the course of his professional employment.

Section 5.—A priest or clergyman shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional capacity, in the course of discipline enjoined by the church to which he belongs.

Section 6.—A physician or surgeon shall not, against the objection of his patient, be examined in a civil action or proceeding as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

Section 7.—Every person has a right to inspect any public writing or record in said District, and every public officer having the custody thereof is bound to permit such inspection, and to give on demand and on payment of the legal fees therefor a certified copy of such writing or record, and such copy shall in all cases be evidence of the original.

Section 8.—A judicial, legislative, or executive record of said District, or of any State or Territory of the United States, or of any foreign country, or of any political subdivision of either, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having the legal custody thereof, with the seal of the court or the official seal of such person affixed thereto, if it or he have a seal.

Section 9.—Private seals and scrolls as a substitute are abolished and are not required to any instrument, but the effect thereof, when used, shall remain unchanged.

Section 10.—The uninterrupted, exclusive, actual, physical, adverse, continuous notorious possession of real property under color and claim of title for fifteen years or more shall be conclusively presumed to give title thereto except as against the Government.

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**Chapter Ninety-One. Of Indispensable Evidence.**

Section 1.—Every sale or assignment of personal property, unless accompanied by the immediate delivery and the actual and continued change of possession of the thing sold or assigned, shall be presumed prima facie to be a fraud against the creditors of the vendor or assignor, and subsequent purchasers in good faith and for valuable consideration, during the time such property remains in the possession of said vendor or assignor.

Section 2.—No evidence is admissible to charge a person upon a representation as to the credit, skill, or character of a third person unless such representation or some memorandum thereof be in writing, and either subscribed by or in the handwriting of the party to be charged.

Section 3.—No estate or interest in real property, other than a lease for a term not exceeding one year, nor any trust or power concerning such property, can be created, transferred, or declared otherwise than by operation of law, or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring the same, or by his lawful agent under written authority, and executed with such formalities as are required by law.

Section 4.—The last section shall not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent a trust arising or being extinguished by implication or operation of law, nor to affect the power of a court to compel specific performance of an agreement in relation to such property.

Section 5.—A sale or transfer of a boat or vessel is not valid unless it be in writing and signed by the party making the sale or transfer.

**6. The Organic Act of the U.S. Virgin Islands-1936 Act****Judicial Branch****Section 25.**

The judicial power of the Virgin Islands shall be vested In a court to be designated "the District Court of the Virgin Islands" and in such court or courts of inferior jurisdiction as may have been or may hereafter be established by local law: Provided, That the legislative assembly may provide for the organization and conduct of a Superior Court of the Virgin Islands and may transfer from the district court to such Superior Court jurisdiction over any or all causes other than those arising under the laws of the United States. Appeals from the Superior Court shall be as provided by law in the case of appeals from the district court.

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Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 25, 49 Stat. 1807, 1813 (1936), *repealed by* Act of Oct. 19, 1982, Pub. L. No. 97-357, § 307, 96 Stat. 1705, 1709.

Section 26.

The President shall, by and with the advice and consent of the Senate, appoint a judge and a district attorney for the District Court of the Virgin Islands who shall hold office for the term of four years and until their successors are chosen and qualified unless sooner removed by the President for cause.

The Attorney General shall appoint and fix the compensation of all other officers necessary for the transaction of the business of the district court, and the compensation of the judge of the district court, and of the district attorney, and the administrative expenses or such court shall be paid from appropriations made for the Department of Justice. The duties of such officers shall be prescribed by law or ordinance and by order of the Attorney General not inconsistent therewith: *Provided*, That the Governor may call upon the district attorney to advise him upon any legal questions concerning the administration of the Government of the Virgin Islands.

Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 26, 49 Stat. 1807, 1813 (1936). In 1966, section 26 was repealed when Title 5 of the United States Code was enacted. See Act of Sept. 6, 1966, Pub. L. No. 89-554, § 8(a), 80 Stat. 378, 632, 649.

Section 27.

The District Court of the Virgin Islands shall consist of two divisions, one constituted by the municipality of Saint Croix and one constituted by the municipality of Saint Thomas and Saint John, as defined by local law in force on the date of enactment of this Act. The judge of the district court shall hold court in each division at such time as he may designate by order, at least once in two months in each division. The rules of practice and procedure in such district court shall be prescribed by law or ordinance or by rules and regulations of the district judge not inconsistent with law or ordinance. The process of the district court shall run throughout the Virgin Islands.

Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 27, 49 Stat. 1807, 1813-14 (1936), *repealed by* Act of October 19, 1982, Pub. L. No. 97-357, § 307, 96 Stat. 1705, 1709.

Section 28.

The district court shall have jurisdiction of-

- (1) All criminal cases under the laws of the respective municipalities or under the laws of the United States applicable to the Virgin Islands;
- (2) All cases in equity;
- (3) All cases in admiralty;

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- (4) All cases of divorce and annulment of marriage;
- (5) An cases at law involving principal sums exceeding \$200;
- (6) All cases involving title to real estate;
- (7) All appeals from judgments rendered in the inferior courts;
- (8) All matters and proceedings not otherwise hereinabove provided for which, on the date of enactment of this Act, were within the jurisdiction of the District Court of the Virgin Islands, or of the judge thereof, or which may hereafter be placed within the jurisdiction of the District Court of the Virgin Islands, or of the judge thereof, by local law.

The district court shall also have concurrent Jurisdiction with the inferior courts as provided in section 32.

Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 28, 49 Stat. 1807, 1814 (1936), *repealed by* Act of October 19, 1982, Pub. L. No. 97-357, § 307, 96 Stat. 1705, 1709.

#### Section 29.

The district court shall also have jurisdiction of offenses under the criminal laws of the United States when such offenses are committed on the high seas beyond the territorial limits of the Virgin Islands on vessels belonging in whole or in part to the United States, to any citizen thereof, or to any corporation created by or under the laws of the United States or of any State or Territory thereof, and the offenders are found in the Virgin Islands or are brought into the Virgin Islands after the commission of the offense.

Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 29, 49 Stat. 1807, 1814 (1936), *repealed by* Act of October 19, 1982, Pub. L. No. 97-357, § 307, 96 Stat. 1705, 1709.

#### Section 30.

Appeals from the District Court of the Virgin Islands shall be as provided by law in force on the date of enactment of this Act: *Provided*, That no appeal shall be predicated upon the existence of a right of appeal under the law of Denmark.

Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 30, 49 Stat. 1807, 1814 (1936), *repealed by* Act of October 19, 1982, Pub. L. No. 97-357, § 307, 96 Stat. 1705, 1709.

#### Section 31.

In any criminal case originating in said district court, no person shall be denied the right to trial by jury on the demand of either party: *Provided*, That if no jury is demanded the case shall be tried by the court without a jury: *Provided further*, That the judge of the district court may, on his own motion, order a jury for the trial of any criminal action: *Provided further*, That the respective municipal councils of Saint Croix and of Saint Thomas and Saint John, may provide for trial in misdemeanor cases by a jury of six qualified persons.

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Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 31, 49 Stat. 1807, 1814 (1936), *repealed by* Act of October 19, 1982, Pub. L. No. 97-357, § 307, 96 Stat. 1705, 1709.

Section 32.

The inferior courts shall have jurisdiction concurrent with the District Court in all Civil cases in which the principal sum claimed does not exceed \$200 and of all criminal cases wherein the punishment that may be imposed shall not exceed a fine of \$100 or imprisonment not exceeding six months, all violations of police regulations and executive regulations, and any cause or offense wherein Jurisdiction hereafter shall have been conferred by local law. Such inferior courts shall hold preliminary investigations in charges of felony and charges of misdemeanor in which the punishment that may be imposed is beyond the jurisdiction granted to the inferior courts by this section, and shall commit offenders to the district court and grant bail inailable cases. The rules governing said courts and prescribing the duties of inferior judges and inferior court officers, oaths, and bonds, the times and places of holding such courts, the disposition of fines, costs, forfeitures, enforcements of judgments, providing for appeals therefrom to the district court, and the disposition and treatment of prisoners shall be as established by law or ordinance in force on the date of enactment of this Act or as may hereafter be established by law or ordinance by the municipal council having jurisdiction. . .

Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 32, 49 Stat. 1807, 1814-15 (1936), *repealed by* Act of October 19, 1982, Pub. L. No. 97-357, § 307, 96 Stat. 1705, 1709.

Section 33.

Appeals in civil and criminal cases from the judgments and rulings of the inferior courts shall be to the district court and shall be taken in accordance with the laws and ordinances of the respective municipalities: *Provided*, That the right of appeal in all cases, civil and criminal, shall be as established by law or ordinance in force on the date of enactment of this Act, or as may hereafter be established by law or ordinance by the municipal council having jurisdiction.

Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 33, 49 Stat. 1807, 1815 (1936), *repealed by* Act of October 19, 1982, Pub. L. No. 97-357, § 307, 96 Stat. 1705, 1709.

**Miscellaneous Provisions**

Section 34.

No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

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In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal cause to give evidence against himself; nor shall any person sit as judge or magistrate in any case in which he has been engaged as attorney or prosecutor.

All persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first-degree murder or any capital offense when the proof is evident or the presumption great.

No law impairing the obligation of contracts shall be enacted.

No person shall be imprisoned or shall suffer forced labor for debt.

All persons shall have the privilege of the writ of habeas corpus and the same shall not be suspended except as herein expressly provided.

No ex-post-facto law or bill of attainder shall be enacted.

Private property shall not be taken for public use except upon payment of just compensation ascertained in the manner provided by law.

Nothing contained in this Act shall be construed to limit the power of the municipal councils herein provided to enact laws for the protection of life, the public health, or the public safety.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

The right to be secure against unreasonable searches and seizures shall not be violated.

No warrant for arrest or search 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.

Slavery shall not exist in the Virgin Islands.

Involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall not exist in the Virgin Islands.

No law shall be passed abridging the freedom of speech or of the press or the right of the people peaceably to assemble and petition the Government for the redress of grievances.

No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and the free enjoyment of religious profession and worship without discrimination or

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preference shall forever be allowed, and no political or religious test other than an oath to support the Constitution and the laws of the United States applicable to the Virgin Islands, and the laws of the Virgin Islands, shall be required as a qualification to any office or public trust under the Government of the Virgin Islands.

The contracting of polygamous or plural marriages is prohibited.

No money shall be paid out of the treasury except in accordance with an Act of Congress or money bill of the local legislative authority having jurisdiction and on warrant drawn by the proper officer.

The employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited.

Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 34, 49 Stat. 1807, 1815-16 (1936), *repealed by* Act of October 19, 1982, Pub. L. No. 97-357, § 307, 96 Stat. 1705, 1709.

#### Section 37.

All judicial process shall run in the name of “United States of America, scilicet, the President of the United States”, and all penal or criminal prosecutions in the local courts shall be conducted in the name of and by authority of “the People of the Virgin Islands of the United States.”

Organic Act of the Virgin Islands of the United States, Pub. L. No. 749, § 37, 49 Stat. 1807, 1817 (1936), *abrogated by* Revised Organic Act of the Virgin Islands, Pub. L. No. 517, 68 Stat. 497, 497-98 (1954).

## **7. The Organic Act of the U.S. Virgin Islands-1954 Act**

### **Bill of Rights**

#### Section 3.

No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal cause to give evidence against himself; nor shall any person sit as judge or magistrate in any case in which he has been engaged as attorney or prosecutor.

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All persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first-degree murder or any capital offense when the proof is evident or the presumption great.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

No law impairing the obligation of contracts shall be enacted.

No person shall be imprisoned or shall suffer forced labor for debt.

All persons shall have the privilege of the writ of habeas corpus and the same shall not be suspended except as herein expressly provided.

No ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken for public use except upon payment of just compensation ascertained in the manner provided by law.

The right to be secure against unreasonable searches and seizures shall not be violated.

No warrant for arrest or search 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.

Slavery shall not exist in the Virgin Islands.

Involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted by a court of law, shall not exist in the Virgin Islands.

No law shall be passed abridging the freedom of speech or of the press or the right of the people peaceably to assembly and petition the government for the redress of grievances.

No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof.

No person who advocates, or who aids or belongs to any party, organization, or association which advocates, the overthrow by force or violence of the government of the Virgin Islands or of the United States shall be qualified to hold any office of trust or profit under the government of the Virgin Islands.

No money shall be paid out of the Virgin Islands treasury except in accordance with an Act of Congress or money bill of the legislature and on warrant drawn by the proper officer.

The contracting of polygamous or plural marriages is prohibited.

The employment of children under the age of sixteen years in any occupation injurious to health or morals or hazardous to life or limb is prohibited.

Nothing contained in this Act shall be construed to limit the power of the legislature herein provided to enact laws for the protection of life, the public health, or the public safety.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, 68 Stat. 497, 497-98 (1954).

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### Section 3.

No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal cause to give evidence against himself; nor shall any person sit as judge or magistrate in any case in which he has been engaged as attorney or prosecutor.

All persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first-degree murder or any capital offense when the proof is evident or the presumption great.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

No law impairing the obligation of contracts shall be enacted.

No person shall be imprisoned or shall suffer forced labor for debt.

All persons shall have the privilege of the writ of habeas corpus and the same shall not be suspended except as herein expressly provided.

No ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken for public use except upon payment of just compensation ascertained in the manner provided by law.

The right to be secure against unreasonable searches and seizures shall not be violated.

No warrant for arrest or search 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.

Slavery shall not exist in the Virgin Islands.

Involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted by a court of law, shall not exist in the Virgin Islands.

No law shall be passed abridging the freedom of speech or of the press or the right of the people peaceably to assembly and petition the government for the redress of grievances.

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No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof.

No person who advocates, or who aids or belongs to any party, organization, or association which advocates, the overthrow by force or violence of the government of the Virgin Islands or of the United States shall be qualified to hold any office of trust or profit under the government of the Virgin Islands.

No money shall be paid out of the Virgin Islands treasury except in accordance with an Act of Congress or money bill of the legislature and on warrant drawn by the proper officer.

The contracting of polygamous or plural marriages is prohibited.

The employment of children under the age of sixteen years in any occupation injurious to health or morals or hazardous to life or limb is prohibited.

Nothing contained in this Act shall be construed to limit the power of the legislature herein provided to enact laws for the protection of life, the public health, or the public safety.

No political or religious test other than an oath to support the Constitution and the law of the United States applicable to the Virgin Islands, and the laws of the Virgin Islands, shall be required as a qualification to any office or public trust under the Government of the Virgin Islands.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, 68 Stat. 497, 497-98 (1954), *amended* by Act of Aug. 28, 1958, Pub. L. No. 85-851, § 1, 72 Stat. 1094, 1094.

### Section 3.

No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal cause to give evidence against himself; nor shall any person sit as judge or magistrate in any case in which he has been engaged as attorney or prosecutor.

All persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first-degree murder or any capital offense when the proof is evident or the presumption great.

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Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

No law impairing the obligation of contracts shall be enacted.

No person shall be imprisoned or shall suffer forced labor for debt.

All persons shall have the privilege of the writ of habeas corpus and the same shall not be suspended except as herein expressly provided.

No ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken for public use except upon payment of just compensation ascertained in the manner provided by law.

The right to be secure against unreasonable searches and seizures shall not be violated.

No warrant for arrest or search 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.

Slavery shall not exist in the Virgin Islands.

Involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted by a court of law, shall not exist in the Virgin Islands.

No law shall be passed abridging the freedom of speech or of the press or the right of the people peaceably to assembly and petition the government for the redress of grievances.

No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof.

No person who advocates, or who aids or belongs to any party, organization, or association which advocates, the overthrow by force or violence of the government of the Virgin Islands or of the United States shall be qualified to hold any office of trust or profit under the government of the Virgin Islands.

No money shall be paid out of the Virgin Islands treasury except in accordance with an Act of Congress or money bill of the legislature and on warrant drawn by the proper officer.

The contracting of polygamous or plural marriages is prohibited.

The employment of children under the age of sixteen years in any occupation injurious to health or morals or hazardous to life or limb is prohibited.

Nothing contained in this Act shall be construed to limit the power of the legislature herein provided to enact laws for the protection of life, the public health, or the public safety.

No political or religious test other than an oath to support the Constitution and the law of the United States applicable to the Virgin Islands, and the laws of the Virgin Islands, shall be required

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as a qualification to any office or public trust under the Government of the Virgin Islands.

The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; the first to eight amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments: Provided, however, that all offenses shall continue to be prosecuted in the district court by information as heretofore, except such as may be required by local law to be prosecuted by indictment by grand jury.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, 68 Stat. 497, 497-98 (1954), *amended* by Virgin Islands Elective Governor Act, Pub. L. No. 90-496, § 11, 82 Stat. 837, 841 (1968).

### Section 3.

No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal cause to give evidence against himself; nor shall any person sit as judge or magistrate in any case in which he has been engaged as attorney or prosecutor.

All persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first-degree murder or any capital offense when the proof is evident or the presumption great.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

No law impairing the obligation of contracts shall be enacted.

No person shall be imprisoned or shall suffer forced labor for debt.

All persons shall have the privilege of the writ of habeas corpus and the same shall not be suspended except as herein expressly provided.

No ex post facto law or bill of attainder shall be enacted.

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Private property shall not be taken for public use except upon payment of just compensation ascertained in the manner provided by law.

The right to be secure against unreasonable searches and seizures shall not be violated.

No warrant for arrest or search 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.

Slavery shall not exist in the Virgin Islands.

Involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted by a court of law, shall not exist in the Virgin Islands.

No law shall be passed abridging the freedom of speech or of the press or the right of the people peaceably to assembly and petition the government for the redress of grievances.

No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof.

No person who advocates, or who aids or belongs to any party, organization, or association which advocates, the overthrow by force or violence of the government of the Virgin Islands or of the United States shall be qualified to hold any office of trust or profit under the government of the Virgin Islands.

No money shall be paid out of the Virgin Islands treasury except in accordance with an Act of Congress or money bill of the legislature and on warrant drawn by the proper officer.

The contracting of polygamous or plural marriages is prohibited.

The employment of children under the age of sixteen years in any occupation injurious to health or morals or hazardous to life or limb is prohibited.

Nothing contained in this Act shall be construed to limit the power of the legislature herein provided to enact laws for the protection of life, the public health, or the public safety.

No political or religious test other than an oath to support the Constitution and the law of the United States applicable to the Virgin Islands, and the laws of the Virgin Islands, shall be required as a qualification to any office or public trust under the Government of the Virgin Islands.

The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; **article VI, clause 3**; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth

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amendment; and the fifteenth and nineteenth amendments: Provided, however, that all offenses shall continue to be prosecuted in the district court by information as heretofore, except such as may be required by local law to be prosecuted by indictment by grand jury.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, 68 Stat. 497, 497-98 (1954), *amended* by Act of Dec. 8, 1983, Pub. L. No. 98-123, § 5(d), 97 Stat. 1459, 1460.

### Section 3.

No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal cause to give evidence against himself; nor shall any person sit as judge or magistrate in any case in which he has been engaged as attorney or prosecutor.

All persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first-degree murder or any capital offense when the proof is evident or the presumption great.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

No law impairing the obligation of contracts shall be enacted.

No person shall be imprisoned or shall suffer forced labor for debt.

All persons shall have the privilege of the writ of habeas corpus and the same shall not be suspended except as herein expressly provided.

No ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken for public use except upon payment of just compensation ascertained in the manner provided by law.

The right to be secure against unreasonable searches and seizures shall not be violated.

No warrant for arrest or search 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.

Slavery shall not exist in the Virgin Islands.

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Involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted by a court of law, shall not exist in the Virgin Islands.

No law shall be passed abridging the freedom of speech or of the press or the right of the people peaceably to assembly and petition the government for the redress of grievances.

No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof.

No person who advocates, or who aids or belongs to any party, organization, or association which advocates, the overthrow by force or violence of the government of the Virgin Islands or of the United States shall be qualified to hold any office of trust or profit under the government of the Virgin Islands.

No money shall be paid out of the Virgin Islands treasury except in accordance with an Act of Congress or money bill of the legislature and on warrant drawn by the proper officer.

The contracting of polygamous or plural marriages is prohibited.

The employment of children under the age of sixteen years in any occupation injurious to health or morals or hazardous to life or limb is prohibited.

Nothing contained in this Act shall be construed to limit the power of the legislature herein provided to enact laws for the protection of life, the public health, or the public safety.

No political or religious test other than an oath to support the Constitution and the law of the United States applicable to the Virgin Islands, and the laws of the Virgin Islands, shall be required as a qualification to any office or public trust under the Government of the Virgin Islands.

The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; **article VI, clause 3**; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments: ~~Provided, however, that all offenses shall continue to be prosecuted in the district court by information as heretofore, except such as may be required by local law to be prosecuted by indictment by grand jury.~~ **Provided, That all offenses against the laws of the United States and the laws of the Virgin Islands which are prosecuted in the district court pursuant to sections 22 (a) and (c) of this Act may be had by indictment by grand jury or by information, and that all offenses against the laws of the Virgin Islands which are**

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**prosecuted in the district court pursuant to section 22(b) of this Act or in the courts established by local law shall continue to be prosecuted by information, except such as may be required by local law to be prosecuted by indictment by grand jury.**

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, 68 Stat. 497, 497-98 (1954), *amended* by Act of Oct. 5, 1984, Pub. L. No. 98-454, § 701, 98 Stat. 1732, 1737 (effective Jan. 3, 1985) (deletions indicated by stricken text; additions indicated in bold).

### **Judicial Branch**

#### Section 21.

The judicial power of the Virgin Islands shall be vested in a court of record to be designated the "District Court of the Virgin Islands", and in such court or courts of inferior jurisdiction as may have been or may hereafter be established by local law.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 21, 68 Stat. 497, 506 (1954).

#### Section 21.

(a) The judicial power of the Virgin Islands shall be vested in a court of record ~~to be~~ designated the 'District Court of the Virgin Islands' **established by Congress**, and in such **appellate** court and **lower local courts of inferior jurisdiction** as may have been or may hereafter be established by local law.

(b) The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the concurrent jurisdiction conferred on the District Court of the Virgin Islands by section 22(a) and (c) of this Act.

(c) The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 21, 68 Stat. 497, 506 (1954), *amended* by Act of Oct. 5, 1984, Pub. L. No. 98-454, § 702, 98 Stat. 1732, 1737 (effective Jan. 3, 1985) (deletions indicated by stricken text; additions indicated in bold).

#### Section 22.

The District Court of the Virgin Islands shall have the jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties and laws of the United States, regardless of the sum or value of the matter in controversy. It shall have general original jurisdiction in all other causes in the Virgin Islands, exclusive jurisdiction over which is not conferred by this

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Act upon the inferior courts of the Virgin Islands. When it is in the interest of justice to do so the district court may on motion of any party transfer to the district court any action or proceeding brought in an inferior court and the district court shall have jurisdiction to hear and determine such action or proceeding. The district court shall also have appellate jurisdiction to review the judgments and orders of the inferior courts of the Virgin Islands to the extent now or hereafter prescribed by local law.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 22, 68 Stat. 497, 506 (1954).

Section 22.

The District Court of the Virgin Islands shall have the jurisdiction of a district court and a bankruptcy court of the United States in all causes arising under the Constitution, treaties and laws of the United States, regardless of the sum or value of the matter in controversy. It shall have general original jurisdiction in all other causes in the Virgin Islands, exclusive jurisdiction over which is not conferred by this Act upon the inferior courts of the Virgin Islands. When it is in the interest of justice to do so the district court may on motion of any party transfer to the district court any action or proceeding brought in an inferior court and the district court shall have jurisdiction to hear and determine such action or proceeding. The district court shall also have appellate jurisdiction to review the judgments and orders of the inferior courts of the Virgin Islands to the extent now or hereafter prescribed by local law.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 22, 68 Stat. 497, 506 (1954),  
*amended by* Act to Establish a Uniform Law on the Subject of Bankruptcies, Pub. L. No. 95-598,  
§ 336(a), 92 Stat. 2549, 2680 (1978).

Section 22.

(a) The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and that of a bankruptcy court of the United States. The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1954 shall constitute an offense against the government of the Virgin Islands and may be prosecuted in the name of the government of the Virgin

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Islands by the appropriate officers thereof in the District Court of the Virgin Islands without the request or the consent of the United States attorney for the Virgin Islands, notwithstanding the provisions of section 27 of this Act.

(b) In addition to the jurisdiction described in subsection (a) the District Court of the Virgin Islands shall have general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands: Provided, That the jurisdiction of the District Court of the Virgin Islands under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of \$500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of \$100 or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by local law for the purposes of determining the availability of indictment by grand jury or trial by jury.

(c) The District Court of the Virgin Islands shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over those offenses against the criminal laws of the Virgin Islands, whether felonies or misdemeanors or both, which are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the District Court of the Virgin Islands has jurisdiction pursuant to subsections (a) and (b) of this section.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 22, 68 Stat. 497, 506 (1954), amended by Act of Oct. 5, 1984, Pub. L. No. 98-454, § 703(a), 98 Stat. 1732, 1738 (effective Jan. 3, 1985).

### Section 23.

The inferior courts now or hereafter established by local law shall have exclusive original jurisdiction of all civil actions wherein the matter in controversy does not exceed the sum or value of \$500 exclusive of interest and costs, all criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of \$100 or imprisonment for six months, or both, and all violations of police and executive regulations, and they shall have original jurisdiction, concurrently with the district court, of all actions, civil

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or criminal, jurisdiction of which may hereafter be conferred upon them by local law. Any action or proceeding brought in the district court which is within the jurisdiction of an inferior court may be transferred to such inferior court by the district court in the interest of justice. The inferior courts shall hold preliminary investigations in charges of felony and charges of misdemeanor in which the punishment that may be imposed is beyond the jurisdiction granted to the inferior courts by this section, and shall commit offenders to the district court and grant bail in bailable cases. The rules governing the practice and procedure of the inferior courts and prescribing the duties of the judges and officers thereof, oaths and bonds, the times and places of holding court, and the procedure for appeals to the district court shall be as may hereafter be established by the district court. The rules governing disposition of fines, costs and forfeitures, enforcement of judgments, and disposition and treatment of prisoners shall be as established by law or ordinance in force on the date of approval of this Act or as may hereafter be so established.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 23, 68 Stat. 497, 506 (1954).

### Section 23

The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: Provided, That for the first fifteen years following the establishment of the appellate court authorized by section 21(a) of this Act, the United States Court of Appeals for the Third Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of the Virgin Islands from which a decision could be had. The Judicial Council of the Third Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this section.

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Act to enhance the economic development of Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and for Other Purposes, Pub. L. No. 98-454, 98 Stat. 1732, 1739 (1984) (effective Jan. 3, 1985).

### Section 23

The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: Provided, That for the first fifteen years following the establishment of the appellate court authorized by section 21(a) of this Act, the United States Court of Appeals for the Third Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of the Virgin Islands from which a decision could be had. The Judicial Council of the Third Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on ~~Interior and Insular Affairs~~ **Natural Resources** of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this section.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 23, 68 Stat. 497, 506 (1954), amended by Act of Nov. 2, 1994, Pub. L. No. 103-437, § 17(a)(4), 108 Stat. 4581, 4595 (deletions indicated by stricken text; additions indicated in bold).

### Section 23.

The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: ~~Provided, That for the first fifteen years following the establishment of the appellate court authorized by section 21(a) of this Act, the United States Court of Appeals for the Third Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of the Virgin Islands~~

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~~from which a decision could be had. The Judicial Council of the Third Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs **Natural Resources** of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this section.~~

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 23, 68 Stat. 497, 506 (1954), amended by Act of Dec. 28, 2012, Pub. L. No. 112-226, § 1, 126 Stat. 1606, 1606 (deletions indicated by stricken text; additions indicated in bold).

#### Section 23A.

(a) Prior to the establishment of the appellate court authorized by section 21(a) of this Act, the District Court of the Virgin Islands shall have such appellate jurisdiction over the courts of the Virgin Islands established by local law to the extent now or hereafter prescribed by local law: Provided, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Virgin Islands or of any order or regulation issued or action taken by the executive branch of the government of the Virgin Islands with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

(b) Appeals to the District Court of the Virgin Islands shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The chief judge of the district court shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time pursuant to section 24(a) of this Act: Provided, That no more than one of them may be a judge of a court established by local law. The concurrence of two judges shall be necessary to any decision by the appellate division of the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an

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appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure. Appeals pending in the district court on the effective date of this Act shall be heard and determined by a single judge.

(c) The United States Court of Appeals for the Third Circuit shall have jurisdiction of appeals from all final decisions of the district court on appeal from the courts established by local law. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

(d) Upon the establishment of the appellate court provided for in section 21(a) of this Act all appeals from the decisions of the courts of the Virgin Islands established by local law not previously taken must be taken to that appellate court. The establishment of the appellate court shall not result in the loss of jurisdiction of the district court over any appeal then pending in it. The rulings of the district court on such appeals may be reviewed in the United States Court of Appeals for the Third Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, 68 Stat. 497, 506 (1954), *amended by* Act of Oct. 5, 1984, Pub. L. No. 98-454, § 705, 98 Stat. 1732, 1739 (effective Jan. 3, 1985).

#### Section 24.

The President shall, by and with the advice and consent of the Senate, appoint a judge for the District Court of the Virgin Islands, who shall hold office for the term of eight years and until his successor is chosen and qualified, unless sooner removed by the President for cause. The salary of the judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the District Court the Chief Judge of the Third Judicial Circuit of the United States may assign a circuit or district judge of the Third Circuit, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judge of the district court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States. The Attorney General shall, as heretofore, appoint a marshal and one deputy marshal for the Virgin Islands to whose office the provisions of chapter 33 of title 28, United States Code, shall apply.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 24, 68 Stat. 497, 506-07 (1954).

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## Section 24.

The President shall, by and with the advice and consent of the Senate, appoint a judge for the District Court of the Virgin Islands, who shall hold office for the term of eight years and until his successor is chosen and qualified, unless sooner removed by the President for cause. The salary of the judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the District Court the Chief Judge of the Third Judicial Circuit of the United States may assign a circuit or district judge of the Third Circuit, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judge of the district court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States. The Attorney General shall, ~~as heretofore,~~ appoint a **United States marshal and one deputy marshal** for the Virgin Islands, to whose office the provisions of chapter 33 of title 28, United States Code, shall apply.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 24, 68 Stat. 497, 506 (1954), amended by Act of Aug. 28, 1958, Pub. L. No. 85-851, §7, 72 Stat. 1094, 1095 (deletions indicated by stricken text; additions indicated in bold).

## Section 24.

The President shall, by and with the advice and consent of the Senate, appoint **a two** judges for the District Court of the Virgin Islands, who shall hold office for the term of eight years and until his successor is chosen and qualified, unless sooner removed by the President for cause. The salary of the judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the District Court, the Chief Judge of the Third Judicial Circuit of the United States may assign **a judge of the municipal court of the Virgin Islands** or a circuit or district judge of the Third Circuit, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judge of the district court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States. ~~The Attorney General shall, as heretofore, appoint a United States marshal and one deputy marshal for the Virgin~~

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~~Islands, to whose office the provisions of chapter 33 of title 28, United States Code, shall apply.~~

(b) The judge of the district court who is senior in continuous service and under seventy years of age shall be the chief judge of the court and shall have power to appoint officers of the court when and as provided in section 756 of title 28, United States Code. The division of the business of the court among the judges shall be made as prescribe<sup>3d</sup> in section 137 of that title.

(c) The Attorney General Shall appoint a United States marshal for the Virgin Islands, to whose office the provisions of chapter 33 of title 28, Untied States Code, shall apply.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 24, 68 Stat. 497, 506 (1954), amended by Act of June 2, 1970, Pub. L. No. 91-272, § 3(b), 84 Stat. 294, 296 (deletions indicated by stricken text; additions indicated in bold).

#### Section 24.

The President shall, by and with the advice and consent of the Senate, appoint two judges for the District Court of the Virgin Islands, who shall hold office for the term of ~~eight~~ **ten** years and until his successor is chosen and qualified, unless sooner removed by the President for cause. **The judge of the district court who is senior in continuous service and who otherwise qualifies under section 136(a) of title 28, United States Code, shall be the chief judge of the court.** The salary of the judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the District Court, the Chief Judge of the Third Judicial Circuit of the United States may assign a judge of ~~the municipal court~~ **a court of record** of the Virgin Islands **established by local law** or a circuit or district judge of the Third Circuit, **or a recalled senior judge of the District Court of the Virgin Islands**, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judge of the district court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States.

(b) Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provisions of rule 7(a) and of rule 54(a) of the Federal Rules of Criminal Procedure relating to the requirement of indictment and to the prosecution of criminal offenses in the Virgin Islands by information, respectively, the rules of practice heretofore or hereafter promulgated and made effective by the Congress or the

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Supreme Court of the United States pursuant to titles 11, 18, and 28, United States Code, shall apply to the district court and appeals therefrom: Provided, That the terms "Attorney for the government" and "United States attorney" as used in the Federal Rules of Criminal Procedure, shall, when applicable to causes arising under the income tax laws applicable to the Virgin Islands, mean the Attorney General of the Virgin Islands or such other person or persons as may be authorized by the laws of the Virgin Islands to act therein: Provided further, That in the district court all criminal prosecutions under the laws of the United States, under local law under section 22(c) of this Act, and under the income tax laws applicable to the Virgin Islands may be had by indictment by grand jury or by information: Provided further, That an offense which has been investigated by or presented to a grand jury may be prosecuted by information only by leave of court or with the consent of the defendant. All criminal prosecutions arising under local law which are tried in the district court pursuant to section 22(b) of this Act shall continue to be had by information, except such as may be required by the local law to be prosecuted by indictment by grand jury.

(c) The Attorney General Shall appoint a United States marshal for the Virgin Islands, to whose office the provisions of chapter 33 of title 28, United States Code, shall apply.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 24, 68 Stat. 497, 506 (1954), amended by Act of Oct. 5, 1984, Pub. L. No. 98-454, §§ 706(a), (b), 98 Stat. 1732, 1740 (effective Jan. 3, 1985) (deletions indicated by stricken text; additions indicated in bold).

#### Section 25.

The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays. The district court shall hold sessions in each division at such time as the court may designate by rule or order, at least once in three months in each division. The rules of practice and procedure heretofore or hereafter promulgated and made effective by the Supreme Court of the United States pursuant to section 2072 of title 28, United States Code, in civil cases, section 2073 of title 28, United States Code, in admiralty cases, and section 30 of the Bankruptcy Act in bankruptcy cases, shall apply to the District Court of the Virgin Islands and to appeals therefrom. All offenses shall continue to be prosecuted in the District Court by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 25, 68 Stat. 497, 507 (1954).

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## Section 25.

The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays. The district court shall hold sessions in each division at such time as the court may designate by rule or order, at least once in three months in each division. The rules of practice and procedure heretofore or hereafter promulgated and made effective by the Supreme Court of the United States pursuant to section 2072 of title 28, United States Code, in civil cases, section 2073 of title 28, United States Code, in admiralty cases, and section ~~30 of the Bankruptcy Act in bankruptcy cases~~ **2075 of title 28, United States Code, in cases under title 11, United States Code,** shall apply to the District Court of the Virgin Islands and to appeals therefrom. All offenses shall continue to be prosecuted in the District Court by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 25, 68 Stat. 497, 506 (1954), amended by Act to Establish a Uniform Law on the Subject of Bankruptcies, Pub. L. No. 95-598, § 336(b), 92 Stat. 2549, 2680 (1978) (deletions indicated by stricken text; additions indicated in bold).

## Section 25.

The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays. ~~The district court shall hold sessions in each division at such time as the court may designate by rule or order, at least once in three months in each division. The rules of practice and procedure heretofore or hereafter promulgated and made effective by the Supreme Court of the United States pursuant to section 2072 of title 28, United States Code, in civil cases, section 2073 of title 28, United States Code, in admiralty cases, and section 2075 of title 28, United States Code, in cases under title 11, United States Code, shall apply to the District Court of the Virgin Islands and to appeals therefrom. All offenses shall continue to be prosecuted in the District Court by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury.~~ **Court for the Division of Saint Croix shall be held in Christiansted, and for the Division of Saint Thomas and Saint John at Charlotte Amalie.**

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Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 25, 68 Stat. 497, 506 (1954), amended by Act of Oct. 5, 1984, Pub. L. No. 98-454, § 707, 98 Stat. 1732, 1741 (effective Jan. 3, 1985) (deletions indicated by stricken text; additions indicated in bold).

#### Section 25.

The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays. **Court for the Division of Saint Croix shall be held in Christiansted, and for the Division of Saint Thomas and Saint John at Charlotte Amalie.**

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 25, 68 Stat. 497, 506 (1954), amended by Omnibus Insular Areas Act, Pub. L. 101-219, § 202, 103 Stat. 1870, 1874 (1989) (deletions indicated by stricken text; additions indicated in bold).

#### Section 26.

In any criminal case originating in the district court, no person shall be denied the right to trial by jury on the demand of either party. If no jury is demanded the case shall be tried by the judge of the district court without a jury, except that the judge may, on his own motion, order a jury for the trial of any criminal action. The legislature may provide for trial in misdemeanor cases by a jury of six qualified persons.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 26, 68 Stat. 497, 507 (1954).

#### Section 26.

~~In any~~ **All** criminal cases originating in the district court, ~~no person shall be denied the right to trial~~ **tried by jury upon the demand of either party by the defendant or the Government.** If no jury is demanded the case shall be tried by the judge of the district court without a jury, except that the judge may, on his own motion, order a jury for the trial of any criminal action. The legislature may provide for trial in misdemeanor cases by a jury of six qualified persons.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 26, 68 Stat. 497, 506 (1954), amended by Act of Aug. 28, 1958, Pub. L. No. 85-851, § 8, 72 Stat. 1094, 1095 (deletions indicated by stricken text; additions indicated in bold).

#### Section 27.

The President shall, by and with the advice and consent of the Senate, appoint a United States attorney for the Virgin Islands, who shall hold office for the term of four years and until his successor is chosen and qualified, unless sooner removed by the President for cause. The United States attorney, by himself or the assistant United

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States attorney, shall conduct all legal proceedings, civil and criminal, to which the Government of the United States or the government of the Virgin Islands is a party in the District Court of the Virgin Islands and in the inferior courts of the Virgin Islands. Offenses against the laws of the Virgin Islands shall be prosecuted in the name of the government of the Virgin Islands. The United States attorney shall perform his duties under the supervision and direction of the Attorney General of the United States. The Attorney General may appoint one assistant United States attorney. The Attorney General may authorize the employment of necessary clerical assistants. The compensation of the district attorney and his assistant and employees shall be fixed by the Attorney General and their salaries and the other necessary expenses of the office shall be paid from appropriations made to the Department of Justice. In the case of a vacancy in the office of the district attorney, the District Court of the Virgin Islands may appoint a district attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 27, 68 Stat. 497, 507 (1954).

Section 27.

The President shall, by and with the advice and consent of the Senate, appoint a United States attorney for the Virgin Islands, who shall hold office for the term of four years and until his successor is chosen and qualified, unless sooner removed by the President for cause. The United States attorney, by himself or the assistant United States attorney, shall conduct all legal proceedings, civil and criminal, to which the Government of the United States or the government of the Virgin Islands is a party in the District Court of the Virgin Islands and in the inferior courts of the Virgin Islands. Offenses against the laws of the Virgin Islands shall be prosecuted in the name of the government of the Virgin Islands. The United States attorney shall perform his duties under the supervision and direction of the Attorney General of the United States. The Attorney General may appoint one assistant United States attorney. The Attorney General may authorize the employment of necessary clerical assistants. The compensation of the ~~district attorney~~ **United States attorney** and his assistant and employees shall be fixed by the Attorney General and their salaries and the other necessary expenses of the office shall be paid from appropriations made to the Department of Justice. In the case of a vacancy in the office of the ~~district attorney~~ **United States attorney**, the District Court of the Virgin Islands may appoint a ~~district attorney~~ **United States attorney** to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.

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Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 27, 68 Stat. 497, 506 (1954), amended by Act of Aug. 28, 1958, Pub. L. No. 85-851, § 9, 72 Stat. 1094, 1095 (1958) (deletions indicated by stricken text; additions indicated in bold).

Section 27.

The President shall, by and with the advice and consent of the Senate, appoint a United States attorney for the Virgin Islands, ~~who shall hold office for the term of four years and until his successor is chosen and qualified, unless sooner removed by the President for cause. The United States attorney, by himself or the assistant United States attorney, shall conduct all legal proceedings, civil and criminal, to which the Government of the United States or the government of the Virgin Islands is a party in the District Court of the Virgin Islands and in the inferior courts of the Virgin Islands. Offenses against the laws of the Virgin Islands shall be prosecuted in the name of the government of the Virgin Islands. The United States attorney shall perform his duties under the supervision and direction of the Attorney General of the United States. The Attorney General may appoint one assistant United States attorney. The Attorney General may authorize the employment of necessary clerical assistants. The compensation of the United States attorney and his assistant and employees shall be fixed by the Attorney General and their salaries and the other necessary expenses of the office shall be paid from appropriations made to the Department of Justice. In the case of a vacancy in the office of the United States attorney, the District Court of the Virgin Islands may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.~~ **To whose office the provisions of chapter 31 of title 28, United States Code, shall apply, except that the Attorney General shall not appoint more than one assistant United States attorney for the Virgin Islands. Except as otherwise provided by law it shall be the duty of the United States attorney to prosecute all offenses against the United States and to conduct all legal proceedings, civil and criminal, to which the Government of the United States is a party in the district court and in the inferior courts of the Virgin Islands. He shall also prosecute in the district court in the name of the government of the Virgin Islands all offenses against the laws of the Virgin Islands which are cognizable by that court unless, at his request or with his consent, the prosecution of any such case is conducted by the attorney general of the Virgin Islands. The United States attorney may, when requested by the Governor or the attorney general of the Virgin Islands, conduct any other legal proceedings to which the government of the Virgin Islands is a party in the district court**

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**or the inferior courts of the Virgin Islands. In the case of a vacancy in the office of the United States attorney, the District Court of the Virgin Islands may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.**

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 27, 68 Stat. 497, 506 (1954), amended by Virgin Islands Organic Act Amendments of 1959, Pub. L. No. 86-289, § 4, 73 Stat. 568, 569 (deletions indicated by stricken text; additions indicated in bold).

Section 27.

The President shall, by and with the advice and consent of the Senate, appoint a United States attorney for the Virgin Islands to whose office the provisions of chapter 345 of title 28, United States Code, shall apply, ~~except that the Attorney General shall not appoint more than one assistant United States attorney for the Virgin Islands.~~ Except as otherwise provided by law it shall be the duty of the United States attorney to prosecute all offenses against the United States and to conduct all legal proceedings, civil and criminal, to which the Government of the United States is a party in the district court and in the inferior courts of the Virgin Islands. He shall also prosecute in the district court in the name of the government of the Virgin Islands all offenses against the laws of the Virgin Islands which are cognizable by that court unless, at his request or with his consent, the prosecution of any such case is conducted by the attorney general of the Virgin Islands. The United States attorney may, when requested by the Governor or the attorney general of the Virgin Islands, conduct any other legal proceedings to which the government of the Virgin Islands is a party in the district court or the inferior courts of the Virgin Islands. In the case of a vacancy in the office of the United States attorney, the District Court of the Virgin Islands may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 27, 68 Stat. 497, 506 (1954), amended by Act of June 2, 1971, Pub. L. No. 92-24, § 1, 85 Stat. 76, 76.

Section 27.

The President shall, by and with the advice and consent of the Senate, appoint a United States attorney for the Virgin Islands to whose office the provisions of chapter 35 of title 28, United States Code, shall apply. Except as otherwise provided by law it shall be the duty of the United States attorney to prosecute all offenses against the United States and to conduct all legal proceedings, civil and criminal, to which the Government of the United States is a

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party in the district court and in ~~the inferior courts of the Virgin Islands~~ courts established by local law. He shall also prosecute in the district court in the name of the government of the Virgin Islands all offenses against the laws of the Virgin Islands which are cognizable by that court unless, at his request or with his consent, the prosecution of any such case is conducted by the attorney general of the Virgin Islands. The United States attorney may, when requested by the Governor or the attorney general of the Virgin Islands, conduct any other legal proceedings to which the government of the Virgin Islands is a party in the district court or the inferior courts of the Virgin Islands. In the case of a vacancy in the office of the United States attorney, the District Court of the Virgin Islands may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 27, 68 Stat. 497, 506 (1954), amended by Act of Oct. 5, 1984, Pub. L. No. 98-454, § 708, 98 Stat. 1732, 1741.

#### **Miscellaneous Provisions**

##### **Section 34.**

This act shall take effect upon its approval, but until its provisions shall become operative as herein provided, the corresponding legislative, executive, and judicial functions of the existing government shall continue to be exercised as now provided by law or ordinance, and the incumbents of all offices under the government of the Virgin Islands shall continue in office until their successors are appointed and have qualified unless sooner removed by competent authority. The enactment of this Act shall not affect the term of office of the judge of the District Court of the Virgin Islands in office on the date of its enactment.

Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 34, 68 Stat. 497, 507 (1954).

### **8. Virgin Islands Code (1957 to present)**

#### **Title Four**

#### **Chapter 1. Judicial Organization**

##### **Section 1. Judicial divisions**

The Territory of the Virgin Islands is divided into two judicial divisions: the division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the division of Saint Thomas and Saint Johns, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays. The division of Saint Croix is subdivided into two jurisdictions: the Christiansted jurisdiction comprising the two of Christiansted and the North Side B, King's, Queen's, East End A and East End B quarters of Saint Croix, Buck Islands, and adjacent islets and cays, and the

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Fredericksted Jurisdiction comprising the town of Frederiksted, and the North Side A, West End and Prince's quarters of Saint Croix and adjacent islets and cays.

4 V.I.C. § 1 (1957) (sources are section 25 of the 1954 Organic Act, section 27 of the 1936 Organic Act, and section 3 of chapter 1 of title 1 of the 1921 codes).

#### Section 1. Judicial divisions

**Except with respect to the Supreme Court** ~~the~~ Territory of the Virgin Islands is divided into two judicial divisions: the division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the division of Saint Thomas and Saint Johns, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays. The division of Saint Croix is subdivided into two jurisdictions: the Christiansted jurisdiction comprising the two of Christiansted and the North Side B, King's, Queen's, East End A and East End B quarters of Saint Croix, Buck Islands, and adjacent islets and cays, and the Fredericksted Jurisdiction comprising the town of Frederiksted, and the North Side A, West End and Prince's quarters of Saint Croix and adjacent islets and cays.

4 V.I.C. § 1, *amended by* Act to amend title 4, Virgin Islands Code to establish the Supreme Court of the Virgin Islands and to rename the Territorial Court of the Virgin Islands and for other purposes, No. 6687, § (1)(a), Sess. L. 2004, p. 179 (Oct. 29, 2004).

#### Section 2. Courts of the Territory

The judicial power of the Territory is vested in a court of general jurisdiction created by section 21 of the Revised Organic Act, approved July 22, 1954, and designated the "District Court of the Virgin Islands," and in the inferior courts which are hereby established in and for each judicial division of the Territory, and which are designated, respectively, the "Municipal Court of Saint Croix" and the "Municipal Court of Saint Thomas and Saint John." Each court is a court of record.

4 V.I.C. § 2 (1957) (sources are sections 1, 11, and 12 of chapter 1 of title 1 of the 1921 codes).

#### Section 2. Courts of the Territory

The judicial power of the Territory is vested in a court of general jurisdiction created by section 21 of the Revised Organic Act, approved July 22, 1954, **as amended**, and designated the 'District Court of the Virgin Islands,' and in ~~the an~~ inferior courts ~~which are hereby established in and for each judicial division of the Territory, and which are designated, respectively, the "Municipal Court of Saint Croix" and the "Municipal Court of Saint Thomas and Saint John."~~ **designated the 'Municipal Court of the Virgin Islands'.** Each court is a court of record.

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4 V.I.C. § 2, *amended by Act to Provide for Consolidation of the Municipal Courts and for Other Purposes*, No. 1291, § 1, Sess. L. 1965, p. 7, 7-8 (Feb. 8, 1965) (effective Mar. 1, 1965) (deletions indicated by stricken text; additions indicated in bold).

#### Section 2. Courts of the Territory

The judicial power of the Territory is vested in a court of general jurisdiction created by section 21 of the Revised Organic Act, approved July 22, 1954, as amended, and designated the “District Court of the Virgin Islands,” and in ~~an inferior courts designated the ‘Municipal Court of the Virgin Islands’~~ **a court of local jurisdiction to be designated the “Territorial Court of the Virgin Islands”**.

Each court is a court of record.

4 V.I.C. § 2, *amended by Act to Amend Title 4, Virgin Islands Code, Pertaining to a Change in the Name of the Court of Local Jurisdiction from “Municipal Court of the Virgin Islands” to “Territorial Court of the Virgin Islands”, to Enlarge the Jurisdiction of the Court, to Provide for the Selection, Qualifications, Compensation, Tenure, Retirement and Removal of Judges, to Provide for Trial by a Jury of Six Members and to Establish a Commission on Judicial Disabilities*, No. 3876, §§ 1, 5, Sess. L. 1976, p. 187, 197 (Sept. 9, 1976) (effective Jan. 1, 1977) (deletions indicated by stricken text; additions indicated in bold).

#### Section 2. Courts of the Territory

The judicial power of the Territory is vested in a courts of general jurisdiction created by section 21 of the Revised Organic Act, approved July 22, 1954, as amended, and designated the “District Court of the Virgin Islands,” and in a court of local jurisdiction to be designated the ~~“Territorial Superior Court of the Virgin Islands”~~. Each court is a court of record.

4 V.I.C. § 2, *amended by Act to Amend title 4, Virgin Islands Code to establish the Supreme Court of the Virgin Islands and to rename the Territorial Court of the Virgin Islands and for other purposes*, No. 6687, § 1(b), Sess. L. 2004, p. 179, 179 (Oct. 29, 2004) (deletions indicated by stricken text; additions indicated in bold).

#### Section 2. Courts of the Territory

(a) The judicial power of the Territory is vested in courts of general jurisdiction created by section 21 of the Revised Organic Act, approved July 22, 1954, as amended, and designated the “District Court of the Virgin Islands,” and in a court of local jurisdiction to be designated the “Superior Court of the Virgin Islands” and the court of last resort established pursuant to section 21(b) of the Revised Organic Act, The Supreme Court of the Virgin Islands. Each court is a court of record.

(b) **Nothing contained in this title may be construed to grant authority to the Governor of the Virgin Islands to remove the Chief Justice of the Supreme Court of the Virgin Islands, or the Presiding Judge of the Superior Court of the Virgin**

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**Islands, or any judge of the Superior Court or magistrate judge of the Superior Court during the judge's or magistrate judge's term of office.**

4 V.I.C. § 2 *amended by* Act amending titles 3, 4, 5, 10, 14, 15, 16, 17, 20, 203 and 33 of the Virgin Islands Code relating to the reorganization of the judicial system and for other related purposes, No. 7888, § 19, Sess. L. 2016, p. 115 (July 30, 2016) (deletions indicated by stricken text; additions indicated in bold).

Section 3. Consolidation of municipal courts into single court

On and after ~~the effective date of this Act~~ [March 1, 1965] the two municipal courts heretofore known as the Municipal Court of St. Croix and the Municipal Court of St. Thomas and St. John are consolidated into a single court which shall be designated "The Municipal Court of the Virgin Islands", as provided by section 2 of Title 4 of the Virgin Islands Code as amended by ~~section 1 of this Act~~ [section 2 of this title].

4 V.I.C. § 3 (1965); Act To Provide for Consolidation of the Municipal Courts and for Other Purposes, No. 1291, § 14, Sess. L. 1965, p. 7, 11 (Feb. 8, 1965) (alterations by code reviser) (codified at 4 V.I.C. § 3 (1965)) (effective Mar. 1, 1965) (deletions indicated by stricken text; additions indicated in brackets).

Section 3. Consolidation of municipal courts into single court

On and after March 1, 1965 the two municipal courts heretofore known as the Municipal Court of St. Croix and the Municipal Court of St. Thomas and St. John are consolidated into a single court which shall be designated "The ~~Municipal~~ **Territorial** Court of the Virgin Islands", as provided by section 2 of Title 4 of the Virgin Islands Code as amended by section 2 of this title.

4 V.I.C. § 3, *amended by* Act to Amend Title 4, Virgin Islands Code, Pertaining to a Change in the Name of the Court of Local Jurisdiction from "Municipal Court of the Virgin Islands" to "Territorial Court of the Virgin Islands", to Enlarge the Jurisdiction of the Court, to Provide for the Selection, Qualifications, Compensation, Tenure, Retirement and Removal of Judges, to Provide for Trial by a Jury of Six Members and to Establish a Commission on Judicial Disabilities, No. 3876, § 5, Sess. L. 1976, p. 179, 197 (Sept. 9, 1976) (effective Jan. 1, 1977) (deletions indicated by stricken text; additions indicated in bold).

Section 3. Consolidation of municipal courts into single court

On and after March 1, 1965 the two municipal courts heretofore known as the Municipal Court of St. Croix and the Municipal Court of St. Thomas and St. John are consolidated into a single court which shall be designated "The ~~Territorial~~ **Superior** Court of the Virgin Islands", as provided by section 2 of Title 4 of the Virgin Islands Code as amended by section 2 of this title.

4 V.I.C. § 3, *amended by* Act to Amend title 4, Virgin Islands Code to establish the Supreme Court of the Virgin Islands and to rename the Territorial Court of the Virgin Islands and for other

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purposes, No. 6687, § 5, Sess. L. 2004, p. 179, 189 (Oct. 29, 2004) (deletions indicated by stricken text; additions indicated in bold).

## **Chapter 2. Supreme Court of the Virgin Islands**

### Section 21.

The Supreme Court of the Virgin Islands is established pursuant to section 21(a) of the Revised Organic Act of the Virgin Islands, as amended, as the highest court of the Virgin Islands and in it shall be reposed the supreme judicial power of the Territory. As used in this Chapter, “Supreme Court” or “Court” Means the Supreme Court of the Virgin Islands established in this section.

- (a) The Supreme Court shall consist of a Chief Justice of the Virgin Islands and two associate justices. Any decision must be concurred in by a majority of the justices of the Court, but one of the justices may adjourn the Court from day to day or to a day certain.
- (b)
  - (1) The Supreme Court shall hold one term annually, commencing at such time and continuing for such period as it may by rule determine.
  - (2) The Supreme Court shall hold regular sessions in Charlotte Amalie, St. Thomas, commencing at such times and continuing for such periods as the Court from time to time directs.
  - (3) The Court may hold special sessions from time to time in any location throughout the Territory, as the Chief Justice Considers appropriate.
  - (4) The offices or chambers of the respective justices need not be in St. Thomas, but may be located in the island where the justices respectively reside.
- (c) The Supreme Court may transact business at any time. Adjournments from day to day, or from time to time, are construed as recesses in the sessions, and do not prevent the Supreme Court from sitting at any time.
- (d) The seal of the Supreme Court shall be the Grate Seal of the Government of the Virgin Islands, as set forth in Title 1 Virgin Islands Code, chapter 7, section 108(b), substituting the words “Supreme Court of the Virgin Islands” around the vignette of the seal.

4 V.I.C. § 21 (2004); Act to Amend Title 4, Virgin Islands Code to establish the Supreme Court of the Virgin Islands and to Rename the Territorial Court of the Virgin Islands and for Other Purposes, No. 6687, § 2, Sess. L. 2004, p. 179, 179 (Oct. 29, 2004).

### Section 32. Jurisdiction

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- (a) The Supreme Court shall have jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law.
- (b) The Supreme Court shall have all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under the laws of the Virgin Islands. The Supreme Court's authority also includes jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction.
- (c) Upon an appeal from a judgment or an order, the Supreme Court may reverse or affirm, wholly or in part, or may modify the judgment or order appealed from, and each interlocutory judgment or intermediate or other order that it is authorized to review, and as to any or all of the parties. The Court shall thereupon render judgment of affirmance, judgment of reversal and final judgment upon the right of any or all of the parties, or judgment of modification thereon according to law, except where it may be necessary or proper to grant a new trial or hearing, when it may grant a new trial or hearing.
- (d) The Supreme Court may transfer any action or proceeding, except one over which it has exclusive jurisdiction which does not depend upon the monetary amount sought, to any other court within the judicial branch, having jurisdiction of the subject matter if such other court has jurisdiction over the classes of persons named as parties. The Supreme Court may transfer to itself any action or proceeding originated or pending in another local court or administrative agency within the Territory upon a finding that such a transfer will promote the administration of justice. The Supreme Court shall provide, by rules of court, for the time and procedure for transfer and for review, including, among other things, provision for the time and procedure for transfer with instructions for review of all or part of a decision, and for remand as improvidently granted.
- (e) Regulation of the bar. The Supreme Court has exclusive jurisdiction to regulate the admission of person to the practice of law and the discipline of persons admitted to the practice of law.
- (f)
  - (1) The Supreme Court shall adopt the rules of court for the Superior Court of the Virgin Islands and such other courts as may be established by local law.
  - (2) The Supreme Court shall also adopt rules governing civil and criminal procedure, judicial ethics, admission to and governance of the bar of the Virgin Islands, and other matters of judicial administration.

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- (3) In carrying out the mandate of paragraph (1) of this subsection, the Chief Justice may appoint a committee to recommend the adoption of the rules which shall consist of the presiding judge and two other judges of the Superior Court as well as at least two members of the Virgin Islands Bar Association.

4 V.I.C. § 32 (2004); Act to Amend title 4, Virgin Islands Code to establish the Supreme Court of the Virgin Islands and to rename the Territorial Court of the Virgin Islands and for other purposes, No. 6687, § 2, Sess. L. 2004, p. 179, 185-86 (Oct. 29, 2004).

#### Section 32. Jurisdiction

- (a) The Supreme Court shall have jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law.
- (b) The Supreme Court shall have all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under the laws of the Virgin Islands. The Supreme Court's authority also includes jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction.
- (c) Upon an appeal from a judgment or an order, the Supreme Court may reverse or affirm, wholly or in part, or may modify the judgment or order appealed from, and each interlocutory judgment or intermediate or other order that it is authorized to review, and as to any or all of the parties. The Court shall thereupon render judgment of affirmance, judgment of reversal and final judgment upon the right of any or all of the parties, or judgment of modification thereon according to law, except where it may be necessary or proper to grant a new trial or hearing, when it may grant a new trial or hearing.
- (d) The Supreme Court may transfer any action or proceeding, except one over which it has exclusive jurisdiction which does not depend upon the monetary amount sought, to any other court within the judicial branch, having jurisdiction of the subject matter if such other court has jurisdiction over the classes of persons named as parties. The Supreme Court may transfer to itself any action or proceeding originated or pending in another local court or administrative agency within the Territory upon a finding that such a transfer will promote the administration of justice. The Supreme Court shall provide, by rules of court, for the time and procedure for transfer and for review, including, among other things, provision for the time and procedure for transfer with instructions for review of all or part of a decision, and for remand as improvidently granted.

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- (e) Regulation of the bar. The Supreme Court has exclusive jurisdiction to regulate the admission of person to the practice of law and the discipline of persons admitted to the practice of law.
- (f)
- (1) The ~~Supreme Superior~~ Court shall adopt the rules of court for the Superior Court of the Virgin Islands ~~and such other courts as may be established by local law consistent with section 21(c) of the Revised Organic Act of the Virgin Islands.~~
  - (2) The Supreme Court shall also adopt rules governing civil and criminal procedure, judicial ethics, admission to and governance of the bar of the Virgin Islands, and other matters of judicial administration. **The Supreme Court may adopt the rules of procedure governing criminal and civil matters before the Supreme Court, the rules of judicial ethics, and the rules for admissions to and governance of the Virgin Islands Bar.**
  - (3) In carrying out the mandate of paragraph (1) of this subsection, the Chief Justice may appoint a committee to recommend the adoption of the rules which shall consist of the presiding judge and two other judges of the Superior Court as well as at least two members of the Virgin Islands Bar Association.

4 V.I.C. § 32, *amended by* Act amending 4 V.I.C., sections 31, 32, 34, 74a, 122, 124 and 126 relating to relations between the Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands; amending Act 6965 relating to an increase in the appropriation for Fiscal Year 2008 operating expenses for the Supreme Court of the Virgin Islands; and providing for a deadline for full implementation of Act 6919 establishing the Magistrate Division of the Superior Court; and providing for other related purposes, No. 6985, Sess. L. 2007, p. 229, 230 (Dec. 22, 2007) (effective retroactively to Jan. 1, 2007) (deletions indicated by stricken text; additions indicated in bold).

#### Section 32. Jurisdiction

- (a) The Supreme Court shall have jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law.
- (b) The Supreme Court shall have all inherent powers, including the power to issue all writs necessary to the complete exercise of its duties and jurisdiction under the laws of the Virgin Islands, **including those orders necessary for the supervision of the judicial branch of the Virgin Islands. The Supreme Court has supervisory jurisdiction over the Superior Court of the Virgin Islands and all other courts of the judicial branch of the Virgin Islands.** The Supreme Court's authority also includes jurisdiction of original proceedings for mandamus,

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prohibition, injunction, and similar remedies to protect its appellate jurisdiction.

- (c) Upon an appeal from a judgment or an order, the Supreme Court may reverse or affirm, wholly or in part, or may modify the judgment or order appealed from, and each interlocutory judgment or intermediate or other order that it is authorized to review, and as to any or all of the parties. The Court shall thereupon render judgment of affirmance, judgment of reversal and final judgment upon the right of any or all of the parties, or judgment of modification thereon according to law, except where it may be necessary or proper to grant a new trial or hearing, when it may grant a new trial or hearing.
- (d) The Supreme Court may transfer any action or proceeding, except one over which it has exclusive jurisdiction which does not depend upon the monetary amount sought, to any other court within the judicial branch, having jurisdiction of the subject matter if such other court has jurisdiction over the classes of persons named as parties. The Supreme Court may transfer to itself any action or proceeding originated or pending in another local court or administrative agency within the Territory upon a finding that such a transfer will promote the administration of justice. The Supreme Court shall provide, by rules of court, for the time and procedure for transfer and for review, including, among other things, provision for the time and procedure for transfer with instructions for review of all or part of a decision, and for remand as improvidently granted.
- (e) Regulation of the bar. The Supreme Court has exclusive jurisdiction to regulate the admission of person to the practice of law and the discipline of persons admitted to the practice of law.
- (f)
  - (1) The Superior Court shall **subject to the approval of the Supreme Court** adopt the rules of court for the Superior Court of the Virgin Islands consistent with section 21(c) of the Revised Organic Act of the Virgin Islands.
  - (2) The Supreme Court may adopt the rules of procedure governing criminal and civil matters before the Supreme Court, the rules of judicial ethics, and the rules for admissions to and governance of the Virgin Islands Bar. **The Supreme Court shall adopt rules governing civil and criminal procedure, evidence, judicial discipline, disability, ethics, admission to and governance of the bar of the Virgin Islands, the administration of the judiciary and the practice and procedure in the courts of the judicial branch of the Virgin Islands and other matters of judicial administration.**

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- (3) In carrying out the mandate of paragraph (2), the Chief Justice may appoint a committee to recommend the adoption of rules consisting of two judges of the Superior Court and at least two members of the Virgin Islands Bar Association.

4 V.I.C. § 32, *amended by* Act amending titles 3, 4, 5, 10, 14, 15, 16, 20, 23 and 33 of the Virgin Islands Code relating to the reorganization of the judicial system and for other related purposes, No. 7888, Sess. 2016, § 3, p. 103, 109 (July 30, 2016).

Section 33. Availability of appealable judgments and orders

- (a) Appealable judgments and orders to the Supreme Court shall be available only upon entry of final judgment in the Superior Court from which appeal or application for review is taken.
- (b) Interlocutory review—civil. The Supreme Court of the Virgin Islands has jurisdiction of appeals from:
- (1) Interlocutory order of the Superior Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions;
- (2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;
- (c) Whenever the Superior Court judge, in making a civil action or order not otherwise appealable under this section, is of the opinion that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation, the judge shall so state in the order. The Supreme Court of the Virgin Islands may thereupon, in its discretion, permit an appeal to be taken from the order, if application is made to it within ten days after the entry of the order; except that application for an appeal hereunder may not stay proceedings, in the Superior Court unless the Superior Court judge or the Supreme Court or a justice thereof, orders a stay of proceedings.
- (d) Review—criminal.
- (1) In a criminal case an appeal by the Government of the Virgin Islands shall lie to the Supreme Court from a decision, judgment, or order of the Superior Court dismissing an indictment or information or granting a new trial after verdict or judgment, as to any one or more counts, or any part thereof, except that no appeal shall lie where the double jeopardy clause of the United States Constitution or the Revised Organic Act prohibits further prosecution.

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- (2) An appeal by the Government of the Virgin Islands shall lie to the Supreme Court from a decision or order of the Superior Court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the Attorney General conducting the prosecution certifies to the Superior Court judge that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding. The trial court shall adjourn or continue the trial until the appeal is resolved. The appeal shall be determined promptly.
- (3) An appeal by the Government of the Virgin Islands shall lie to the Supreme Court from a decision or order, entered by the Superior Court, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release. The appeal shall be determined promptly.
- (4) An appeal by a defendant or person ordered detained pursuant to section 3504a, of title 5 of the Virgin Islands Code or other provision of law, shall lie to the Supreme Court from a decision or order, entered by the Superior Court, detaining a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order of detention. The appeal shall be determined promptly.
- (5) The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

4 V.I.C. § 33 (2004); Act to Amend title 4, Virgin Islands Code to establish the Supreme Court of the Virgin Islands and to rename the Territorial Court of the Virgin Islands and for other purposes, No. 6687, § 2, Sess. L. 2004, p. 179, 186-88 (Oct. 29, 2004).

**Section 33. Availability of appealable judgments and orders**

- (a) Appealable judgments and orders to the Supreme Court shall be available only upon entry of final judgment in the Superior Court from which appeal or application for review is taken.
- (b) Interlocutory review—civil. The Supreme Court of the Virgin Islands has jurisdiction of appeals from:
  - (1) Interlocutory order of the Superior Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions;

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- (2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;
- (c) Whenever the Superior Court judge, in making a civil action or order not otherwise appealable under this section, is of the opinion that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation, the judge shall so state in the order. The Supreme Court of the Virgin Islands may thereupon, in its discretion, permit an appeal to be taken from the order, if application is made to it within ten days after the entry of the order; except that application for an appeal hereunder may not stay proceedings, in the Superior Court unless the Superior Court judge or the Supreme Court or a justice thereof, orders a stay of proceedings.
- (d) Review—criminal.
  - (1) In a criminal case an appeal by the Government of the Virgin Islands shall lie to the Supreme Court from a decision, judgment, or order of the Superior Court dismissing an indictment or information or ~~granting a new trial after verdict or judgment~~ **otherwise terminating a prosecution in favor of the defendant**, as to any one or more counts, or any part thereof, except that no appeal shall lie where the double jeopardy clause of the United States Constitution or the Revised Organic Act prohibits further prosecution.
  - (2) An appeal by the Government of the Virgin Islands shall lie to the Supreme Court from a decision or order of the Superior Court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the Attorney General conducting the prosecution certifies to the Superior Court judge that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding. The trial court shall adjourn or continue the trial until the appeal is resolved. The appeal shall be determined promptly.
  - (3) An appeal by the Government of the Virgin Islands shall lie to the Supreme Court from a decision or order, entered by the Superior Court, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a

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decision or order granting release. The appeal shall be determined promptly.

- (4) An appeal by a defendant or person ordered detained pursuant to section 3504a, of title 5 of the Virgin Islands Code or other provision of law, shall lie to the Supreme Court from a decision or order, entered by the Superior Court, detaining a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order of detention. The appeal shall be determined promptly.
- (5) The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

4 V.I.C. § 33, *amended* by Omnibus Justice Act of 2005, No. 6730, § 53, Sess. L. 2005, p. 68, 136 (May 5, 2005) (deletions indicated by stricken text; additions indicated in bold).

#### Section 34. Court Rules

- (a) The Supreme Court may, from time to time, promulgate or amend general rules, or where it considers it best for the advancement of justice, may make special orders, provide for the conduct of the business of the Court, and regulate the practice and procedure governing causes and proceedings in the Court, provide for holding of regular and special sessions, fix the time of and otherwise regulate the return of process issued out of the Court, and fix the fees that shall be paid and the costs that shall be assessed in the Court. All such fees and costs shall be credited to the General Fund of the Treasury of the Virgin Islands.
- (b) The rules of the Supreme Court shall, after they have taken effect, supersede all statutory provisions in conflict or inconsistent therewith.
- (c) The Rules may not abridge, enlarge or modify any substantive right of any party.

4 V.I.C. § 34 (2004); Act to Amend title 4, Virgin Islands Code to establish the Supreme Court of the Virgin Islands and to rename the Territorial Court of the Virgin Islands and for other purposes, No. 6687, § 2, Sess. L. 2004, p. 179, 179 (Oct. 29, 2004).

#### [Savings Clause]

All actions and proceedings arising under the laws of the Virgin Islands pending in any court of the Virgin Islands, or in the Appellate Division of the District Court of the Virgin Islands on the effective date of this Act and on the date of certification that the court is ready to accept jurisdiction, shall be prosecuted to final determination in the court in which they were pending. All appeals pending before the United States Court of Appeals for the Third

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Circuit shall remain in that court until concluded, and the Superior Court of the Virgin Islands shall retain jurisdiction to enter such orders, decrees, and judgments and conduct any appropriate proceedings in accordance with the ultimate mandate issued on any such pending appeals. Once the Chief Justice has sent the certification to the Governor as set forth in Section 3(c) of this Act, the Supreme Court of the Virgin Islands shall have exclusive jurisdiction over all appeals filed thereafter from the Superior Court of the Virgin Islands as well as all other jurisdiction as prescribed by this Act and other law.

Act to Amend title 4, Virgin Islands Code to establish the Supreme Court of the Virgin Islands and to rename the Territorial Court of the Virgin Islands and for other purposes, No. 6687, § 4, Sess. L. 2004, p. 179, 188-89 (Oct. 29, 2004).

### **Chapter 3. District Court**<sup>3</sup>

#### **Section 31. Composition**

The district court consists of the judge appointed to the court by the President and of any judge assigned to the court pursuant to section 24 of the Revised Organic Act, approved July 22, 1954.

4 V.I.C. § 31 (1957) (sources are section 26 of the 1936 Organic Act, section 24 of the 1954 Organic Act, and section 5 of chapter 1 of title I of the 1921 Codes as amended on April 8, 1921 and June 25, 1926).

#### **Section 32. Original jurisdiction**

(a) Under section 22 of the Revised Organic Act, approved July 22, 1954, the district court has the original jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties and laws of the United States, regardless of the sum or value of the matter in controversy, and has general original jurisdiction in all other cause in the Virgin Islands, where exclusive jurisdiction is not conferred upon the municipal courts, as inferior courts of the Territory, by section 23 of the Revised Organic Act. When it is in the interest of justice to do so the district court may on motion of any party transfer to the district court any action or proceeding brought in a municipal court, and the district court shall have jurisdiction to hear and determine such action or proceeding.

(b) Any action or proceeding brought in the district court which is within the jurisdiction of the municipal court may be

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<sup>3</sup> This chapter was repealed on Oct. 29, 2004. Act to amend title 4, Virgin Islands Code to establish the Supreme Court of the Virgin Islands and to rename the Territorial Court of the Virgin Islands and for other purposes, No. 6687, § 113(a), Sess. L. 2004, p. 179, 190 (Oct. 29, 2004).

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transferred by the district court in the interest of justice to the municipal court for proper judicial division.

- (c) If in a civil action brought in a municipal court a counterclaim or cross complaint is filed which is in excess of the jurisdiction of the municipal court to the district court which shall have jurisdiction to hear and determine both the complaint and counterclaim or cross complaint.

4 V.I.C. § 32 (1957) (sources are sections 22 and 23 of the 1954 Organic Act, section 28 of the 1936 Organic Act, and section 2 of chapter 1 of title I of the 1921 Codes).

#### Section 32. Original jurisdiction

- (a) Under section 22 of the Revised Organic Act, approved July 22, 1954, the district court has the original jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties and laws of the United States, regardless of the sum or value of the matter in controversy, and has general original jurisdiction in all other cause in the Virgin Islands, where exclusive jurisdiction is not conferred upon the municipal courts, as inferior courts of the Territory, by section 23 of the Revised Organic Act. When it is in the interest of justice to do so the district court may on motion of any party transfer to the district court any action or proceeding brought in a municipal court, and the district court shall have jurisdiction to hear and determine such action or proceeding.
- (b) Any action or proceeding brought in the district court which is within the jurisdiction of the municipal court may be transferred by the district court in the interest of justice to the municipal court for proper judicial division.
- (c) If in a civil action brought in a municipal court a counterclaim or cross complaint is filed which is in excess of the jurisdiction of the municipal court to the district court which shall have jurisdiction to hear and determine both the complaint and counterclaim or cross complaint.
- (d) **If in a civil action brought in the municipal court wherein the matter in controversy exceeds the sum or value of \$1,000, exclusive of interest and costs, the defendant would have been entitled to a jury trial if the action had been brought in the district court, and the defendant demands such a trial at the time of filing his answer, the action shall forthwith be transferred by the municipal court to the district court for such trial and determination.**

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**(e) No jury trial shall be allowed in civil actions brought in the municipal court where in the matter in controversy does not exceed the sum or value of \$1,000.**

4 V.I.C. § 32, *amended by Act To Provide for Consolidation of the Municipal Courts and for Other Purposes*, No. 1291, § 6, Sess. L. 1965, p. 7, 9 (Feb. 8, 1965) (effective Mar. 1, 1965) (deletions indicated by stricken text; additions indicated in bold).

### Section 33. Appellate jurisdiction

The district court has appellate jurisdiction to review the judgment and orders of the municipal courts in all civil cases in which the matter in controversy exceeds the sum or value of \$10, exclusive of interest and costs, in all juvenile and domestic relations cases, and in all criminal cases in which the defendant has been convicted, other than on a plea of guilty. Appeals in civil, juvenile and domestic relations cases may be taken by any party aggrieved by the judgement or order appealed from, but in juvenile and domestic relations cases they may be taken only if specially allowed by the district court. Appeals in criminal cases may be taken only by the defendant. When an appeal is taken the judgment or order appeal from shall be deemed vacated and the judge of the district court shall hear and determine the case anew without regard to the judgment or order of the municipal court therein. The time within which an appeal must be taken, the manner of taking an appeal and the procedure on appeal shall be prescribed by rules adopted by the district court.

4 V.I.C. § 33 (1957) (sources are sections 22 and 23 of the 1954 Organic Act and the 1921 Codes, Title III, ch. 87, §§ 1-13, ch.88, s 5, and Title V, ch. 37, §§ 1-12).

### Section 33. Appellate jurisdiction

The district court has appellate jurisdiction to review the judgment and orders of the municipal courts in all civil cases ~~in which the matter in controversy exceeds the sum or value of \$10, exclusive of interest and costs,~~ in all juvenile and domestic relations cases, and in all criminal cases in which the defendant has been convicted, other than on a plea of guilty. Appeals in civil, juvenile and domestic relations cases may be taken by any party aggrieved by the judgement or order appealed from, but in juvenile and domestic relations cases they may be taken only if specially allowed by the district court. Appeals in criminal cases may be taken only by the defendant. ~~When an appeal is taken the judgment or order appeal from shall be deemed vacated and the judge of the district court shall hear and determine the case anew without regard to the judgment or order of the municipal court therein.~~ Upon appeal the district court may affirm, modify, vacate, set aside or reverse any judgment or order appealed from and may remand the

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**cause and direct the entry of such appropriate judgment, decree or order, or require such further proceedings to be had as may be just under the circumstances. Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the municipal court to judge the credibility of the witnesses.** The time within which an appeal must be taken, the manner of taking an appeal and the procedure on appeal shall be prescribed by rules adopted by the district court.

4 V.I.C. § 33, *amended by* Act To Provide for Consolidation of the Municipal Courts and for Other Purposes, No. 1291, § 1, Sess. L. 1965, p. 7, 7-8 (Feb. 8, 1965) (effective Mar. 1, 1965) (deletions indicated by stricken text; additions indicated in bold).

#### Section 34. Rules and writs

The district court may from time to time prescribe rules, consistent with law and with the rules adopted by the Supreme Court, for the conduct of its business and may issue writs of habeas corpus, review and prohibition and all other writs and make mandatory orders and all other orders necessary or appropriate in aid of its original or appellate jurisdiction and agreeable to the usages and principals of law.

4 V.I.C. § 34 (1957) (sources are 1921 Codes, title I, ch. 1, § 27 and title III, ch. 53, § 3, ch. 54, § 3).

#### Section 35. Sessions

The district court shall hold regular sessions at Charlotte Amalie in the division of Saint Thomas and Saint John and at Christiansted and Fredericksted in the division of Saint Croix at such times as the court designates by rule or order, at least once in three months in each division. Special sessions may be held at such places as the nature of the business may require and upon such notice as the court orders.

4 V.I.C. § 35 (1957) (sources are 1921 Codes, Title I, ch. 1, § 4 and section 25 of the 1954 Organic Act).

#### Section 36. District court commissioners, powers

The judge of the district court may, from time to time, in the public interest, designate the judges of the municipal courts, or any of them, and, if there are special reasons requiring his designation and he is an attorney at law, the clerk of the district court, to serve without additional compensation as commissioners of the district court. If the clerk of the district court is designated to serve as a commissioner, the special reasons requiring his appointment shall be recited in the order of appointment. A commissioner of the district court—

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- (1) Take and approve bonds and examine sureties, administer oaths, make orders or publication and take depositions in any action or proceeding pending in the district court;
- (2) In the absence of the judge of the district court or his inability to act, grant writs of habeas corpus, writs of arrest in civil actions, writs of attachment and temporary restraining orders, provided that all such writs and orders shall be returnable to the district court and like proceedings shall be had thereon as if the same had been granted by the judge of the district court in the first instance;
- (3) Hear and determine interlocutory motions in causes pending in the district court which may be referred to him by the judge of the court, and subject to review by the judge if requested by any party;
- (4) Act in all probate, trust, guardianship, bankruptcy and insolvency matters and perform all the duties and exercise all the powers conferred upon the district court in such matters, subject to review by the judge if requested by any party; and
- (5) Grant bail in bailable cases pending the district court.

In the performance of his duties a commissioner of the district court shall have the powers of a master under Rule 53 of the Federal Rules of Civil Procedure.

4 V.I.C. § 36 (prior to May 16, 1957) (sources are 1921 Codes, title I, ch. 1, § 6 as amended on June 10, 1939, May 25, 1948 (Bill no. 229), July 15, 1939 (Bill no. 27), July 22, 1949 (Bill no. 33), and May 25, 1948 (Bill no. 229)).

#### Section 36. District court commissioners, powers

The judge of the district court may, from time to time, in the public interest, designate the judges of the municipal courts, or any of them, and, if there are special reasons requiring his designation and he is an attorney at law, the clerk of the district court, to serve without additional compensation as commissioners of the district court. If the clerk of the district court is designated to serve as a commissioner, the special reasons requiring his appointment shall be recited in the order of appointment. A commissioner of the district court—

- (1) Take and approve bonds and examine sureties, administer oaths, make orders or publication and take depositions in any action or proceeding pending in the district court;
- (2) In the absence of the judge of the district court or his inability to act, grant writs of habeas corpus, writs of arrest in civil actions, writs of attachment and temporary restraining orders, provided that all such writs and orders shall be returnable to the district court and like proceedings shall be

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- had thereon as if the same had been granted by the judge of the district court in the first instance;
- (3) Hear and determine interlocutory motions in causes pending in the district court which may be referred to him by the judge of the court, and subject to review by the judge if requested by any party;
  - (4) **In the absence of the judge of the district court or in the case of his inability to act, take the testimony in such civil cases as the judge may designate from time to time and report his findings to the judge of the district court who may confirm and adopt them as the findings of the court or may modify or reject them as right and justice may require;**
  - (5) Act in all probate, trust, guardianship, bankruptcy and insolvency matters and perform all the duties and exercise all the powers conferred upon the district court in such matters, subject to review by the judge if requested by any party; and
  - (6) Grant bail inailable cases pending the district court.

In the performance of his duties a commissioner of the district court shall have the powers of a master under Rule 53 of the Federal Rules of Civil Procedure.

4 V.I.C. § 36, *amended by* Act of May 16, 1957, No. 160, § 23 (deletions indicated by stricken text; additions indicated in bold).

### **Chapter 5. Municipal Court**

#### Section 73. Exclusive jurisdiction

The municipal court shall have original jurisdiction within its judicial division, exclusive of the district court:

- (1) Of all civil actions wherein the matter in controversy does not exceed the sum or value of \$500, exclusive of interest and costs;
- (2) Of all criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of \$100 or imprisonment for six months, or both;
- (3) Of all violations of police and executive regulations; and
- (4) To make all preliminary investigation in charges of crime cognizable by the district court and to commit offenders to the district court and grant bail inailable cases. In the case of a charge of crime within the concurrent jurisdiction of the municipal court and the district court the United States attorney shall in writing request the municipal court to make a preliminary investigation and commit the offender to the district court if he desires to file an information in the district court and prosecute the offender in that court. Upon

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receiving of such a request the municipal court shall make the preliminary investigation requested and, if warranted by the facts disclosed by the investigation, shall commit the offender to the district court.

4 V.I.C. § 73 (1957) (sources are 1954 Organic Act section 23, 1936 Organic Act section 32, and 1921 Codes Title I, ch. 1, §§ 18, 19; and Title III, ch. 89, § 2).

#### Section 735. Exclusive jurisdiction

The ~~municipal territorial~~ court shall have original, **exclusive** jurisdiction — ~~within its judicial division, exclusive of the district court:~~

- (1) Of all civil actions wherein the matter in controversy does not exceed the sum or value of \$500, exclusive of interest and costs;
- (2) Of all criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of \$100 or imprisonment ~~for~~ of six (6) months, or both;
- (3) Of all violations of police and executive regulations, **unless otherwise provided by law; and**
- (4) ~~To make all preliminary investigation in charges of crime cognizable by the district court and to commit offenders to the district court and grant bail in bailable cases. In the case of a charge of crime within the concurrent jurisdiction of the municipal court and the district court the United States attorney shall in writing request the municipal court to make a preliminary investigation and commit the offender to the district court if he desires to file an information in the district court and prosecute the offender in that court. Upon receiving of such a request the municipal court shall make the preliminary investigation requested and, if warranted by the facts disclosed by the investigation, shall commit the offender to the district court where otherwise provided by law.~~

4 V.I.C. § 73, *amended by* Act to Amend Title 4, Virgin Islands Code, Pertaining to a Change in the Name of the Court of Local Jurisdiction from “Municipal Court of the Virgin Islands” to “Territorial Court of the Virgin Islands”, to Enlarge the Jurisdiction of the Court, to Provide for the Selection, Qualifications, Compensation, Tenure, Retirement and Removal of Judges, to Provide for Trial by a Jury of Six Members and to Establish a Commission on Judicial Disabilities, No. 3876, § 1, Sess. L. 1976, p. 187, 188 (Sept. 9, 1976) (effective Jan. 1, 1977) (deletions indicated by stricken text; additions indicated in bold).

#### Section 74. Concurrent jurisdiction

Each municipal court has original jurisdiction within its judicial division, concurrently with the district court:

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- (1) Of all civil actions wherein the matter in controversy exceeds the sum or value of \$500, exclusive of interest and costs, but does not exceed the sum or value of \$1,000, exclusive of interest and costs;
- (2) Of all criminal cases of misdemeanor arising under the laws of the Virgin Islands wherein the maximum punishment which may be imposed exceeds a fine of \$100 or imprisonment for six months;
- (3) Of all actions for forcible entry and detainer, in which the unpaid rent or the value of the property involved exceeds \$500, exclusive of interest and costs;
- (4) Of all other cases in which jurisdiction is expressly conferred upon the municipal court by law.

4 V.I.C. § 74 (prior to May 16, 1957 (Act No. 160, § 24)) (sources are 1954 Organic Act section 23).

**Section 746. Concurrent jurisdiction**

- (a) ~~Each municipal~~ **The territorial court shall have original jurisdiction within its judicial division, concurrently with the district court in all civil actions wherein the matter in controversy exceeds the sum or value of \$500, exclusive of interest and costs, but does not exceed the sum or value of \$50,000, exclusive of interest and costs; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and changes of name; to establish paternity; to legitimize children and to make orders and decrees pertaining to the support of relations.**
- (b) **The territorial court shall have original jurisdiction, concurrent with that of the district court, in all criminal actions wherein the maximum sentence exceeds a fine of \$100 or imprisonment for six months but does not exceed imprisonment for one year or a fine as prescribed by law. Commencing two years from the effective date of the revision of this chapter in the year 1977, the territorial court shall have original jurisdiction, concurrent with that of the district court in all criminal actions wherein the maximum sentence does not exceed imprisonment for five years or a fine as prescribed by law.**

4 V.I.C. § 74, *amended by* Act to Amend Title 4, Virgin Islands Code, Pertaining to a Change in the Name of the Court of Local Jurisdiction from "Municipal Court of the Virgin Islands" to "Territorial Court of the Virgin Islands", to Enlarge the Jurisdiction of the Court, to Provide for the Selection, Qualifications, Compensation, Tenure, Retirement and Removal of Judges, to Provide for Trial by a Jury of Six Members and to Establish a Commission on Judicial Disabilities,

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No. 3876, § 1, Sess. L. 1976, p. 187, 189 (Sept. 9, 1976) (effective Jan. 1, 1977) (deletions indicated by stricken text; additions indicated in bold).

Section 76. Concurrent jurisdiction

- (a) The territorial court shall have original jurisdiction concurrent with the district court in all civil actions wherein the matter in controversy exceeds the sum of \$500 but does not exceed the sum of ~~\$500,000~~ **\$5200,000**, exclusive of interest and costs; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and changes of name; to establish paternity; to legitimize children and to make orders and decrees pertaining to the support of relations.
- (b) The territorial court shall have original jurisdiction, concurrent with that of the district court, in all criminal actions wherein the maximum sentence exceeds a fine of \$100 or imprisonment for six months but does not exceed imprisonment for one year or a fine as prescribed by law. Commencing two years from the effective date of the revision of this chapter in the year 1977, the territorial court shall have original jurisdiction, concurrent with that of the district court in all criminal actions wherein the maximum sentence does not exceed imprisonment for five years or a fine as prescribed by law.

4 V.I.C. § 76, *amended by* Act to Increase from \$50,000 to \$200,000 the Amount Below Which the Territorial Court in Civil Actions has Original Jurisdiction, Concurrent with the District Court, and to Increase from \$750 to \$1,000 the Maximum Amount Recoverable in the Small Claims Division of the Territorial Court, No. 4647, § 1, Sess. L. 1981, p. 260, 260 (Oct. 20, 1981).<sup>4</sup>

Section 76. Concurrent jurisdiction

- (a) The territorial court shall have original jurisdiction concurrent with the district court in all civil actions wherein the matter in controversy exceeds the sum of \$500 but does not exceed the sum of \$200,000, exclusive of interest and costs; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and changes of name; to establish paternity; to legitimize children and to

<sup>4</sup> As of January 1, 1979, the later clause of subsection (b) would have become operative giving criminal jurisdiction for matters wherein imprisonment did not exceed five years, as provided in sections 2 and 8 of Act No. 3876, passed September 9, 1976, and effect January 1, 1977. However, a formal amendment reflecting this was enacted in section 3 of Act No. 5040 on February 1, 1985, after this 1981 amendment regarding civil jurisdiction of the territorial court.

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make orders and decrees pertaining to the support of relations.

- (b) The territorial court shall have original jurisdiction, concurrent with that of the district court in all criminal actions ~~wherein the maximum sentence exceeds a fine of \$100 or imprisonment for six months but does not exceed imprisonment for one year or a fine as prescribed by law.~~ Commencing ~~two years from the effective date of the revision of this chapter in the year 1977,~~ the territorial court shall have original jurisdiction, concurrent with that of the district court in all criminal actions wherein the maximum sentence does not exceed imprisonment for ~~five~~ **15** years or a fine as prescribed by law.

4 V.I.C. § 76, *amended* by Act to Confer the Status of Peace Officer on Members of the Fire Service, Investigators of the Department of Law, Enforcement Officers of the Consumer Services Administration, and Internal Affairs Agents of the Bureau of Corrections and Department of Public Safety; to Provide for the Establishment of an Arson Prevention and Investigation Unit and to Provide Original Jurisdiction to the Territorial Court in Certain Instances, No. 5040, § 3(a), Sess. L. 1984, p. 463, 464 (Feb. 1, 1985) (effective Mar. 1, 1985) (deletions indicated by stricken text; additions indicated in bold).<sup>5</sup>

#### Section 76. Concurrent jurisdiction

- (a) The territorial court shall have original jurisdiction concurrent with the district court in all civil actions wherein the matter in controversy exceeds the sum of \$500 but does not exceed the sum of \$200,000, exclusive of interest and costs; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and changes of name; to establish paternity; to legitimize children and to make orders and decrees pertaining to the support of relations.
- (b) **Subject to the concurrent jurisdiction conferred on the district court of the Virgin Islands by sections 21 and 22 of the Revised Organic Act of the Virgin Islands, as amended (68 Stat. 506; 92 Stat. 2680; 98 Stat. 1737 et seq.),** ~~t~~The territorial court shall have original jurisdiction, ~~eoneurrent with that of the district court~~ in all criminal actions wherein the maximum sentence does not exceed imprisonment for 15 years or a fine as prescribed by law.

<sup>5</sup> Section 3(b) of Act No. 5040 provided that one year after the effective date of March 1, 1985, the Territorial Court was to have concurrent jurisdiction with the District Court in all criminal actions.

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4 V.I.C. § 76, *amended* by Act to Delay the Effective Date and Certain Other Provisions of Section 3 of Act No. 5040, Which Expands the Jurisdiction of the Territorial Court, No. 5045, § 1(a), Sess. L. 1985, p. 8, 8 (Mar. 1, 1985) (effective Oct. 1, 1987) (deletions indicated by stricken text; additions indicated in bold).

Section 76. Concurrent jurisdiction

- (a) The territorial court shall have original jurisdiction concurrent with the district court in all civil actions wherein the matter in controversy exceeds the sum of \$500 but does not exceed the sum of \$200,000, exclusive of interest and costs; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and changes of name; to establish paternity; to legitimize children and to make orders and decrees pertaining to the support of relations.
- (b) Subject to the concurrent jurisdiction conferred on the district court of the Virgin Islands by sections 21 and 22 of the Revised Organic Act of the Virgin Islands, as amended (~~68 Stat. 506; 92 Stat. 2680; 98 Stat. 1737 et seq.~~), the territorial court shall have original jurisdiction in all criminal actions ~~wherein the maximum sentence does not exceed imprisonment for 15 years or a fine as prescribed by law.~~

4 V.I.C. § 76, *amended* by Omnibus Authorization Act of 1987, No. 5206, § 107(b), Sess. L. 1986, p. 230, 236 (Oct. 4, 1986) (effective Oct. 1, 1990) (deletions indicated by stricken text; additions indicated in bold).

Section 76. ~~Concurrent~~ **Original** jurisdiction

- (a) ~~The territorial court shall have original jurisdiction concurrent with the district court in all civil actions wherein the matter in controversy exceeds the sum of \$500 but does not exceed the sum of \$200,000~~ **Subject to the concurrent jurisdiction conferred on the district court of the Virgin Islands by sections 21 and 22 of the Revised Organic Act of the Virgin Islands, as amended, effective October 1, 1991, the Territorial Court shall have original jurisdiction in all civil actions regardless of the amount in controversy, exclusive of interest and costs; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and changes of name; to establish paternity; to legitimize children and to make orders and decrees pertaining to the support of relations.**

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- (b) Subject to the concurrent jurisdiction conferred on the district court of the Virgin Islands by sections 21 and 22 of the Revised Organic Act of the Virgin Islands, as amended, the territorial court shall have original jurisdiction in all criminal actions.

4 V.I.C. § 76, *amended by* Act to Amend Title 4, Section 76, Virgin Islands Code, to Expand Original Jurisdiction of All Civil Actions to the Territorial Court of the Virgin Islands, No. 5594, § 1, Sess. L. 1990, p. 271, 272 (Sept. 5, 1990) (deletions indicated by stricken text; additions indicated in bold).

Section 76. Original jurisdiction

- (a) Subject to the concurrent jurisdiction conferred on the district court of the Virgin Islands by sections 21 and 22 of the Revised Organic Act of the Virgin Islands, as amended, effective October 1, 1991, the ~~Territorial~~ **Superior** Court shall have original jurisdiction in all civil actions regardless of the amount in controversy, exclusive of interest and costs; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and changes of name; to establish paternity; to legitimize children and to make orders and decrees pertaining to the support of relations.
- (b) **Upon the effective date of this Section,** ~~S~~subject to the concurrent jurisdiction conferred on the district court of the Virgin Islands by sections 21 and 22 of the Revised Organic Act of the Virgin Islands, as amended, the ~~territorial~~ **Superior** court shall have original jurisdiction in all criminal actions.

4 V.I.C. § 76, *amended by* Act To Postpone the effective date of expanded jurisdiction over local criminal actions in the Territorial Court and to appropriate \$1.8 million from the General Fund to the Department of Justice to provide for the operation of the Attorney General's Office for expenses to be incurred under expanded jurisdiction, No. 5890, § 1, Sess. L. 1993, p. 214, 214 (Sept. 30, 1993) (effective Jan. 1, 1994); Act to Amend title 4, Virgin Islands Code to establish the Supreme Court of the Virgin Islands and to rename the Territorial Court of the Virgin Islands and for other purposes, No. 6687, § 5, Sess. L. 2004, 179, 189 (Oct. 29, 2004).

Section 77. Civil actions to be tried in territorial court; transfers

- (a) Unless transferred by a judge of the district court, all civil cases originally filed in the territorial court shall be tried and concluded in that court.
- (b) A judge of the district court may, in the interest of justice, cause a case or cases pending in the territorial court to be transferred to the district court and may transfer cases pending in the district court to the territorial court provided

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that such transferred case is within the jurisdictional competence of the court to which the transfer is made.

4 V.I.C. § 77 (1977); Act to Amend Title 4, Virgin Islands Code, Pertaining to a Change in the Name of the Court of Local Jurisdiction from “Municipal Court of the Virgin Islands” to “Territorial Court of the Virgin Islands”, to Enlarge the Jurisdiction of the Court, to Provide for the Selection, Qualifications, Compensation, Tenure, Retirement and Removal of Judges, to Provide for Trial by a Jury of Six Members and to Establish a Commission on Judicial Disabilities, No. 3876, § 1, Sess. L. 1976, p. 187, 189 (Sept. 9, 1976) (effective Jan. 1, 1977).

Section 79. Divisions of the Court

The territorial court shall be comprised of criminal, civil, traffic, family, conciliation and small claims divisions. The court may create such additional divisions as the public interest requires. The presiding judge shall from time to time designate and assign judges to sit in the various divisions of the court in each of the judicial divisions of the Territory as the business of the court may require.

4 V.I.C. § 79 (1977); Act to Amend Title 4, Virgin Islands Code, Pertaining to a Change in the Name of the Court of Local Jurisdiction from “Municipal Court of the Virgin Islands” to “Territorial Court of the Virgin Islands”, to Enlarge the Jurisdiction of the Court, to Provide for the Selection, Qualifications, Compensation, Tenure, Retirement and Removal of Judges, to Provide for Trial by a Jury of Six Members and to Establish a Commission on Judicial Disabilities, No. 3876, § 1, Sess. L. 1976, p. 190 (Sept. 9, 1976) (effective Jan. 1, 1977).

Section 79. Divisions of the Court

- (a) The territorial court shall be comprised of criminal, civil, traffic, family, conciliation and small claims divisions. The court may create such additional divisions as the public interest requires. The presiding judge shall from time to time designate and assign judges to sit in the various divisions of the court in each of the judicial divisions of the Territory as the business of the court may require.
- (b) **There is hereby established as a division within the Territorial Court an Office of the Marshall of the Territorial Court of the Virgin Islands (referred to in the remainder of this subsection as the “Marshal’s Office”). At the head of the Marshal’s Office, subject to the supervision, control and direction of the Presiding Judge. There shall be an Assistant Marshal for the Judicial District of St. Croix and an Assistant Marshal for the Judicial District of St. Thomas-St. John, and such deputies as the Presiding Judge deems necessary for the proper administration and performance of duties and functions. The Marshal and the Assistant Marshals shall be appointed by the presiding judge.**

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4 V.I.C. § 79, *amended by* Act to Appropriate Monies for Salaries and Expenses of the Territorial Court of the Virgin Islands for Fiscal Year Ending September 30, 1983, No. 4754, § 3(b), Sess. L. 1982, p. 167, 168 (Oct. 22, 1982) (deletions indicated by stricken text; additions indicated in bold).

Section 79. Divisions of the Court

- (a) The territorial court shall be comprised of criminal, civil, traffic, family, conciliation and small claims divisions. The court may create such additional divisions as the public interest requires. The presiding judge shall from time to time designate and assign judges to sit in the various divisions of the court in each of the judicial divisions of the Territory as the business of the court may require.
- (b) There is hereby established as a division within the Territorial Court an Office of the Marshall of the Territorial Court of the Virgin Islands (referred to in the remainder of this subsection as the "Marshal's Office"). At the head of the Marshal's Office, subject to the supervision, control and direction of the Presiding Judge. There shall be an Assistant Marshal for the Judicial District of St. Croix and an Assistant Marshal for the Judicial District of St. Thomas-St. John, and such deputies as the Presiding Judge deems necessary for the proper administration and performance of duties and functions. The Marshal and the Assistant Marshals shall be appointed by the presiding judge.
- (c) **There is established as a division within the Territorial Court, the Territorial Probation Office. At the head of the Territorial Probation Office, there shall be a Chief Probation Officer who shall administer the Office, subject to the supervision, control, and direction of the Presiding Judge. There shall be such Deputy Chief Probation Officers and such other officers as the Presiding Judge of the Territorial Court deems necessary for the proper administration and performance of duties and functions.**

4 V.I.C. § 7, *amended by* Omnibus Authorization Act of 1987, No. 5206, §115(c), Sess. L. 1986, p. 230, 243-44 (Oct. 14, 1986) (deletions indicated by stricken text; additions indicated in bold).

Section 79. Divisions of the Court

- (a) The territorial court shall be comprised of criminal, civil, traffic, family, **magistrate's** conciliation and small claims divisions. The court may create such additional divisions as the public interest requires. The presiding judge shall from time to time designate and assign judges to sit in the various divisions of the court in each of the judicial divisions of the Territory as the business of the court may require.
- (b) There is hereby established as a division within the Territorial Court an Office of the Marshall of the Territorial Court of the

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Virgin Islands (referred to in the remainder of this subsection as the “Marshal’s Office”). At the head of the Marshal’s Office, subject to the supervision, control and direction of the Presiding Judge. There shall be an Assistant Marshal for the Judicial District of St. Croix and an Assistant Marshal for the Judicial District of St. Thomas-St. John, and such deputies as the Presiding Judge deems necessary for the proper administration and performance of duties and functions. The Marshal and the Assistant Marshals shall be appointed by the presiding judge.

- (c) There is established as a division within the Territorial Court, the Territorial Probation Office. At the head of the Territorial Probation Office, there shall be a Chief Probation Officer who shall administer the Office, subject to the supervision, control, and direction of the Presiding Judge. There shall be such Deputy Chief Probation Officers and such other officers as the Presiding Judge of the Territorial Court deems necessary for the proper administration and performance of duties and functions.

4 V.I.C. § 7, *amended* by Act Amending 4 V.I.C., to provide for a Magistrate Division within the Superior Court of the Virgin Islands, No. 6919, § 1, Sess. L. 2007, p. 26, 26-27 (Mar. 11, 2007) (effective Jan. 1, 2009) (deletions indicated by stricken text; additions indicated in bold).

#### Section 79. Divisions of the Court

- (a) The territorial court shall be comprised of criminal, civil, traffic, family, magistrate’s conciliation and small claims divisions. The court may create such additional divisions as the public interest requires. The presiding judge shall from time to time designate and assign judges to sit in the various divisions of the court in each of the judicial divisions of the Territory as the business of the court may require.
- ~~(b) There is hereby established as a division within the Territorial Court an Office of the Marshall of the Territorial Court of the Virgin Islands (referred to in the remainder of this subsection as the “Marshal’s Office”). At the head of the Marshal’s Office, subject to the supervision, control and direction of the Presiding Judge. There shall be an Assistant Marshal for the Judicial District of St. Croix and an Assistant Marshal for the Judicial District of St. Thomas-St. John, and such deputies as the Presiding Judge deems necessary for the proper administration and performance of duties and functions. The Marshal and the Assistant Marshals shall be appointed by the presiding judge.~~
- (c) There is established as a division within the Territorial Court, the Territorial Probation Office. At the head of the Territorial Probation Office, there shall be a Chief Probation Officer who shall administer the Office, subject to the supervision, control, and direction of the Presiding Judge. There shall be such Deputy

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Chief Probation Officers and such other officers as the Presiding Judge of the Territorial Court deems necessary for the proper administration and performance of duties and functions.

4 V.I.C. § 7, *amended by* Act amending titles 3, 4, 5, 10, 14, 15, 16, 20, 23 and 33 of the Virgin Islands Code relating to the reorganization of the judicial system and for other related purposes, No. 7888, Sess. 2016, § 5(c), 103, 111 (July 30, 2016) (deletions indicated by stricken text; additions indicated in bold).

Section ~~768~~2. Process

(a) The process of the municipal courts runs throughout the Territory.

....

4 V.I.C. § 76 (1957) (Section 76 was added in the 1957 Code. 1921 Codes, Title I, ch. 1, § 11, provided for the territorial jurisdiction of the police courts to be “through the sub-judicial district in which it was held.”), *amended by* Act to Amend Title 4, Virgin Islands Code, Pertaining to a Change in the Name of the Court of Local Jurisdiction from “Municipal Court of the Virgin Islands” to “Territorial Court of the Virgin Islands”, to Enlarge the Jurisdiction of the Court, to Provide for the Selection, Qualifications, Compensation, Tenure, Retirement and Removal of Judges, to Provide for Trial by a Jury of Six Members and to Establish a Commission on Judicial Disabilities, No. 3876, § 1, Sess. L. 1976, p. 187, 190-91 (Sept. 9, 1976) (effective Jan. 1, 1977) (deletions indicated by stricken text; additions indicated in bold).

### **Chapter 7. Small Claims Division of Municipal Court**

Section 111. Small Claims Division

There is in each municipal court a small claims division, in which the procedure shall be as informal and summary is consistent with justice.

4 V.I.C. § 111 (1957).

Section 111. Small Claims Division

There is in ~~each~~ the municipal court a small claims division, in which the procedure shall be as informal and summary is consistent with justice.

4 V.I.C. § 111, *amended by* Act to Provide for Consolidation of the Municipal Courts and for Other Purposes, No. 1291, § 12, Sess. L. 1965, p. 7, 11 (Feb. 8, 1965) (effective Mar. 1, 1965) (deletions indicated by stricken text; additions indicated in bold).

Section 111. Small Claims Division

There is in the ~~municipal~~ Territorial Court a small claims division, in which the procedure shall be as informal and summary is consistent with justice.

4 V.I.C. § 111, *amended by* Act to Amend Title 4, Virgin Islands Code, Pertaining to a Change in the Name of the Court of Local Jurisdiction from “Municipal Court of the Virgin Islands” to “Territorial Court of the Virgin Islands”, to Enlarge the Jurisdiction of the Court, to Provide for the Selection, Qualifications, Compensation, Tenure, Retirement and Removal of Judges, to

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Provide for Trial by a Jury of Six Members and to Establish a Commission on Judicial Disabilities, No. 3876, § 5, Sess. L. 1976, p. 187, 197 (Sept. 9, 1976) (effective Jan. 1, 1977) (deletions indicated by stricken text; additions indicated in bold).

Section 112. Jurisdiction of small claims

- (a) The small claims division of the municipal court has jurisdiction of actions in contract only, where the debt, balance, penalty or other contractual matter in dispute does not exceed \$100, exclusive of interest and costs, and where the plaintiff is the original holder of the debt, claim or demand and does not hold it by assignment or transfer.
- (b) Where the debt, balance or other matter in dispute or the amount really due or recoverable exceeds \$100, exclusive of interest and costs, a party may recover in the small claims division of the municipal court a sum not exceeding \$100, with interest and costs, which recovery shall bar the recovery of the residue of such debt, balance or other matter in dispute in the municipal court or any other court.
- (c) The plaintiff in a complaint or the defendant in a counterclaim or cross claim may waive the excess of his claim over \$100, in order to bring it within the jurisdiction of the small claims division of the municipal court.

4 V.I.C. § 112 (1957) (Sections 111 and 112 are intended to provide “a simple and inexpensive procedure . . . similar to that followed in the former police courts.” (code reviser note)).

Section 112. Jurisdiction of small claims

- (a) The small claims division of the municipal court has jurisdiction of **all civil actions concurrently with the civil division of the said court**~~in contract only~~, wherein the ~~debt, balance, penalty or other contractual matter in dispute~~ **amount in controversy** does not exceed **the sum or value of \$1300**, exclusive of interest and costs, ~~and where the plaintiff is the original holder of the debt, claim or demand and does not hold it by assignment or transfer.~~
- (b) Where the ~~debt, balance or other matter in dispute or the amount really due or recoverable~~ **the amount in controversy** exceeds **\$1300**, exclusive of interest and costs, a party may recover in the small claims division of the municipal court a sum not exceeding **\$1300**, with interest and costs, which recovery shall bar the recovery of the residue of such ~~debt, balance or other matter in dispute~~ **amount in controversy** in the municipal court or any other court.
- (c) The plaintiff in a complaint or the defendant in a counterclaim or cross claim may waive the excess of his

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claim over \$1300, in order to bring it within the jurisdiction of the small claims division of the municipal court.

- (d) **Neither party may be represented by counsel and parties shall in all cases appear in person except for corporate parties, association and partnerships which may appear by a personal representative.**

4 V.I.C. § 112, *amended by* Act to Amend the Provisions of Title 4, Chapter 7, of the Virgin Islands Code Relating to the Small Claims Division of the Municipal Court, No. 1844, § 1, Sess. L. 1967, p. 11, 111-12 (Feb. 9, 1967) (deletions indicated by stricken text; additions indicated in bold).

Section 112. Jurisdiction of small claims

- (a) The small claims division of the municipal court has jurisdiction of all civil actions concurrently with the civil division of the said court, wherein the amount in controversy does not exceed the sum or value of ~~\$3500~~, exclusive of interest and costs.
- (b) Where the amount in controversy exceeds \$300, exclusive of interest and costs, a party may recover in the small claims division of the municipal court a sum not exceeding \$300, with interest and costs, which recovery shall bar the recovery of the residue of such amount in controversy in the municipal court or any other court.
- (c) The plaintiff in a complaint or the defendant in a counterclaim or cross claim may waive the excess of his claim over \$300, in order to bring it within the jurisdiction of the small claims division of the municipal court.
- (d) Neither party may be represented by counsel and parties shall in all cases appear in person except for corporate parties, association and partnerships which may appear by a personal representative.

4 V.I.C. § 112, *amended by* Act to Amend Title 4, Chapter 7, Pertaining to the Maximum Jurisdictional Amount of the Small Claims Division of the Municipal Court, No. 3380, § 1, Sess. L. 1973, p. 7, 7 (Feb. 15, 1973) (deletions indicated by stricken text; additions indicated in bold).

Section 112. Jurisdiction of small claims

- (a) The small claims division of the municipal court has jurisdiction of all civil actions concurrently with the civil division of the said court, wherein the amount in controversy does not exceed the sum or value of ~~\$500~~**750**, exclusive of interest and costs.
- (b) Where the amount in controversy exceeds ~~\$300~~**750**, exclusive of interest and costs, a party may recover in the small claims division of the municipal court a sum not exceeding ~~\$300~~**750**, with interest and costs, which recovery

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shall bar the recovery of the residue of such amount in controversy in the municipal court or any other court.

- (c) The plaintiff in a complaint or the defendant in a counterclaim or cross claim may waive the excess of his claim over ~~\$300~~**750**, in order to bring it within the jurisdiction of the small claims division of the municipal court.
- (d) Neither party may be represented by counsel and parties shall in all cases appear in person except for corporate parties, association and partnerships which may appear by a personal representative.

4 V.I.C. § 112, *amended by* Act to Amend Title 4, Chapter 7, Virgin Islands Code, to Provide for Uniformity of Jurisdictional Limit Throughout the Chapter and to Raise the Jurisdictional Limit to \$750, No. 4084, § 1, Sess. L. 1978, p. 6, 7 (Jan. 8, 1978) (deletions indicated by stricken text; additions indicated in bold).

Section 112. Jurisdiction of small claims

- (a) The small claims division of the municipal court has jurisdiction of all civil actions concurrently with the civil division of the said court, wherein the amount in controversy does not exceed the sum or value of ~~\$750~~**1,000**, exclusive of interest and costs.
- (b) Where the amount in controversy exceeds ~~\$750~~**1,000**, exclusive of interest and costs, a party may recover in the small claims division of the municipal court a sum not exceeding ~~\$750~~**1,000**, with interest and costs, which recovery shall bar the recovery of the residue of such amount in controversy in the municipal court or any other court.
- (c) The plaintiff in a complaint or the defendant in a counterclaim or cross claim may waive the excess of his claim over ~~\$750~~**1,000**, in order to bring it within the jurisdiction of the small claims division of the municipal court.
- (d) Neither party may be represented by counsel and parties shall in all cases appear in person except for corporate parties, association and partnerships which may appear by a personal representative.

4 V.I.C. § 112, *amended by* Act to Increase from \$50,000 to \$200,000 the Amount Below Which the Territorial Court in Civil Actions has Original Jurisdiction, Concurrent with the District Court, and to Increase from ~~\$750~~ to \$1,000 the Maximum Amount Recoverable in the Small Claims Division of the Territorial Court, No. 4647, § 1, Sess. L. 1981, p. 260, 260 (Oct. 20, 1981) (deletions indicated by stricken text; additions indicated in bold).

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- (a) The small claims division of the municipal court has jurisdiction of all civil actions concurrently with the civil division of the said court, wherein the amount in controversy does not exceed the sum or value of ~~\$12,000~~, exclusive of interest and costs.
- (b) Where the amount in controversy exceeds ~~\$12,000~~, exclusive of interest and costs, a party may recover in the small claims division of the municipal court a sum not exceeding ~~\$12,000~~, with interest and costs, which recovery shall bar the recovery of the residue of such amount in controversy in the municipal court or any other court.
- (c) The plaintiff in a complaint or the defendant in a counterclaim or cross claim may waive the excess of his claim over ~~\$12,000~~, in order to bring it within the jurisdiction of the small claims division of the municipal court.
- (d) Neither party may be represented by counsel and parties shall in all cases appear in person except for corporate parties, association and partnerships which may appear by a personal representative.

4 V.I.C. § 112, *amended by* Act to Increase the Jurisdictional Limit of the Small Claims Division of the Territorial Court and to Amend Act No. 4902 to Enable Release of Funds for Payment to the Federal Bureau of Prisons, No. 4959, § 1, Sess. L. 1984, p. 172, 172 (June 14, 1984) (effective 60 days after) (deletions indicated by stricken text; additions indicated in bold).

#### Section 112. Jurisdiction of small claims

- (a) The small claims division of the municipal court has jurisdiction of all civil actions concurrently with the civil division of the said court, wherein the amount in controversy does not exceed the sum or value of ~~\$25,000~~, exclusive of interest and costs.
- (b) Where the amount in controversy exceeds ~~\$25,000~~, exclusive of interest and costs, a party may recover in the small claims division of the municipal court a sum not exceeding ~~\$25,000~~, with interest and costs, which recovery shall bar the recovery of the residue of such amount in controversy in the municipal court or any other court.
- (c) The plaintiff in a complaint or the defendant in a counterclaim or cross claim may waive the excess of his claim over ~~\$25,000~~, in order to bring it within the jurisdiction of the small claims division of the municipal court.
- (d) Neither party may be represented by counsel and parties shall in all cases appear in person except for corporate

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parties, association and partnerships which may appear by a personal representative.

4 V.I.C. § 112, *amended by Act to Amend Title 4, Section 76, Virgin Islands Code, to Expand Original Jurisdiction of All Civil Actions to the Territorial Court of the Virgin Islands, No. 5594, § 2, Sess. L. 1990, p. 271, 272 (Sept. 5, 1990) (deletions indicated by stricken text; additions indicated in bold).*

**Section 112. Jurisdiction of small claims**

- (a) The small claims division of the municipal court has jurisdiction of all civil actions concurrently with the civil division of the said court, wherein the amount in controversy does not exceed the sum or value of ~~\$510,000~~, exclusive of interest and costs.
- (b) Where the amount in controversy exceeds ~~\$510,000~~, exclusive of interest and costs, a party may recover in the small claims division of the municipal court a sum not exceeding ~~\$510,000~~, with interest and costs, which recovery shall bar the recovery of the residue of such amount in controversy in the municipal court or any other court.
- (c) The plaintiff in a complaint or the defendant in a counterclaim or cross claim may waive the excess of his claim over ~~\$510,000~~, in order to bring it within the jurisdiction of the small claims division of the municipal court.
- (d) Neither party may be represented by counsel and parties shall in all cases appear in person except for corporate parties, association and partnerships which may appear by a personal representative.

4 V.I.C. § 112, *amended by Act Amending 4 V.I.C., Chapter 7, Section 112 Increasing the Amount in Controversy for a Small Claims Action from \$5,000 to \$10,000, No. 6857, § 1, Sess. L. 2006, p. 142, 142 (July 19, 2006) (deletions indicated by stricken text; additions indicated in bold).*

**Chapter 8. Magistrate Division of the Superior Court**

**Section 120. Magistrate Division**

There is established in the Superior Court of the Virgin Islands a Magistrate Division in which the procedure, unless otherwise specified, is in accordance with the rules governing the Superior Court of the Virgin Islands.

4 V.I.C. § 120 (2009); Act Amending 4 V.I.C., to provide for a Magistrate Division within the Superior Court of the Virgin Islands, No. 6919, § 2, Sess. L. 2007, p. 26, 27 (Mar. 11, 2007) (effective Jan. 1, 2009).

**Section 123. Jurisdiction and Powers of Magistrate Division**

- (a) Each magistrate may:

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- (1) Administer oaths and affirmations and issue civil and criminal process, including warrants of arrest, search warrants, subpoenas, and orders, including orders for the release on bail, for detention of persons pending trial and for contempt;
  - (2) Take acknowledgements, affidavits and depositions;
  - (3) Conduct marriages;
  - (4) Hear all non-felony traffic offenses, litter cases, misdemeanor criminal cases where the maximum punishment is limited to not more than six months imprisonment; arraignment and probable cause hearings in any criminal or traffic matter, small claims cases and probate matters;
  - (5) Issue restraining orders in domestic violence cases after reviewing a complaint's affidavit; and
  - (6) Hear forcible entry and detainer and landlord tenant actions.
- (b) Upon designation by a judge of the Superior Court, pursuant to rules adopted by the court, a magistrate may:
- (1) Hear and determine any pretrial matter pending before the court, including matters before the Family Court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, for dismissing or quashing an indictment or information made by the defendant, suppression of evidence in a criminal case, dismissal or to permit maintenance of a class action, dismissal for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.
  - (2) Conduct hearings, including evidentiary hearings, to submit proposed findings of fact and recommendations for the disposition, by a Superior Court judge, of any motion excepted in subsection (b)(1) of applications of post-trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.
- (c) A judge of the Superior Court may reconsider any pretrial matter handled by the magistrate where it has been shown that the magistrate's order is clearly erroneous or contrary to law.
- (d) Upon consent of the parties and approval of the Presiding Judge, the magistrate may conduct all proceedings in a jury or non-jury civil matter, including trial and enter a judgment in the case. An order entered pursuant to this subsection is an Order of the Court, appealable to the Supreme Court of the Virgin Islands as any other Order.

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4 V.I.C. § 123 (2009); Act Amending 4 V.I.C., to provide for a Magistrate Division within the Superior Court of the Virgin Islands, No. 6919, § 2, Sess. L. 2007, p. 26, 28-29 (Mar. 11, 2007) (effective Jan. 1, 2009).

**Section 123. Jurisdiction and Powers of Magistrate Division**

- (a) Each magistrate may:
- (1) Administer oaths and affirmations and issue civil and criminal process, including warrants of arrest, search warrants, subpoenas, and orders, including orders for the release on bail, for detention of persons pending trial and for contempt;
  - (2) Take acknowledgements, affidavits and depositions;
  - (3) Conduct marriages;
  - (4) Hear all non-felony traffic offenses, litter cases, misdemeanor criminal cases where the maximum punishment is limited to not more than six months imprisonment; arraignment and probable cause hearings in any criminal or traffic matter, small claims cases and probate matters;
  - (5) Issue **temporary and permanent** restraining orders in domestic violence cases ~~after reviewing a complaint's affidavit~~; and
  - (6) Hear forcible entry and detainer and landlord tenant actions.
- (b) Upon designation by a judge of the Superior Court, pursuant to rules adopted by the court, a magistrate may:
- (1) Hear and determine any pretrial matter pending before the court, including matters before the Family Court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, for dismissing or quashing an indictment or information made by the defendant, suppression of evidence in a criminal case, dismissal or to permit maintenance of a class action, dismissal for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.
  - (2) Conduct hearings, including evidentiary hearings, to submit proposed findings of fact and recommendations for the disposition, by a Superior Court judge, of any motion excepted in subsection (b)(1) of applications of post-trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.
- (c) A judge of the Superior Court may reconsider any pretrial matter handled by the magistrate where it has been shown

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that the magistrate's order is clearly erroneous or contrary to law.

- (d) Upon consent of the parties and approval of the Presiding Judge, the magistrate may conduct all proceedings in a jury or non-jury civil matter, including trial and enter a judgment in the case. An order entered pursuant to this subsection is an Order of the Court, appealable to the Supreme Court of the Virgin Islands as any other Order.

4 V.I.C. § 123, *amended by Act Amending Title 4 Virgin Islands Code, Chapter 8 Relating to the Magistrate Division of the Superior Court and Amending Act No. 6985 Extending the Date of Implementation of a Magistrate Division; Amending 17 V.I.C. 24 Providing for a System-wide Revenue Data Collection by the Department of Education; Amending 17 V.I.C. 190t Relating to the Terrence A. Todman Scholarship Fund in Inter National Affairs; Amending 29 V.I.C. 237 Relating to Zoning Applications; Amending 29 V.I.C. 2494 Relating to Proof of Payment for Property Taxes; Making Several Appropriations; and Providing for Other Purposes, No. 7009, § 2, Sess. L. 2008, p. 155, 156 (July 4, 2008) (effective Jan. 1, 2009) (deletions indicated by stricken text; additions indicated in bold).*

#### Section 123. Jurisdiction and Powers of Magistrate Division

(a) Each magistrate may:

- (1) Administer oaths and affirmations and issue civil and criminal process, including warrants of arrest, search warrants, subpoenas, and orders, including orders for the release on bail, for detention of persons pending trial and for contempt;
- (2) Take acknowledgements, affidavits and depositions;
- (3) Conduct marriages;
- (4) Hear all non-felony traffic offenses, litter cases, misdemeanor criminal cases where the maximum punishment is limited to not more than six months imprisonment; arraignment and probable cause hearings in any criminal or traffic matter, small claims cases and probate matters;
- (5) Issue temporary and permanent restraining orders in domestic violence cases; and
- (6) Hear forcible entry and detainer and landlord tenant actions.

(b) Upon designation by a judge of the Superior Court, pursuant to rules adopted by the court, a magistrate may:

- (1) Hear and determine any pretrial matter pending before the court, including matters before the Family Court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, for dismissing or quashing an indictment or information made by the defendant, suppression of evidence in a criminal case,

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- dismissal or to permit maintenance of a class action, dismissal for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.
- (2) Conduct hearings, including evidentiary hearings, to submit proposed findings of fact and recommendations for the disposition, by a Superior Court judge, of any motion excepted in subsection (b)(1), of applications of post-trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.
- (c) A judge of the Superior Court may reconsider any pretrial matter handled by the magistrate where it has been shown that the magistrate's order is clearly erroneous or contrary to law.
- (d) Upon consent of the parties and approval of the Presiding Judge, the magistrate may conduct all proceedings in a jury or non-jury civil matter, including trial and enter a judgment in the case. An order entered pursuant to this subsection is an Order of the Court, appealable to the Supreme Court of the Virgin Islands as any other Order.

4 V.I.C. § 123, *amended by* An Act Amending Title 4, chapter 8, Section 123(b)(2) of the Virgin Islands Code to Clarify the Jurisdiction of the Magistrate Division; etc., No. 7346, § 1, Sess. L. 2012, p. 27, 28 (Mar. 7, 2012).

#### Section 123. Jurisdiction and Powers of Magistrate Division

(a) Each magistrate may:

- (1) Administer oaths and affirmations and issue civil and criminal process, including warrants of arrest, search warrants, subpoenas, and orders, including orders for the release on bail, for detention of persons pending trial and for contempt;
- (2) Take acknowledgements, affidavits and depositions;
- (3) Conduct marriages;
- (4) Hear all non-felony traffic offenses, litter cases, misdemeanor criminal cases where the maximum punishment is limited to not more than ~~six months~~ **364 days** imprisonment; arraignment and probable cause hearings in any criminal or traffic matter, small claims cases and probate matters;
- (5) Issue temporary and permanent restraining orders in domestic violence cases; ~~and~~
- (6) Hear forcible entry and detainer and landlord tenant actions; ~~and~~
- (7) **Hear all civil cases where the amount in controversy does not exceed \$75,000.**

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- (b) Upon designation by a judge of the Superior Court, pursuant to rules adopted by the court, a magistrate may:
- (1) Hear and determine any pretrial matter pending before the court, including matters before the Family Court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, for dismissing or quashing an indictment or information made by the defendant, suppression of evidence in a criminal case, dismissal or to permit maintenance of a class action, dismissal for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.
  - (2) Conduct hearings, including evidentiary hearings, to submit proposed findings of fact and recommendations for the disposition, by a Superior Court judge, of any motion excepted in subsection (b)(1), of applications of post-trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.
- (c) A judge of the Superior Court may reconsider any pretrial matter handled by the magistrate where it has been shown that the magistrate's order is clearly erroneous or contrary to law.
- (d) Upon consent of the parties ~~and approval of the Presiding Judge~~, the magistrate may conduct all proceedings in a jury or non-jury civil matter, including trial and enter a judgment in the case. An order entered pursuant to this subsection is an Order of the Court, appealable to the Supreme Court of the Virgin Islands as any other Order.

4 V.I.C. § 123, *amended* by Act amending titles 3, 4, 5, 10, 14, 15, 16, 20, 23 and 33 of the Virgin Islands Code relating to the reorganization of the judicial system and for other related purposes, No. 7888, Sess. 2016, § 6, p. 103, 111 (July 30, 2016) (deletions indicated by stricken text; additions indicated in bold).

#### Section 124. Magistrate's Traffic Jurisdiction

- (a) For purposes of this chapter, the term, "traffic offense", means any conduct or violation of the provisions of titles 20 and 23 of the Virgin Islands Code and related regulations, relating to motor vehicles or pedestrians, or a moving or non-moving violation, which is punishable by fine or a period of imprisonment not more than six months.
- (b) The Magistrate Division of the Superior Court has exclusive jurisdiction over all traffic offenses, except felony traffic offenses. A magistrate may:

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- (1) Impose any penalty prescribed by law for each offense including other than a penalty providing for imprisonment exceeding six months;
  - (2) Impose points against a license as may be provided by law;
  - (3) Impose as a sanction for a traffic offense including, required attendance at a traffic school, as may be provided by law or order of the court; and
  - (4) Suspend or revoke a driver's license as may be prescribed by law.
- (c) The notice of traffic offense is the summons and complaint in the form described in Rule 151 of the Rules of the Superior Court, known as the "Uniform Traffic Ticket", which must be filed directly by the issuing officer or prosecuting attorney in the Magistrate Division of the Superior Court.
- (d) A person receiving a Uniform Traffic Ticket shall appear in court no later than the day specified on the ticket to admit or deny commission of the offense, and if necessary, to docket the case.
- (e) The issuing officer or person shall present the case to the magistrate at the time and place docketed for the traffic offense hearing. The magistrate shall place a lien on the vehicle of the offender issued a notice of traffic offense until further appearance or proceedings who, without good cause shown, fails to appear as directed.

4 V.I.C. § 124 (2009); Act Amending 4 V.I.C., to provide for a Magistrate Division within the Superior Court of the Virgin Islands, No. 6919, § 2, Sess. L. 2007, p. 26, 29-30 (Mar. 11, 2007) (effective Jan. 1, 2009) (Section 8 of Act 6985 (Dec. 11, 2007) provided that the magistrate division was to be fully implemented by July 1, 2008).

#### Section 124. Magistrate's Traffic Jurisdiction

- (a) For purposes of this chapter, the term, "traffic offense", means any conduct or violation of the provisions of titles 20 and 23 of the Virgin Islands Code and related regulations, relating to motor vehicles or pedestrians, or a moving or non-moving violation, which is punishable by fine or a period of imprisonment not more than six months.
- (b) The Magistrate Division of the Superior Court has exclusive jurisdiction over all traffic offenses, except felony traffic offenses. A magistrate may:
- (1) Impose any penalty prescribed by law for each offense ~~including~~—other than a penalty providing for imprisonment exceeding six months;

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- (2) Impose points against a license as may be provided by law;
  - (3) Impose as a sanction for a traffic offense including, required attendance at a traffic school, as may be provided by law or order of the court; and
  - (4) Suspend or revoke a driver's license as may be prescribed by law.
- (c) The notice of traffic offense is the summons and complaint in the form described in Rule 151 of the Rules of the Superior Court, known as the "Uniform Traffic Ticket", which must be filed directly by the issuing officer or prosecuting attorney in the Magistrate Division of the Superior Court.
- (d) A person receiving a Uniform Traffic Ticket shall appear in court no later than the day specified on the ticket to admit or deny commission of the offense, and if necessary, to docket the case.
- (e) The issuing officer or person shall present the case to the magistrate at the time and place docketed for the traffic offense hearing. The magistrate shall place a lien on the vehicle of the offender issued a notice of traffic offense until further appearance or proceedings who, without good cause shown, fails to appear as directed.

4 V.I.C. § 124, *amended* by Act amending 4 V.I.C., sections 31, 32, 34, 74a, 122, 124 and 126 relating to relations between the Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands; Amending Act 6965 relating to an increase in the appropriation for Fiscal Year 2008 operating expenses for the Supreme Court of the Virgin Islands; and providing for a deadline for full implementation of Act 6919 establishing the Magistrate Division of the Superior Court; and providing for other related purposes, No. 6985, § 6(a), Sess. L. 2007, p. 229, 231 (Mar. 11, 2007) (Section 8 of Act 6985 (Dec. 11, 2007) provided that the magistrate division was to be fully implemented by July 1, 2008) (deletions indicated by stricken text; additions indicated in bold).

#### Section 124. Magistrate's Traffic Jurisdiction

- (a) For purposes of this chapter, the term, "traffic offense", means any conduct or violation of the provisions of titles 20 and 23 of the Virgin Islands Code and related regulations, relating to motor vehicles or pedestrians, or a moving or non-moving violation, which is punishable by fine or a period of imprisonment not more than six months.
- (b) The Magistrate Division of the Superior Court has exclusive jurisdiction over all traffic offenses, except felony traffic offenses. A magistrate **judge** may:
- (1) Impose any penalty prescribed by law for each offense including other than a penalty providing for imprisonment exceeding six months;

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- (2) Impose points against a license as may be provided by law;
  - (3) Impose as a sanction for a traffic offense including, required attendance at a traffic school, as may be provided by law or order of the court; and
  - (4) Suspend or revoke a driver's license as may be prescribed by law.
- (c) The notice of traffic offense is the summons and complaint in the form described in Rule 151 of the Rules of the Superior Court, known as the "Uniform Traffic Ticket", which must be filed directly by the issuing officer or prosecuting attorney in the Magistrate Division of the Superior Court.
- (d) A person receiving a Uniform Traffic Ticket shall appear in court no later than the day specified on the ticket to admit or deny commission of the offense, and if necessary, to docket the case.
- (e) The issuing officer or person shall present the case to the magistrate at the time and place docketed for the traffic offense hearing. The magistrate **judge** shall place a lien on the vehicle of the offender issued a notice of traffic offense until further appearance or proceedings who, without good cause shown, fails to appear as directed.

4 V.I.C. § 124, *amended by* Act amending titles 3, 4, 5, 10, 14, 15, 16, 20, 23 and 33 of the Virgin Islands Code relating to the reorganization of the judicial system and for other related purposes, No. 7888, Sess. 2016, § 15, 103, 114 (July 30, 2016) (deletions indicated by stricken text; additions indicated in bold).

#### Section 125. Appeals from the Magistrate Division

All appeals from the Magistrate Division, except as otherwise provided for in this chapter, must be filed in the Superior Court or to the Supreme Court, if appealable to the Supreme Court as provided by law.

4 V.I.C. § 125 (2009); Act Amending 4 V.I.C., to provide for a Magistrate Division within the Superior Court of the Virgin Islands, No. 6919, § 2, Sess. L. 2007, p. 26, 30 (Mar. 11, 2007) (effective Jan. 1, 2009).

#### Section 126. Rules and Procedures

The Supreme Court shall promulgate rules and amendments to the Rules of the Superior Court as necessary to implement this chapter effectively.

4 V.I.C. § 126 (2009); Act Amending 4 V.I.C., to provide for a Magistrate Division within the Superior Court of the Virgin Islands, No. 6919, § 2, Sess. L. 2007, p. 26, 30 (Mar. 11, 2007) (effective Jan. 1, 2009).

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**Chapter 9. Conciliation Division of Municipal Court****Section 141. Conciliation division**

There shall be in each municipal court a conciliation division.

4 V.I.C. § 141 (1957) (This section provides a “procedure to promote the amicable settlement of disputes without recourse to formal litigation . . . [similar to the] procedure long followed by the judges of the former police courts and which has proved to be in the public interest.” (reviser note)).

**Section 142. Jurisdiction of disputes**

The conciliation division of the municipal court may, at the request of any party to a civil controversy, endeavor to effect an amicable settlement of the controversy, and, to that end, may summon the other party or parties to the controversy to appear before the judge for an informal hearing.

4 V.I.C. § 142 (1957).

**Chapter 17. Judicial Officers**

**Section 281. Powers of judicial officers as to conduct of proceeding**

Every judicial officer shall have power:

- (1) To preserve and enforce order in his immediate presence and in the proceedings before him, when he is engaged in the performance of a duty imposed on him by law;
- (2) To compel obedience to his lawful orders;
- (3) To compel the attendance of persons to testify in a proceeding pending before him; and
- (4) To 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 or in the performances of his duties.

4 V.I.C. § 281 (1957) (sources are 1921 Codes, Title I, ch.1, § 24).

**Chapter 11. Juvenile and Domestic Relations Divisions of Municipal Court<sup>6</sup>**

**Section 171. Juvenile and domestic relations division**

There is in each municipal court a juvenile and domestic relations division.

4 V.I.C. § 171 (1957) (“This chapter is based on the provisions of the Standard Juvenile Court Act (1949), prepared by a Committee of National Probation and Parole Association. It supersedes the following sections of the 1921 Codes, Title I, ch.1: [§§ 29, 30, 31, 34].”).

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<sup>6</sup> In 1983, all of chapter 11 of title 4 was repealed and replaced. The original 1957 Code provisions are provided for reference and comparison. Act to Amend Titles 3, 4, 5, and 19, Virgin Islands Code, to Establish a Coherent and Uniform Policy Throughout the Territory with Regard to Delinquent, Neglected, and Abused Children, and for Other Purposes, No. 4855, § 1, Sess. L. 1983, p. 138, 138-39 (Sept. 24, 1983) (effective Sept. 24, 1983).

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Section 171. Tenure of Judges in the Family Division of the Territorial Court; qualifications

- (a) The presiding judge of the Territorial Court shall assign to the Family Division of the Territorial Court a judge or judges for a period of six months. The judge(s) for the Family Division shall have primary judicial responsibility for all matters within the jurisdiction of the Family Division.
- (b) No judge may be assigned primary judicial responsibility for the Family Division for more than two consecutive six-month terms; Provided, however, that the presiding judge shall have discretion to appoint an incumbent judge for the Family Division to additional consecutive terms of one year when the judge has demonstrated exceptional competence while serving in the Family Division and retains a keen interest in the needs and problems of juveniles and expresses an interest in continuing to serve in the Family Division.
- (c) The presiding judge may appoint other territorial judges to the Family Division as the need arises.
- (d) To be eligible for designation as a judge for the Family Division of the court, a person should be trained and knowledgeable in the practice of family law and have the temperament and interest compatible with the functions of the office.

4 V.I.C. § 171, *amended by Act to Amend Titles 3, 4, 5, and 19, Virgin Islands Code, to Establish a Coherent and Uniform Policy Throughout the Territory with Regard to Delinquent, Neglected, and Abused Children, and for Other Purposes, No. 4855, § 1, Sess. L. 1983, p. 138, 138-39 (Sept. 24, 1983) (effective Sept. 24, 1983).*

Section 171. Tenure of Judges in the Family Division of the Territorial Court; qualifications

- (a) The presiding judge of the Territorial Court shall assign to the Family Division of the Territorial Court a judge or judges ~~for a period of six months~~. The judge(s) for the Family Division shall have primary judicial responsibility for all matters within the jurisdiction of the Family Division.
- (b) ~~No judge may be assigned primary judicial responsibility for the Family Division for more than two consecutive six-month terms; Provided, however, that~~ The presiding judge shall have discretion to reappoint an incumbent judge for the Family Division ~~to additional consecutive terms of one year~~ when the judge has demonstrated exceptional competence while serving in the Family Division and retains a keen interest in the needs and problems of juveniles and expresses an interest in continuing to serve in the Family Division.

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- (c) The presiding judge may appoint other territorial judges to the Family Division as the need arises.
- (d) To be eligible for designation as a judge for the Family Division of the court, a person should be trained and knowledgeable in the practice of family law and have the temperament and interest compatible with the functions of the office.

4 V.I.C. § 171, *amended by* Act to Amend the Virgin Islands Code to Provide that Parents and Legal Guardians Shall be Legally Responsible for Children Under the Age of 18 years and to Establish an Identification System for Students; to Provide that the Family Division of the Territorial Court may Impose a Fine of up to \$2,500 in Cases Involving Malicious or Destructive Acts of Minors; to Amend Title 4, Section 171, Virgin Islands Code, With Respect to the Tenure of Judges in the Family Division of the Territorial Court and for Other Related Purposes, No. 5957, § 8, Sess. L. 1994, p. 13, 16 (Feb. 15, 1994) (deletions indicated by stricken text; additions indicated in bold).

Section 171. Tenure of Judges in the Family Division of the Territorial Court; qualifications

- ~~(a) The presiding judge of the Territorial Court shall assign to the Family Division of the Territorial Court a judge or judges. The judge(s) for the Family Division shall have primary judicial responsibility for all matters within the jurisdiction of the Family Division. The Governor shall appoint pursuant to section 72 of this title, two Superior Court judges to the Family Division of the Superior Court, one in the Division of St. Croix and the other in the Division of St. Thomas-St. John.~~
- (b) The presiding judge shall have discretion to reappoint an incumbent judge for the Family Division when the judge has demonstrated exceptional competence while serving in the Family Division and retains a keen interest in the needs and problems of juveniles and expresses an interest in continuing to serve in the Family Division.
- ~~(c) The presiding judge may appoint other territorial judges to the Family Division as the need arises.~~
- (c) To be eligible for designation as a judge for the Family Division of the court, a person ~~should~~ **must** be trained and knowledgeable in the practice of family law and have the temperament and interest compatible with the functions of the office.

4 V.I.C. § 171, *amended by* Act Amending 4 V.I.C., chapter 11, section 171 to provide for a permanent judge for the Family Division of the Superior Court, No. 6845, § 1, Sess. L. 6845, p. 109, 109 (July 19, 2006) (deletions indicated by stricken text; additions indicated in bold).

Section 172. Jurisdiction of children and minors

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Except as otherwise provided herein and subject to the exclusive jurisdiction of the district court in causes arising under the laws of the United States, the juvenile and domestic relations division of the municipal court shall have jurisdiction in proceedings:

- (a) Concerning any child under 18 years of age living or found within the judicial division (A) who is neglected as to proper or necessary support or education as required by law, or as to medical, psychiatric, psychological or other care necessary for his well-being, or who is abandoned by his parent or other custodian, (B) whose occupation, behavior, condition, environment or associations are such as to injure or endanger his welfare or that of others, (C) who is beyond the control of his parent or other custodian, or (D) who is alleged to have violated or attempted to violate any federal, state, territorial, or local law or municipal ordinance, regardless of where the violation occurred;
- (b) Concerning any minor 18 years of age or older living or found within the judicial division alleged to have violated or attempted to violate any federal, state, territorial, or local law or municipal ordinance prior to having become 18 years of age, the court being empowered to deal with such a minor under the provisions of this chapter relating to children;
- (c) To determine the custody or guardianship of the person of any child under 18 years of age living within the judicial division, for the adoption of a minor and to terminate parental rights in connection with such proceedings;
- (d) For judicial consent to the marriage of a child under 18 years of age, when such consent is required by law; and
- (e) For the treatment or commitment of a mentally defective or mentally disordered or emotionally disturbed child under 18 years of age.

4 V.I.C. § 172 (1957) (“This chapter is based on the provisions of the Standard Juvenile Court Act (1949), prepared by a Committee of National Probation and Parole Association. It supersedes the following sections of the 1921 Codes, Title I, ch. 1, [§§ 29, 30, 31, 34].”).

#### Section 172. Jurisdiction of children and minors

Except as otherwise provided by this chapter, the Family Division of the Territorial Court shall have original jurisdiction:

- (a) Concerning any child living or found within the geographical limits of its jurisdiction:
  - (1) who is neglected or abused;
  - (2) whose occupation, behavior, condition, environment or associations are such as to injure or endanger his welfare or that of others;
  - (3) who is a “person in need of supervision”;

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- (4) who is alleged to have committed a delinquent act within the territory; except that any child sixteen years and over, charged with an offense under Title 20 of the Virgin Islands Code, other than under section 504 thereof, shall be within the jurisdiction of the Traffic Division of the Territorial Court.
- (b) For treatment or commitment to any mental institution of a mentally defective or mentally disordered or emotionally disturbed child under procedures consistent with Title 19, chapter 31 of the Virgin Islands Code.
- (c) Concerning any adult, living or found within the geographical limits of the court's jurisdiction, alleged to have committed or to have attempted to commit a delinquent act within the territory prior to having become eighteen years of age.
- (d) To determine the custody or guardianship of the person of any child living within the judicial division, for the adoption or other care provision and to determine parental rights in connection with such proceedings.
- (e) For judicial consent for the marriage of a child when such consent is required by law.

4 V.I.C. § 172, *amended by* Act to Amend Titles 3, 4, 5, and 19, Virgin Islands Code, to Establish a Coherent and Uniform Policy Throughout the Territory with Regard to Delinquent, Neglected, and Abused Children, and for Other Purposes, No. 4855, § 1, Sess. L. 1983, p. 138, 138-39 (Sept. 24, 1983) (effective Sept. 24, 1983) (deletions indicated by stricken text; additions indicated in bold).

Section 173. Jurisdiction of persons 18 years of age or over

- (a) The juvenile and domestic relations division of the municipal court has original jurisdiction:
  - (1) To try any person 18 years of age or over charged with a violation of law which causes a child under 18 years of age to become in need of the care and protection of the court.
  - (2) In the case of a person 18 years of age or over charged with paternity of a child born out of wedlock.
  - (3) In the case of a person 18 years of age or over charged with paternity of a child born out of wedlock.
- (b) The court shall have jurisdiction in any of the cases mentioned in this section if either the person charged or the child or other person concerned has residence or is at the time present within the judicial division.
- (c) In any case under this section, if the defendant is entitled to a jury trial and shall demand it, or shall not waive the trial by jury as provided by law, the court shall, and in any other case

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under this section the court may, make preliminary investigation and commit such defendant for criminal proceedings to the district court.

4 V.I.C. § 173 (1957) (“This chapter is based on the provisions of the Standard Juvenile Court Act (1949), prepared by a Committee of National Probation and Parole Association. It supersedes the following sections of the 1921 Codes, Title I, ch. 1, [§§ 29, 30, 31, 34].”).

#### Section 173. Retention of Jurisdiction

- (a) When jurisdiction shall have been obtained by the Family Division in the case of any child, such jurisdiction may be retained by the Division until he become 19 years of age, unless he is discharged prior thereto by the court. This section does not affect the jurisdiction of other divisions of this court or other courts over offenses committed by the child after he reaches the age of 18 years.
- (b) If a child already under the jurisdiction of the Family Division is convicted in the Superior Court or District Court of a crime committed after the age of 18, the conviction shall terminate the jurisdiction of the Family Division
- (c) If a child is transferred to another court, and the child is convicted in that court for a crime pursuant to the transfer, the conviction shall terminate the jurisdiction of the Family Division. For any crimes after such conviction, the child shall be considered an adult for the purpose of determining jurisdiction.

4 V.I.C. § 173, *amended by* Act to Amend Titles 3, 4, 5, and 19, Virgin Islands Code, to Establish a Coherent and Uniform Policy Throughout the Territory with Regard to Delinquent, Neglected, and Abused Children, and for Other Purposes, No. 4855, § 1, Sess. L. 1983, p. 138, 139-40 (Sept. 24, 1983) (effective Sept. 24, 1983).

#### Section 174. Transfer from district court

If during the pendency of a criminal or quasi-criminal charge against any minor in the district court, it shall be ascertained that the minor was under the age of 18 years at the time of committing the alleged offense, the district court may forthwith transfer the case, together with all the papers, documents and testimony connected therewith, to the juvenile and domestic relations division of the municipal court for the proper judicial division. When making such transfer the district court shall order the minor to be taken forthwith to the place of detention designated by the municipal court or to that court itself, or shall release such minor to the custody of some suitable person to be brought before the court at a time designated.

The municipal court shall then proceed as provided by law.

4 V.I.C. § 174 (1957) (“This chapter is based on the provisions of the Standard Juvenile Court Act (1949), prepared by a Committee of National Probation and Parole Association. It supersedes the

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following sections of the 1921 Codes, Title I, ch. 1, [§§ 29, 30, 31, 34].”). In 1983, this section was repealed and replaced with a new section 174 dealing with “Facilities and support personnel for the Family Division,” No. 4855, § 1, Sess. L. 1983, p. 138, 140 (Sept. 24, 1983) (effective Sept. 24, 1983).

#### Section 175. Retention of jurisdiction

When jurisdiction shall have been obtained by the juvenile and domestic relations division of the municipal court in the case of any child less than 18 years of age, such jurisdiction may be retained by the court until he becomes 21 years of age, unless he is discharged prior thereto by the court, or unless he is committed to and received by a public institution or agency maintained by the territorial or federal government; provided that the court may retain jurisdiction over a child placed by the court with such public institution or agency for temporary observation and care. Any decree or order of the court may be modified at any time, except as otherwise provided by law.

4 V.I.C. § 175 (1957) (“This chapter is based on the provisions of the Standard Juvenile Court Act (1949), prepared by a Committee of National Probation and Parole Association. It supersedes the following sections of the 1921 Codes, Title I, ch. 1, [§§ 29, 30, 31, 34].”). In 1983, this section was **repealed** and replaced with a new section 175 dealing with “Periodic inspection by the Family Division judge,” No. 4855, § 1, Sess. L. 1983, p. 138, 140 (Sept. 24, 1983) (effective Sept. 24, 1983).

#### Section 176. Transfer to district court

If a child 16 years of age or older is charged with an offense which would be a felony if committed by a person 18 years of age or over, and if the juvenile and domestic relations division of the municipal court after full investigation deems it contrary to the best interest of the child or of the public to retain jurisdiction, it may commit the child for proper criminal proceedings to the district court; but no child under 16 years of age shall be so committed.

4 V.I.C. § 176 (1957) (“This chapter is based on the provisions of the Standard Juvenile Court Act (1949), prepared by a Committee of National Probation and Parole Association. It supersedes the following sections of the 1921 Codes, Title I, ch. 1, [§§ 29, 30, 31, 34].”).

#### Section 176. Definitions

For purposes of this chapter, the terms “adult”, “child”, “delinquent act”, “neglected or abused” and “person in need of supervision” shall have the same meaning as defined in section 2502 of Title 5, of this code.

4 V.I.C. § 176, *amended by* Act to Amend Titles 3, 4, 5, and 19, Virgin Islands Code, to Establish a Coherent and Uniform Policy Throughout the Territory with Regard to Delinquent, Neglected, and Abused Children, and for Other Purposes, No. 4855, § 1, Sess. L. 1983, p. 138, 139-40 (Sept. 24, 1983) (effective Sept. 24, 1983).

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### **Chapter 15. General Provisions Respecting Courts of Justice**

#### Section 243. Incidental power of courts

Every court shall have power:

- (1) To preserve and enforce order in its immediate presence;
- (2) To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;
- (3) To provide for the orderly conduct of proceedings before it or its officers;
- (4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in all actions, or proceedings pending therein;
- (5) To control obedience to its judgments, orders, and process, and to the orders of a judge out of court, in all actions, or proceedings pending therein;
- (6) To compel attendance of person to testify in an action or proceeding pending therein;
- (7) To 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 or the performance of its duties; and
- (8) To amend and control its process and orders so as to make them conformable to law and justice.

4 V.I.C. § 243 (1957) (sources are 1921 Codes, Title I, ch. 1, § 20).

#### Section 246. Assignment and appointment of judges temporarily

If a judge of a municipal court is absent, disabled or disqualified from acting or if for any reason the public interest so requires, the judge of the district court may assign the judge of the other municipal court thereto temporarily. If the proper dispatch of the business of a municipal court so requires the judge of the district court, upon the request of the Judicial Council, may appoint a judge pro tempore to serve for a designated temporary period in the court, who during his service shall receive the salary of the office.

4 V.I.C. § 1246 (1957) (sources are 1921 Codes, Title I, ch. 1, §§ 14, 17, and 35), *repealed by Act To Provide for Consolidation of the Municipal Courts and for Other Purposes, No. 1291, § 13, Sess. L. 1965, p. 7, 11 (Feb. 8, 1965) (effective Mar. 1, 1965).*

### **Chapter 19. Miscellaneous Provisions Respecting Courts and Judicial Officers**

#### Section 324. Means to carry jurisdiction into effect

When jurisdiction is by law conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of the proceedings is not specially pointed out by law or by rules of

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procedure adopted pursuant to law, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the law.

4 V.I.C. § 324 (1957) (sources are 1921 Codes, Title III, ch. 67, § 9).

### Title Five

#### Chapter 201. Juvenile and Domestic Relations Division of Municipal Court/Chapter 201. Family Division of the Superior Court<sup>7</sup>

##### Section 2501. Definitions

When used in this chapter, unless the context otherwise requires—

- (1) “court” means the juvenile and domestic relations division of the municipal court;
- (2) “judge” means a judge of the municipal court sitting in the juvenile and domestic relations division of the court;
- (3) “child” means a person less than 18 years of age; and
- (4) “adult means a person 18 years of age or over

5 V.I.C. § 2501 (1957) (sources are Standard Juvenile Court Act (1949) prepared by a Committee of the National Probation and Parole Association) (purpose of this chapter 201 is to provide a “procedure for exercising the jurisdiction granted by section s171-176 of title 4”).

##### Section 2501. A children’s policy for the Territory

- (a) The purpose of this act is to establish a Children’s Policy for the Territory
- (b) This policy shall be interpreted in conjunction with all relevant laws, regulations, and the cultural heritage of the child and shall apply to all children who have need of services including, but not limited to, those mentally, socially, emotionally, physically, developmentally, educationally or economically disadvantaged or handicapped; those dependent, neglected, abused or exploited; and, those who by their circumstance or action commit delinquent acts within this territory and are found to be in need of treatment or sanctions.
- (c) The policy for children who commit delinquent acts is a balance between treatment and sanctions. Emphasis is placed upon public safety and deterrence. Children should become aware through the imposition of sanctions that delinquent behavior will not be excused. Sanctions will be dispensed in a manner that is ‘appropriate to the seriousness of the offense’.

<sup>7</sup> In 1983, Chapter 201 was repealed in its entirety and retitled “Family Division of the Territorial Court.” Act 4855, § 2, Sess. L. 1983, p. 138, 141 (Sept. 24, 1983).

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- (d) It shall be the policy of this territory to concentrate on the prevention of children's problems as the most important strategy which can be planned and implemented on behalf of children and their families. The territory shall encourage community involvement in the provisions of children's services including, as an integral part, public and private groups in order to encourage and provide innovative strategies for children's services. To maximize resources in providing services to children in need, all departments providing service to children shall develop methods to coordinate their services' resources. For children with multiple needs, the furtherance of this policy requires that all children's service agencies recognize that their jurisdiction in meeting these children's needs is not mutually exclusive.
- (e) When children or their families request help, Federal and Territorial government resources shall be utilized to complement community efforts to help meet the needs of children by aiding in the prevention and resolution of their problems. The territory shall direct its efforts first to strengthen and encourage family life as the most appropriate environment for the care and nurturing of children. To this end, the territory shall assist and encourage families to utilize all available resources. For children in need of services, care and guidance, the territory shall attempt to secure those services needed to serve the emotional, mental and physical welfare of children and the best interests of the community, preferably in their homes or in the least restrictive environment possible. When children must be placed in care away from their homes, the territory shall attempt to ensure that they are protected against harmful effects resulting from the temporary or permanent inability of parents to provide care and protection of their children. It is the policy of this territory to reunite children with their families in a timely manner, whether or not the child has been voluntarily placed in the care of a department. When children must be permanently removed from their homes, they shall if practicable be placed in adoptive homes so that they may become members of a family by legal adoption or, absent that possibility, they shall be placed in other permanent settings.
- (f) The Children's Policy shall be implemented through the cooperative efforts of legislative, judicial and executive branches, as well as other public and private resources. Where resources are limited, services shall be targeted to those children in greatest need.

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- (g) Further, it is the duty of every government officer and employee to render such assistance and cooperation as is within his jurisdictional power to further the objects of this chapter. All institutions or other agencies to which any child is committed shall give to the court or its representative such information concerning such child as the court may require. The court is authorized to seek the cooperation of and may use the available services of any societies or organizations, public or private, having for their objective the protection or aid of children or families, including family counseling services, to the end that the court may be assisted in every reasonable way to give the children and families within its jurisdiction such care, protection and assistance as will best enhance their welfare.
- (h) The laws relating to delinquency, persons in need of supervision, abuse and neglect shall be liberally construed to carry out the intent and purpose of the Children's Policy.

5 V.I.C. § 2501, *amended by Act to Amend Titles 3, 4, 5, and 19, Virgin Islands Code, to Establish a Coherent and Uniform Policy Throughout the Territory with Regard to Delinquent, Neglected, and Abused Children, and for Other Purposes, No. 4855, § 1, Sess. L. 1983, p. 138, 138-39 (Sept. 24, 1983) (effective Sept. 24, 1983).*

#### Section 2502. Information; investigation, complaint

Whenever any person informs the court that a child is within the purview of section 172 of Title 4, the court shall make a preliminary inquiry to determine whether the interest of the public or of the child require that further action be taken. Thereupon the court may make such informal adjustment as is practicable without a complaint, or may authorize a complaint to be filed by any person.

5 V.I.C. § 2502 (1957) (sources are Standard Juvenile Court Act (1949) prepared by a Committee of the National Probation and Parole Association) (purpose of this chapter 201 is to provide a "procedure for exercising the jurisdiction granted by section s171-176 of title 4").

#### Section 2502. Definitions

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

- (1) 'Abandoned child' means a child whose parents, guardian, or custodian desert him for such a length of time and under such circumstances as to show an intent to evade the duty of rearing him or a reckless disregard for his needs. It shall be a rebuttable presumption that the parent intends to abandon the child who has been left by his parent without any provision for his support, or without communication from such parent for a period of six months. If, in the opinion of the court, the evidence indicates that such parent has made

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only minimal efforts to support or communicate with the child, the court may declare the child to be abandoned. Abandonment is a form of neglect.

- (2) 'Abuse' means any physical or mental injury inflicted on a child, other than by accidental means, by those responsible for the care and maintenance of the child, which injury causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health or loss or protracted impairment of the function of any bodily organ. 'Abuse' includes the sexual abuse of a child, as defined by law, or the sexual exploitation, including the prostituting of a child and the photographing or other depiction of a child for pornographic purposes, or a persistent course of sexual conduct that causes a child's health or welfare to be harmed or threatened.
- (3) 'Adjudicatory hearing' means a hearing conducted in accordance with sections 2517 and 2548 of this chapter in which the court makes its findings of fact and enters an appropriate order dismissing the case, withholding adjudication, or adjudicating the child to be a delinquent child, person in need of supervision, an abused or neglected child.
- (4) 'Adult' means an individual 18 years of age or older.
- (5) 'Attorney General' means the Attorney General of the Virgin Islands, or his designee.
- (6) 'Case involving abuse' means any proceeding under this chapter in which there are allegations that one or more of the children of, or the legal responsibility of, the respondent are abused children.
- (7) 'Child' means an individual under the age of 18 years.
- (8) 'Commit' means to transfer legal and physical custody.
- (9) 'Consent decree' means a decree, entered after the filing of a petition and before the entry of an adjudication order, suspending the proceedings and continuing the care of the child under supervision in the child's own home, under specific terms and conditions.
- (10) 'Custodian' means a person or agency other than a parent, or guardian to whom legal custody has been given by the court order or who is acting in loco parentis.
- (11) 'Delinquent act' means an act which, if committed by an adult, would constitute a crime under the laws of the Virgin Islands.
- (12) 'Delinquent child' means a child who has been adjudicated to have committed a delinquent act.
- (13) 'Detention care' means the temporary care of children

- alleged to be delinquent and held in custody pending disposition.
- (14) 'Detention hearing' means a hearing at which the court determines whether it is necessary that the child be held in detention care, shelter care, some other placement outside his home, or in his own home under court imposed restrictions, pending a hearing to adjudicate delinquency, abuse or neglect or determine whether the child is a person in need of supervision.
- (15) 'Detention home' means a facility to be used for the care of children alleged to be or adjudicated delinquent. A detention home may provide secure or nonsecure custody.
- (16) 'Father' means, for purpose of this chapter only, a male parent of a child when:
- (a) he is married to a mother of the child when the child was conceived or when the child was born, unless a court of competent jurisdiction has, through court order, ruled to the contrary; or
  - (b) it has been so determined by a court of competent jurisdiction; or
  - (c) he has been given an order of adoption of the child by a court of competent jurisdiction; or
  - (d) Title 16, Chapter 15, Virgin Islands Code is applicable; or
  - (e) he otherwise makes a formal or unequivocal acknowledgment;
  - (f) but does not mean a man whose parental rights have been terminated by a court of competent jurisdiction.
- (17) 'Imminent danger to that child's life or health' means danger which involves:
- (a) substantial impairment of the intellectual, psychological or emotional capacity of a child caused by inhumane acts or conduct;
  - (b) substantial impairment of physical well-being as evidenced by lack of adequate nutrition and medical care;
  - (c) actual or attempted sexual abuse;
  - (d) substantial physical pain;
  - (e) serious bodily injury resulting in physical disfigurement;
  - (f) substantial impairment of the function of a bodily member or organ;
  - (g) injury which may result in death.
- (18) 'Intake' means the acceptance of complaints and the screening of them to eliminate those which do not require

action by the court, the disposition of the complaint without court action when appropriate, the referral of the child to another public or private agency when appropriate, and the instigation of court action when necessary.

- (19) 'Legal custody' means in delinquency, person in need of supervision, abuse and neglect matters, a legal status created by court order which vests in a custodian the right to have physical custody of the child and to determine where and with whom he shall live within the territory, and the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities given to a guardian by the court and subject to any residual parental rights and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court.
- (20) 'Neglect' means the failure by those responsible for the care and maintenance of the child to provide the necessary support, maintenance, education as required by law; and medical or mental health care, to the extent that the child's health or welfare is harmed or threatened thereby. It shall also mean an abandoned child as defined in this chapter.
- (21) 'Parent' means the father or mother of a child and includes any adoptive parent. It does not include a person whose parental rights in respect to the child have been terminated in any manner provided by law.
- (22) 'Person responsible for a child's care' includes the child's parent, guardian, custodian or other person or agency responsible for the child's welfare or care, whether the child is in his own home, shelter care, detention home, a relative's home, a foster home or a residential institution.
- (23) 'Person in need of supervision' means a child who:
- (a) being subject to compulsory school attendance is habitually truant from school; or
  - (b) habitually disobeys the reasonable demands of the person responsible for the child's care and is beyond their control; or
  - (c) has run away from the person responsible for the child's care; or
  - (d) habitually or unlawfully uses or consumes alcoholic beverages or controlled substances or habitually misuses other substances to his serious detriment.
- (24) 'Probation' means the legal status created by court order following an adjudication of delinquency, or a person in need of supervision, whereby a minor is permitted to remain

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- in a community environment, subject to supervision and to being returned to the court for violation of probation at any time during the period of probation.
- (25) 'Protective supervision' means a legal status created by court order in neglect or abuse cases whereby the child is permitted to remain in his home.
  - (26) 'Residential institution' means a secure facility administered by the Youth Services Administration for the care of children adjudicated delinquent.
  - (27) 'Residual parental rights and responsibilities' means the rights and responsibilities remaining with the parent after transfer of legal custody or appointment of a guardian, including, but not necessarily limited to, the right of visitation, consent to adoption, the right to determine religious affiliation, and the responsibility for support.
  - (28) 'Respondent' means a party to an action, and is any parent, guardian or other person alleged to have abused or neglected such child in their care.
  - (29) 'Shelter care' means the temporary care of children in physically unrestricting facilities, including group homes.
  - (30) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter. The terms 'child', 'juvenile' and 'minor' are used interchangeably throughout this chapter and carry the same definition as 'child', indicated above.

5 V.I.C. § 2502, *amended by* Act to Amend Titles 3, 4, 5, and 19, Virgin Islands Code, to Establish a Coherent and Uniform Policy Throughout the Territory with Regard to Delinquent, Neglected, and Abused Children, and for Other Purposes, No. 4855, § 2, Sess. L. 1983, p. 138, 145-49 (Sept. 24, 1983) (effective Sept. 24, 1983).

#### Section 2502. Definitions

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

- (1) 'Abandoned child' means a child whose parents, guardian, or custodian desert him for such a length of time and under such circumstances as to show an intent to evade the duty of rearing him or a reckless disregard for his needs. It shall be a rebuttable presumption that the parent intends to abandon the child who has been left by his parent without any provision for his support, or without communication from such parent for a period of six months. If, in the opinion of the court, the evidence indicates that such parent has made only minimal efforts to support or communicate with the child, the court may declare the child to be abandoned. Abandonment is a form of neglect.

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- (2) 'Abuse' means any physical or mental injury inflicted on a child, other than by accidental means, by those responsible for the care and maintenance of the child, which injury causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health or loss or protracted impairment of the function of any bodily organ. 'Abuse' includes the sexual abuse of a child, as defined by law, or the sexual exploitation, including the prostituting of a child and the photographing or other depiction of a child for pornographic purposes, or a persistent course of sexual conduct that causes a child's health or welfare to be harmed or threatened.
- (3) 'Adjudicatory hearing' means a hearing conducted in accordance with sections 2517 and 2548 of this chapter in which the court makes its findings of fact and enters an appropriate order dismissing the case, withholding adjudication, or adjudicating the child to be a delinquent child, person in need of supervision, an abused or neglected child.
- (4) 'Adult' means an individual 18 years of age or older.
- (5) 'Attorney General' means the Attorney General of the Virgin Islands, or his designee.
- (6) 'Case involving abuse' means any proceeding under this chapter in which there are allegations that one or more of the children of, or the legal responsibility of, the respondent are abused children.
- (7) 'Child' means an individual under the age of 18 years.
- (8) 'Commit' means to transfer legal and physical custody.
- (9) 'Consent decree' means a decree, entered after the filing of a petition and before the entry of an adjudication order, suspending the proceedings and continuing the care of the child under supervision in the child's own home, under specific terms and conditions.
- (10) 'Custodian' means a person or agency other than a parent, or guardian to whom legal custody has been given by the court order or who is acting in loco parentis.
- (11) 'Delinquent act' means an act which, if committed by an adult, would constitute a crime under the laws of the Virgin Islands.
- (12) 'Delinquent child' means a child who has been adjudicated to have committed a delinquent act.
- (13) 'Detention care' means the temporary care of children alleged to be delinquent and held in custody pending disposition.
- (14) 'Detention hearing' means a hearing at which the court

determines whether it is necessary that the child be held in detention care, shelter care, some other placement outside his home, or in his own home under court imposed restrictions, pending a hearing to adjudicate delinquency, abuse or neglect or determine whether the child is a person in need of supervision.

- (15) 'Detention home' means a facility to be used for the care of children alleged to be or adjudicated delinquent. A detention home may provide secure or nonsecure custody.
- (16) 'Father' means, for purpose of this chapter only, a male parent of a child when:
- (a) he is married to a mother of the child when the child was conceived or when the child was born, unless a court of competent jurisdiction has, through court order, ruled to the contrary; or
  - (b) it has been so determined by a court of competent jurisdiction; or
  - (c) he has been given an order of adoption of the child by a court of competent jurisdiction; or
  - (d) **Title 16, Chapter 15, Virgin Islands Code is applicable Paternity has otherwise been established pursuant to Title 16, chapter 11 of this Code;** or
  - (e) he otherwise makes a formal or unequivocal acknowledgment;
  - (f) but does not mean a man whose parental rights have been terminated by a court of competent jurisdiction.
- (17) 'Imminent danger to that child's life or health' means danger which involves:
- (a) substantial impairment of the intellectual, psychological or emotional capacity of a child caused by inhumane acts or conduct;
  - (b) substantial impairment of physical well-being as evidenced by lack of adequate nutrition and medical care;
  - (c) actual or attempted sexual abuse;
  - (d) substantial physical pain;
  - (e) serious bodily injury resulting in physical disfigurement;
  - (f) substantial impairment of the function of a bodily member or organ;
  - (g) injury which may result in death.
- (18) 'Intake' means the acceptance of complaints and the screening of them to eliminate those which do not require action by the court, the disposition of the complaint without court action when appropriate, the referral of the child to

another public or private agency when appropriate, and the instigation of court action when necessary.

- (19) 'Legal custody' means in delinquency, person in need of supervision, abuse and neglect matters, a legal status created by court order which vests in a custodian the right to have physical custody of the child and to determine where and with whom he shall live within the territory, and the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities given to a guardian by the court and subject to any residual parental rights and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court.
- (20) 'Neglect' means the failure by those responsible for the care and maintenance of the child to provide the necessary support, maintenance, education as required by law; and medical or mental health care, to the extent that the child's health or welfare is harmed or threatened thereby. It shall also mean an abandoned child as defined in this chapter.
- (21) 'Parent' means the father or mother of a child and includes any adoptive parent. It does not include a person whose parental rights in respect to the child have been terminated in any manner provided by law.
- (22) 'Person responsible for a child's care' includes the child's parent, guardian, custodian or other person or agency responsible for the child's welfare or care, whether the child is in his own home, shelter care, detention home, a relative's home, a foster home or a residential institution.
- (23) 'Person in need of supervision' means a child who:
- (a) being subject to compulsory school attendance is habitually truant from school; or
  - (b) habitually disobeys the reasonable demands of the person responsible for the child's care and is beyond their control; or
  - (c) has run away from the person responsible for the child's care; or
  - (d) habitually or unlawfully uses or consumes alcoholic beverages or controlled substances or habitually misuses other substances to his serious detriment.
- (24) 'Probation' means the legal status created by court order following an adjudication of delinquency, or a person in need of supervision, whereby a minor is permitted to remain in a community environment, subject to supervision and to being returned to the court for violation of probation at any

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time during the period of probation.

- (25) 'Protective supervision' means a legal status created by court order in neglect or abuse cases whereby the child is permitted to remain in his home.
- (26) 'Residential institution' means a secure facility administered by the Youth Services Administration for the care of children adjudicated delinquent.
- (27) 'Residual parental rights and responsibilities' means the rights and responsibilities remaining with the parent after transfer of legal custody or appointment of a guardian, including, but not necessarily limited to, the right of visitation, consent to adoption, the right to determine religious affiliation, and the responsibility for support.
- (28) 'Respondent' means a party to an action, and is any parent, guardian or other person alleged to have abused or neglected such child in their care.
- (29) 'Shelter care' means the temporary care of children in physically unrestricting facilities, including group homes.
- (30) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter. The terms 'child', 'juvenile' and 'minor' are used interchangeably throughout this chapter and carry the same definition as 'child', indicated above.

5 V.I.C. § 2502, *amended by Act to Amend the Virgin Islands Code to Enact Federal Requirements Applicable to Title IV-D of the Social Security Act (Child Support Enforcement Programs), as mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and Section 13721 of the Omnibus Budget Reconciliation Act of 1993, No. 6228, § 3, Sess. L. 1998, p. 248, 252 (Apr. 15, 1998) (deletions indicated by stricken text; additions indicated in bold).*

#### Section 2507. Protection of religious affiliations

In placing a child under the guardianship or custody of an individual or of a private agency or institution, and in granting adoption, the court shall whenever practicable select a person or an agency or institution governed by persons of the same religious faith as that of the parents of such child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or if the religious faith of the child is not ascertainable, then of the faith of either of the parents.

5 V.I.C. § 2507 (1957) (sources are Standard Juvenile Court Act (1949) prepared by a Committee of the National Probation and Parole Association) (purpose of this chapter 201 is to provide a "procedure for exercising the jurisdiction granted by sections 171-176 of title 4").

#### Section 2507. Transfer from other courts

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- (a) If, during the pendency of a criminal charge and prior to the time when jeopardy would attach in the case of an adult, the court with criminal jurisdiction determines that:
- (1) The case was initially brought before the court with criminal jurisdiction and the defendant was under 18 years of age at the time of the alleged offense; or
  - (2) The case was improperly transferred to the court with criminal jurisdiction by the Family Division of the court due to a mistake as to the age of the child,
  - (3) The court with criminal jurisdiction shall forthwith transfer the case, together with all the papers, documents, and testimony connected therewith, to the Family Division of the court. When making such transfer, the court shall order said child to be taken forthwith to the place of detention designated by the Family Division of the court or to the court itself, or shall release such child to the custody of some suitable person, or a public or private agency to be brought before the Family Division of the court at a time designated.
- (b) If, during the pendency of a criminal charge and after the time when jeopardy would attach in the case of an adult, the court determines that:
- (1) The case was initially brought before the court with criminal jurisdiction and the defendant was under 18 years of age at the time of the alleged offense; or
  - (2) The case was improperly transferred to the court with criminal jurisdiction by the Family Division of the court due to a mistake as to the age of the child,
- the court with criminal jurisdiction, with good cause shown, may elect to:
- (1) Retain jurisdiction and
    - (i) dismiss the action; or
    - (ii) proceed with the trial; or
  - (2) Upon consent of the child, transfer the matter to the Family Division of the court as described in subsection (a).

5 V.I.C. § 2507, *amended* by Act to Amend Titles 3, 4, 5, and 19, Virgin Islands Code, to Establish a Coherent and Uniform Policy Throughout the Territory with Regard to Delinquent, Neglected, and Abused Children, and for Other Purposes, No. 4855, § 2, Sess. L. 1983, p. 138, 151-52 (Sept. 24, 1983) (effective Sept. 24, 1983).

Section 2508. Support of child committed to custodial agency  
Whenever a child is committed by the court to custody other than that of his parents, or is given medical, psychological or psychiatric treatment under order of the court, and no provision is otherwise

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made by law for the support of such child or payment for such treatment, compensation for the care and treatment of such child, when approved by order of the court, shall be a charge upon the Territory. The court may, after giving the parent a reasonable opportunity to be heard, order and decree that such parent shall pay in such manner as the court may direct, such sum, within his ability to pay, as will cover in whole or in part the support and treatment of such child. If such parent shall willfully fail or refuse to pay such sum, the court may proceed against him as for contempt.

5 V.I.C. § 2508 (1957) (sources are Standard Juvenile Court Act (1949) prepared by a Committee of the National Probation and Parole Association) (purpose of this chapter 201 is to provide a “procedure for exercising the jurisdiction granted by section s171-176 of title 4”).

**Section 2508. Transfer from the Family Division**

- (a) If a child or adult is charged with an offense which would be a felony if committed by an adult, and the child or adult was sixteen or seventeen years of age at the time of the alleged offense, the Family Division of the Territorial Court may transfer the person for proper criminal proceedings to a court of competent jurisdiction.
- (b) If a child or adult is charged with an offense which would be a felony if committed by an adult, and the child or adult was sixteen or seventeen years of age at the time of the alleged offense, the Family Division of the Territorial Court, after a determination of probable cause, shall transfer the person for proper criminal proceedings to a court of competent criminal jurisdiction when:
- (1) The person has been twice adjudicated to be delinquent for offenses which could constitute a felony if committed by an adult; or
  - (2) The offense now charged is an offense which would be a violent crime, as defined herein, if committed by an adult and the person has at least once been adjudicated to be a delinquent child for an offense which would be constitute a felony if committed by an adult; or
  - (3) The offense now charged is an offense which would be a felony if committed by an adult and the person has at least once been adjudicated to be a delinquent child for an offense which would be a violent crime, as defined herein, if committed by an adult.
- (c) For purposes of this chapter only, a violent crime is defined as one of the following offenses:
- (A) Murder in the first or second degree or an attempt to do so;
  - (B) Voluntary manslaughter;

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- (C) Rape in the first degree or an attempt to do so;
  - (D) Arson in the first or second degree or an attempt to do so;
  - (E) Assault in the first, second or third degree or where appropriate, an attempt to do so;
  - (F) Burglary in the first or second degree or an attempt to do so;
  - (G) Robbery in the first, second, or third degree or an attempt to do so;
  - (H) Carnal abuse of a child under 16 years of age or an attempt to do so;
  - (I) Incendiarism or an attempt to do so;
  - (J) Extortion;
  - (K) Kidnapping or an attempt to do so;
  - (L) Mayhem;
  - (M) Carrying or using a dangerous weapon;
  - (N) Carrying firearms.
- (d) Within five days after the filing of a complaint in the Family Division of the Territorial Court that alleges a child was 16 years of age or older at the time of commission of one of the following offenses:
- (1) Murder in the first degree;
  - (2) Rape in the first degree;
  - (3) Robbery in the first degree;
  - (4) Burglary in the first degree;
  - (5) Arson in the first degree;
- The attorney General may request by motion in writing that the case be transferred for proper criminal proceedings against such person in a court of competent jurisdiction. The judge of the Family Division of the Territorial Court is authorized to determine this request unless the child is provided for in subsection (b). This decision is a final appealable order.
- (e) Provided, further, that once such a child has been transferred from the Family Division to a court of competent jurisdiction, that court shall retain jurisdiction over the case, even though the child pleads guilty to, or is convicted of a lesser included offense; and a plea to or conviction of a lesser included offense shall not revert the Family Division with jurisdiction over such a child.
- (f) If a child is transferred from the Family Division to a court of competent jurisdiction, that court may also have jurisdiction over other alleged delinquent acts not designated as transferable which occurred during or arose out of the factual circumstances surround the offense for which the

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child was transferred. The transfer of the alleged delinquent acts not designated as transferable must occur at the hearing for transfer of the delinquent act designated for transfer and under the procedures established in section 2509.

5 V.I.C. § 2508, *amended by* Act to Amend Titles 3, 4, 5, and 19, Virgin Islands Code, to Establish a Coherent and Uniform Policy Throughout the Territory with Regard to Delinquent, Neglected, and Abused Children, and for Other Purposes, No. 4855, § 2, Sess. L. 1983, p. 138, 152-54 (Sept. 24, 1983) (effective 120 days after approval).

**Section 2508. Transfer from the Family Division**

- (a) If a child or adult is charged with an offense which would be a felony if committed by an adult, and the child or adult was sixteen or seventeen years of age at the time of the alleged offense, the Family Division of the Territorial Court may transfer the person for proper criminal proceedings to a court of competent jurisdiction.
- (b) If a child or adult is charged with an offense which would be a felony if committed by an adult, and the child or adult was sixteen or seventeen years of age at the time of the alleged offense, the Family Division of the Territorial Court, after a determination of probable cause, shall transfer the person for proper criminal proceedings to a court of competent criminal jurisdiction when:
  - (1) The person has been twice adjudicated to be delinquent for offenses which could constitute a felony if committed by an adult; or
  - (2) The offense now charged is an offense which would be a violent crime, as defined herein, if committed by an adult and the person has at least once been adjudicated to be a delinquent child for an offense which would be constitute a felony if committed by an adult; or
  - (3) The offense now charged is an offense which would be a felony if committed by an adult and the person has at least once been adjudicated to be a delinquent child for an offense which would be a violent crime, as defined herein, if committed by an adult.
- (c) For purposes of this chapter only, a violent crime is defined as one of the following offenses:
  - (A) Murder in the first or second degree or an attempt to do so;
  - (B) Voluntary manslaughter;
  - (C) Rape in the first degree or an attempt to do so;
  - (D) Arson in the first or second degree or an attempt to do so;

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- (E) Assault in the first, second or third degree or where appropriate, an attempt to do so;
  - (F) Burglary in the first or second degree or an attempt to do so;
  - (G) Robbery in the first, second, or third degree or an attempt to do so;
  - (H) Carnal abuse of a child under 16 years of age or an attempt to do so;
  - (I) Incendiarism or an attempt to do so;
  - (J) Extortion;
  - (K) Kidnapping or an attempt to do so;
  - (L) Mayhem;
  - (M) Carrying or using a dangerous weapon;
  - (N) Carrying firearms.
  - (O) **Distributing a controlled substance to a person under eighteen years of age.**
- (d) Within five days after the filing of a complaint in the Family Division of the Territorial Court that alleges a child was 16 years of age or older at the time of commission of one of the following offenses:
- (1) Murder in the first degree;
  - (2) Rape in the first degree;
  - (3) Robbery in the first degree;
  - (4) Burglary in the first degree;
  - (5) Arson in the first degree;
- The attorney General may request by motion in writing that the case be transferred for proper criminal proceedings against such person in a court of competent jurisdiction. The judge of the Family Division of the Territorial Court is authorized to determine this request unless the child is provided for in subsection (b). This decision is a final appealable order.
- (e) Provided, further, that once such a child has been transferred from the Family Division to a court of competent jurisdiction, that court shall retain jurisdiction over the case, even though the child pleads guilty to, or is convicted of a lesser included offense; and a plea to or conviction of a lesser included offense shall not revert the Family Division with jurisdiction over such a child.
- (f) If a child is transferred from the Family Division to a court of competent jurisdiction, that court may also have jurisdiction over other alleged delinquent acts not designated as transferable which occurred during or arose out of the factual circumstances surround the offense for which the child was transferred. The transfer of the alleged delinquent

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acts not designated as transferable must occur at the hearing for transfer of the delinquent act designated for transfer and under the procedures established in section 2509.

5 V.I.C. § 2508, *amended by Act to Increase the Penalties for Adults Distributing Controlled Substances to Minors*, No. 4906, § 2, Sess. L. 1984, p. 72, 72 (Mar. 15, 1984) (deletions indicated by stricken text; additions indicated in bold).

Section 2508. Transfer from the Family Division

- (a) If a child or adult is charged with an offense which would be a felony if committed by an adult, and the child or adult was ~~sixteen or seventeen years of age~~ **fourteen years of age or older** at the time of the alleged offense, the Family Division of the Territorial Court may transfer the person for proper criminal proceedings to a court of competent jurisdiction.
- (b) If a child or adult is charged with an offense which would be a felony if committed by an adult, and the child or adult was ~~sixteen or seventeen years of age~~ **fourteen years of age or older** at the time of the alleged offense, the Family Division of the Territorial Court, after a determination of probable cause, shall transfer the person for proper criminal proceedings to a court of competent criminal jurisdiction when:
- (1) The person has been twice adjudicated to be delinquent for offenses which could constitute a felony if committed by an adult; or
  - (2) The offense now charged is an offense which would be a violent crime, as defined herein, if committed by an adult and the person has at least once been adjudicated to be a delinquent child for an offense which would be constitute a felony if committed by an adult; or
  - (3) The offense now charged is an offense which would be a felony if committed by an adult and the person has at least once been adjudicated to be a delinquent child for an offense which would be a violent crime, as defined herein, if committed by an adult.
  - (4) **The offense now charged is one of the following offenses, which would be a felony if committed by an adult: murder in the first degree or an attempt to do so; rape in the first degree or an attempt to do so; aggravated rape or an attempt to do so; possession or use of a firearm in the commission of a crime of violence irrespective of whether the minor has been previously adjudicated to be a delinquent.**
- (c) For purposes of this chapter only, a violent crime is defined as one of the following offenses:

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- (A) Murder in the first or second degree or an attempt to do so;
  - (B) Voluntary manslaughter;
  - (C) Rape in the first degree or an attempt to do so;
  - (D) Arson in the first or second degree or an attempt to do so;
  - (E) Assault in the first, second or third degree or where appropriate, an attempt to do so;
  - (F) Burglary in the first or second degree or an attempt to do so;
  - (G) Robbery in the first, second, or third degree or an attempt to do so;
  - (H) Carnal abuse of a child under 16 years of age or an attempt to do so;
  - (I) Incendiarism or an attempt to do so;
  - (J) Extortion;
  - (K) Kidnapping or an attempt to do so;
  - (L) Mayhem;
  - (M) Carrying or using a dangerous weapon;
  - (N) Carrying firearms;
  - (O) Distributing a controlled substance to a person under eighteen years of age;
  - (P) Aggravated rape or the attempt to do so;**
  - (Q) Unlawful sexual contract in the first degree or attempt to do so.**
- (d) Within five days after the filing of a complaint in the Family Division of the Territorial Court that alleges a child was ~~16~~ **14** years of age or older at the time of commission of one of the following offenses:
- (1) Murder in the first degree;
  - (2) Rape in the first degree;
  - (3) Robbery in the first degree;
  - (4) Burglary in the first degree;
  - (5) Arson in the first degree;
  - (6) Aggravated rape or the attempt to do so;**
  - (7) Possession or use of a firearm in the commission of a crime of violence;**

The attorney General may request by motion in writing that the case be transferred for proper criminal proceedings against such person in a court of competent jurisdiction. The judge of the Family Division of the Territorial Court is authorized to determine this request unless the child is provided for in subsection (b). This decision is a final appealable order.

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- (e) Provided, further, that once such a child has been transferred from the Family Division to a court of competent jurisdiction, that court shall retain jurisdiction over the case, even though the child pleads guilty to, or is convicted of a lesser included offense; and a plea to or conviction of a lesser included offense shall not revert the Family Division with jurisdiction over such a child.
- (f) If a child is transferred from the Family Division to a court of competent jurisdiction, that court may also have jurisdiction over other alleged delinquent acts not designated as transferable which occurred during or arose out of the factual circumstances surround the offense for which the child was transferred. The transfer of the alleged delinquent acts not designated as transferable must occur at the hearing for transfer of the delinquent act designated for transfer and under the procedures established in section 2509.

5 V.I.C. § 2508, *amended by* Act to Authorize the Family Division of the Territorial Court of the Virgin Islands to release as part of the public record, the names of minors fourteen years and older, and their parents, whenever the minor has been adjudicated delinquent for a second time of committing an act which would be a felony if committed by an adult and for other related purposes, No. 5973, § 3, Sess. L. 1994, p. 55, 55-56 (May 2, 1994) (deletions indicated by stricken text; additions indicated in bold).

Section 2508. Transfer from the Family Division

- (a) If a child or adult is charged with an offense which would be a felony if committed by an adult, and the child or adult was fourteen years of age or older at the time of the alleged offense, the Family Division of the Territorial Court may transfer the person for proper criminal proceedings to a court of competent jurisdiction.
- (b) If a child or adult is charged with an offense which would be a felony if committed by an adult, and the child or adult was fourteen years of age or older at the time of the alleged offense, the Family Division of the Territorial Court, after a determination of probable cause, shall transfer the person for proper criminal proceedings to a court of competent criminal jurisdiction when:
  - (1) The person has been twice adjudicated to be delinquent for offenses which could constitute a felony if committed by an adult; or
  - (2) The offense now charged is an offense which would be a violent crime, as defined herein, if committed by an adult and the person has at least once been adjudicated to be a delinquent child for an offense which would be constitute a felony if committed by an adult; or

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- (3) The offense now charged is an offense which would be a felony if committed by an adult and the person has at least once been adjudicated to be a delinquent child for an offense which would be a violent crime, as defined herein, if committed by an adult.
- (4) The offense now charged is one of the following offenses, which would be a felony if committed by an adult: murder in the first degree or an attempt to do so; rape in the first degree or an attempt to do so; aggravated rape or an attempt to do so; possession or use of a firearm in the commission of a crime of violence irrespective of whether the minor has been previously adjudicated to be a delinquent.
- (5) The offense now charged is possession of a loaded firearm, if such possession occurred on school property.**
- (c) For purposes of this chapter only, a violent crime is defined as one of the following offenses:
  - (A) Murder in the first or second degree or an attempt to do so;
  - (B) Voluntary manslaughter;
  - (C) Rape in the first degree or an attempt to do so;
  - (D) Arson in the first or second degree or an attempt to do so;
  - (E) Assault in the first, second or third degree or where appropriate, an attempt to do so;
  - (F) Burglary in the first or second degree or an attempt to do so;
  - (G) Robbery in the first, second, or third degree or an attempt to do so;
  - (H) Carnal abuse of a child under 16 years of age or an attempt to do so;
  - (I) Incendiarism or an attempt to do so;
  - (J) Extortion;
  - (K) Kidnapping or an attempt to do so;
  - (L) Mayhem;
  - (M) Carrying or using a dangerous weapon;
  - (N) Carrying firearms;
  - (O) Distributing a controlled substance to a person under eighteen years of age;
  - (P) Aggravated rape or the attempt to do so;
  - (Q) Unlawful sexual contract in the first degree or attempt to do so.
- (d) Within five days after the filing of a complaint in the Family Division of the Territorial Court that alleges a child was ~~16~~

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14 years of age or older at the time of commission of one of the following offenses:

- (1) Murder in the first degree;
- (2) Rape in the first degree;
- (3) Robbery in the first degree;
- (4) Burglary in the first degree;
- (5) Arson in the first degree;
- (6) Aggravated rape or the attempt to do so;
- (7) Possession or use of a firearm in the commission of a crime of violence;

The attorney General may request by motion in writing that the case be transferred for proper criminal proceedings against such person in a court of competent jurisdiction. The judge of the Family Division of the Territorial Court is authorized to determine this request unless the child is provided for in subsection (b). This decision is a final appealable order.

- (e) Provided, further, that once such a child has been transferred from the Family Division to a court of competent jurisdiction, that court shall retain jurisdiction over the case, even though the child pleads guilty to, or is convicted of a lesser included offense; and a plea to or conviction of a lesser included offense shall not revert the Family Division with jurisdiction over such a child.
- (f) If a child is transferred from the Family Division to a court of competent jurisdiction, that court may also have jurisdiction over other alleged delinquent acts not designated as transferable which occurred during or arose out of the factual circumstances surround the offense for which the child was transferred. The transfer of the alleged delinquent acts not designated as transferable must occur at the hearing for transfer of the delinquent act designated for transfer and under the procedures established in section 2509.

5 V.I.C. § 2508, *amended by* Act to Enact the Omnibus Justice Act of 2005, No. 6730, § 12, Sess. L. 2005, p. 68, 73 (May 5, 2005) (deletions indicated by stricken text; additions indicated in bold).

#### Section 2509. Termination of parental rights

- (a) Whenever in the course of a proceeding instituted under section 2502 of this title it shall appear to the court that the parents of the surviving parent of a child, or the mother of a child born out of wedlock, have abandoned such child for one year or more or have substantially and continuously or repeatedly refused, or being financially able have neglected, to give such child parental care and protection; or that such parent or parents are unfit by reason of their conduct or

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condition which is seriously detrimental to the said child, the court shall have jurisdiction to transfer the permanent care, control and custody of such child to some other person, agency, or institution, and may terminate all rights of such parent or parents with reference to such child, and also may appoint a guardian for the person of such child.

- (b) Such transfer or termination shall be made only after a hearing before the court, and the court shall cause notice of the time, place and purpose of such hearing to be served on such parent or parents personally at least 10 days prior to the date of hearing; or in the court is satisfied that personal service cannot be effected, then such notice may be given by publication thereof in a newspaper in the judicial division once a week for three weeks prior to the date of hearing.
- (c) Upon the application of the parents or surviving parent, or the mother of a child born out of wedlock, the court may order the transfer of the permanent care, control and custody of such child, and if it appears wise, the termination of all the rights of a parent or the parents with reference to such child, provided the court after a hearing finds such transfer or termination to be in the best interests of the child.
- (d) Every order of the court transferring the permanent care, control and custody of a child, or terminating the rights of the parents or of a parent with reference to a child, shall be in writing and shall recite the jurisdictional facts. Every such order shall be conclusive and binding on all persons and in all proceedings after one year from the date of entry thereof.

5 V.I.C. § 2509 (1957) (sources are Standard Juvenile Court Act (1949) prepared by a Committee of the National Probation and Parole Association; purpose of this chapter 201 is to provide a “procedure for exercising the jurisdiction granted by section s171-176 of title 4”).

**Section 2509. Procedure for transfer**

- (a) Following the filing of the motion by the Attorney General, summonses shall be issued and served as provided by law. A copy of the motion and a copy of the delinquency complaint, if not already served, shall be attached to each summons.
- (b) When there are grounds to believe the child is substantially retarded or mentally ill, the court shall stay the proceedings for the purpose of obtaining an examination. After examination, the court shall proceed to determination under subsection (c) unless it determines that the child is incompetent to participate in the proceedings, in which even it shall order the child committed to a mental hospital.

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- (c) Unless a commitment under subsection (b) of this section has intervened or the transfer is mandatory, the court shall conduct a hearing on each of the factors relevant to transfer. Accompanying an order to transfer shall be a statement of the reasons of the court for ordering the transfer of the child. Included in the statement shall be the court's findings with respect to each of the factors set forth in subsection (d). This statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.
- (d) Evidence of the following factors shall be considered in determining transfer:
  - (1) The seriousness of the alleged offense to the community and whether the protection of the community requires waiver;
  - (2) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
  - (3) Whether the alleged offense was against property, greater weight being given to offenses against persons, especially if person injury resulted;
  - (4) Whether there is probable cause to believe that the offense charged has been committed and that the child has committed it;
  - (5) The sophistication and maturity of the child as determined by consideration of his home, emotional attitude and patter of living;
  - (6) The record and previous history of the juvenile, including previous contacts with the Youth Services Administration, law enforcement agencies and courts, and prior periods of probation or prior commitments to residential institutions.;
  - (7) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if found to have committed the alleged offenses.
- (e) Prior to a hearing on the motion by the Attorney General, a study and a report to the court, in writing, relevant to the factors in subsection (d)(1) through (d)(4) shall be made by the ~~Department of Public Safety~~ **U.S. Virgin Islands Police Department (V.I.P.D.)**, and subsection (d)(5) through (d)(7) shall be made by the Youth Services Administration. The child or his parents, or other person responsible for his care, or his counsel shall have the right to examine these reports prior to the hearing and to question the parties responsible for them at the hearing.

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- (f) If the Attorney General's motion for transfer is not granted, the Attorney General, before jeopardy attaches, may move that the court provide for a hearing on the grounds of newly discovered evidence which could not be discovered with reasonable diligence prior to the original transfer hearing. The court may grant the motion if it finds it is in the best interests of justice.

5 V.I.C. § 2509, *amended by* Act to Amend Titles 3, 4, 5, and 19, Virgin Islands Code, to Establish a Coherent and Uniform Policy Throughout the Territory with Regard to Delinquent, Neglected, and Abused Children, and for Other Purposes, No. 4855, § 2, Sess. L. 1983, p. 138, 154-55 (Sept. 24, 1983) (effective Jan. 22, 1984 (120 days after enactment)); Act to Change the Name of the Department of Public Safety to "U.S. Virgin Islands Police Department"; to Make Appropriations for Expenditures Connected with Such Change and for a Criminal Justice Conference; and for Related Purposes, No. 4964, § 1(b), Sess. L. 1984, p. 177, 177 (June 15, 1984) (effective Jan. 1, 1985 changing name of Department of Public Safety) (deletions indicated by stricken text; additions indicated in bold).

Section 2509. Procedure for transfer

- (a) Following the filing of the motion by the Attorney General, summonses shall be issued and served as provided by law. A copy of the motion and a copy of the delinquency complaint, if not already served, shall be attached to each summons.
- (b) When there are grounds to believe the child is substantially retarded or mentally ill, the court shall stay the proceedings for the purpose of obtaining an examination. After examination, the court shall proceed to determination under subsection (c) unless it determines that the child is incompetent to participate in the proceedings, in which even it shall order the child committed to a mental hospital.
- (c) Unless a commitment under subsection (b) of this section has intervened or the transfer is mandatory, the court shall conduct a hearing on each of the factors relevant to transfer. Accompanying an order to transfer shall be a statement of the reasons of the court for ordering the transfer of the child. Included in the statement shall be the court's findings with respect to each of the factors set forth in subsection (d). This statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.
- (d) Evidence of the following factors shall be considered in determining transfer:
- (1) The seriousness of the alleged offense to the community and whether the protection of the community requires waiver;

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- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
  - (3) Whether the alleged offense was against property, greater weight being given to offenses against persons, especially if person injury resulted;
  - (4) Whether there is probable cause to believe that the offense charged has been committed and that the child has committed it;
  - (5) The sophistication and maturity of the child as determined by consideration of his home, emotional attitude and patter of living;
  - (6) The record and previous history of the juvenile, including previous contacts with the Youth Services Administration, law enforcement agencies and courts, and prior periods of probation or prior commitments to residential institutions.;
  - (7) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if found to have committed the alleged offenses.
- (e) Prior to a hearing on the motion by the Attorney General, a study and a report to the court, in writing, relevant to the factors in subsection (d)(1) through (d)(4) shall be made by the U.S. Virgin Islands Police Department (V.I.P.D.), and subsection (d)(5) through (d)(7) shall be made by the Youth Services Administration. The child or his parents, or other person responsible for his care, or his counsel shall have the right to examine these reports prior to the hearing and to question the parties responsible for them at the hearing.
- (f) If the Attorney General's motion for transfer is not granted, the Attorney General, before jeopardy attaches, may move that the court provide for a hearing on the grounds of newly discovered evidence which could not be discovered with reasonable diligence prior to the original transfer hearing. The court may grant the motion if it finds it is in the best interests of justice.
- (g) If the Attorney General's motion for transfer pursuant to Section 2508(d) of this Chapter is granted, and the child offender has been detained or is subsequently detained, the child offender shall be placed in the custody of the Bureau of Corrections. Such pre-trial detention of the child offender shall be separate and apart from the adult inmate population.**

5 V.I.C. § 2509, *amended* by Act to Amend Title 5, Chapters 201 and 401, Virgin Islands Code, Pertaining to the Detention and Placement of Persons in Custody of the Bureau of Corrections and

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for Other Purposes, No. 6140, § 1, Sess. L. 1997, p. 36, 37 (July 7, 1997) (deletions indicated by stricken text; additions indicated in bold).

### Title Fourteen

#### Chapter 24. Child Protection

##### Section 502. Legislative Findings

The Legislature of the Virgin Islands Finds and declares that:

- (a) The children of the Virgin Islands are its most precious resource; and
- (b) Serious abuse and neglect of children are increasing in the Virgin Islands; and
- (c) It is the policy of the Government of the Virgin Islands to protect children from assault, abuse and neglect, and to encourage parents, teachers and others to use methods of correction, restraint and discipline that are not dangerous to children; and
- (d) Current Virgin Islands criminal laws are inadequate to protect children from abuse and neglect; and
- (e) A statute providing for sever penalties for persons who abuse or neglect children is necessary to safeguard the physical and emotional well-being of children in the Virgin Islands.

14 V.I.C. § 502 (1992); Act to Amend Title 14, Virgin Islands Code, to Make Child Abuse a Felony in the Virgin Islands, No. 5818, § 1, Sess. L. 1992, p. 155, 155 (Oct. 20, 1992) (the entirety of chapter 24 was added to title 14 with Act No. 5818 in 1992).

### Title Sixteen

#### Chapter 3. Divorce and Annulment

[Section 101. source law]

A husband or wife may maintain an action of equitable nature against the other for a legal separation or the dissolution of the marriage contract, or to have the same declared void, as provided in this chapter.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 1 (eff. Jan. 28, 1945).

##### Section 101. Action for separation or dissolution of marriage

A husband or wife may maintain an action against the other for a legal separation or the dissolution of the marriage contract, or to have the same declared void, as provided in this chapter.

16 V.I.C. § 101 (1957).

[Section 102. source law]

A marriage may be declared void from the beginning at the action of either party, for any of the causes specified in section two of this chapter, and whether so declared or not shall be deemed and

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held to be void in any action or proceeding whatever in which the same Amy come in question; but a marriage once declared to be valid by the judgment of a court having jurisdiction thereof, in an action for that purpose, can not afterwards be questioned for the same cause, direct or otherwise.

A marriage shall not be declared void for any of the causes specified in section three of this chapter, except at the action or claim of the party laboring under the disability, or upon whom the force or fraud was imposed or practiced; nor at the action or claim of such party if it appears that the parties freely cohabited together as husband and wife after the party had arrived at the legal age, acquired sufficient understanding, been restored to reason, freed from the force, or discovered the fraud, as the case may be.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), §§ 4-5 (eff. Jan. 28, 1945).

Section 102. Annulment of marriage

- (a) A marriage may be declared void from the beginning at the action of either party, for any of the causes specified in section 1 of this title and whether so declared or not shall be deemed and held to be void in any action or proceeding whatever in which the same may come in question. However, a marriage once declared to be valid by the judgment of a court having jurisdiction thereof, in an action for that purpose, cannot afterwards be questioned for the same cause, directly or otherwise.
- (b) A marriage shall not be declared void for any of the causes specified in section 2 of this title, except at the action or claim of the party laboring under the disability, or upon whom the force or fraud was imposed or practiced; nor at action or claim of such party if it appears that the parties freely cohabited together as husband and wife after the party had arrived at legal age, acquired sufficient understanding, been restored to reason, freed from the force, or discovered the fraud, as the case may be.

16 V.I.C. § 102 (1957).

[Section 103. [source law]

When either husband or wife shall claim or pretend that the marriage is void or voidable, as provided in sections two and three of this chapter, the same may be declared valid and lawful at the action of the other, and in such action the court shall have power, if the pleadings and proof authorize it, to declare such marriage void from the beginning or from the time of the judgment, or that it is valid and lawful, and binding on the parties thereto.

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Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 6 (eff. Jan. 28, 1945).

**Section 103. Proceeding to declare marriage valid**

When either husband or wife claims or pretends that the marriage is void or voidable, as provided in sections 1 and 2 of this title, the same may be declared valid and lawful at the action of the other, and in such action the court may, if the pleadings and proof authorize it, declare such marriage void from the beginning or from the time of the judgment, or that it is valid and lawful, and binding on the parties thereto.

16 V.I.C. § 103 (1957).

[Section 104. source law]

A legal separation or the dissolution of the marriage contract may be declared at the instance of the injured party for any of the following causes: (1) Impotency existing at the time of the marriage and continuing to the commencement of the action; (2) Adultery; (3) Conviction for felony; (4) Willful desertion for the period of one year; (5) Cruel and inhuman treatment calculated to impair health or endanger life; (6) Insanity of either spouse occurring after marriage; (7) Habitual gross drunkenness contract since marriage and continuing for one year prior to the commencement of the action; (8) Incompatibility of temperament.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 7 (eff. Jan. 28, 1945).

**Section 104. Divorce**

- (a) A legal separation or dissolution of the marriage contract may be declared at the instance of the injured party for any of the following causes—
- (1) Impotency existing at the time of the marriage and continuing to the commencement of the action;
  - (2) Adultery;
  - (3) Conviction for felony;
  - (4) Willful desertion for the period of one year;
  - (5) Cruel and inhuman treatment calculated to impair health or endanger life;
  - (6) Insanity of either spouse occurring after marriage;
  - (7) Habitual gross drunkenness contract since marriage and continuing for one year prior to the commencement of the action; or
  - (8) Incompatibility of temperament.
- (b) In an action for dissolution of the marriage contract on the grounds of adultery, a confession of adultery, whether in or

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outside of the pleadings, is not of itself sufficient to justify a decree of dissolution.

16 V.I.C. § 104 (1957) (also based on 1921 Code, Title III, ch. 64, § 5).

**Section 104. Legal separation or dissolution; evidence**

A decree granting legal separation or dissolving a marriage may be entered when the court is satisfied from the evidence presented that there has been a breakdown of the marriage relationship to the extent that the legitimate object of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

16 V.I.C. § 104 (1973); Act to Amend Title 16, Chapter 3, Virgin Islands Code, to Substantially Amend the Law Pertaining to Divorce, No. 3418, § 1, Sess. L. 1973, p. 45, 45 (Apr. 24, 1973) (superseding former 16 V.I.C. § 104 (1957)).

[Section 105. source law]

When a marriage has been solemnized in the district an action may be maintained to declare it void if the plaintiff is an inhabitant of the district at the commencement of the action. If the marriage has not been solemnized in the district, such action can only be maintained when the plaintiff has been an inhabitant thereof for six weeks prior to the commencement of the action.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 8 (eff. Jan. 28, 1945).

**Section 105. Residence requirements for annulment**

When a marriage has been solemnized in the Virgin Islands an action may be maintained to declare it void if the plaintiff is an inhabitant of the Virgin Islands at the commencement of the action. If the marriage has not been solemnized in the Virgin Islands, such action can only be maintained when the plaintiff has been an inhabitant thereof for six weeks prior to the commencement of the action.

16 V.I.C. § 105 (1957).

[Section 106. source law]

In an action for the dissolution of the marriage contract or for a legal separation the plaintiff therein must be an inhabitant of the district at the commencement of the action and for six weeks prior thereto, which residence shall be sufficient to give the Court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 9 (eff. Jan. 28, 1945).

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Notwithstanding the provisions of sections 8 and 9 hereof, if the plaintiff is within the district at the time of the filing of the complaint and has been continuously for six weeks immediately prior thereto, this shall be prima facie evidence of domicile, and where the defendant has been personally served within the district or enters a general appearance in the action, then the Court shall have jurisdiction of the action and of the parties thereto without further references to domicile or to the place where the marriage was solemnized or the cause of action arose.

Act of May 29, 1953 (Bill no. 53), § 1 (omitted from 1957 provision of 16 V.I.C. § 106 due to *Granville-Smith v. Granville-Smith*, 349 U.S. 1 (1955)).

Section 106. Divorce; jurisdiction of the court

In an action for the dissolution of the marriage contract or for a legal separation the plaintiff therein must be an inhabitant of the Virgin Islands **who is domiciled therein** at the commencement of the action and **who has resided therein for at least six weeks** prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose.

16 V.I.C. § 106 (1957) (emphasized language added to the 1957 code version of section 106 in order to conform with *Burch v. Burch*, 195 F.2d 799 (3d Cir. 1952)).

Section 106. Divorce; jurisdiction of the court

In an action for the dissolution of the marriage contract or for a legal separation the plaintiff therein must be an inhabitant of the Virgin Islands who is domiciled therein at the commencement of the action and who has resided therein **continuously and uninterruptedly** for at least six weeks prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose. **Evidence of the six weeks residence as aforesaid shall be presumptive proof of domicile.**

16 V.I.C. § 106, *amended by* Act to Amend Title 16, Chapter 3, Virgin Islands Code, Relating to Residence Requirements for Dissolution of Marriage or Legal Separation, No. 3347, § 1, Sess. L. 1972, p. 523, 523 (Dec. 6, 1972) (deletions indicated by stricken text; additions indicated in bold).

Section 106. Divorce; jurisdiction of the court

(a) In an action for the dissolution of the marriage contract or for a legal separation the plaintiff therein must be an inhabitant of the Virgin Islands who is domiciled therein at the commencement of the action and who has resided therein continuously and uninterruptedly for at least six weeks prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the

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cause of action arose. Evidence of the six weeks residence as aforesaid shall be presumptive proof of domicile.

- (b) **For the purposes of this section, any person who is serving with the United States Army, Navy, Marine Corps, Coast Guard or Air Force or the Merchant Marines, and who was a resident of the Virgin Islands at the time of his entry into military service or the Merchant Marines, shall be deemed to have continuously resided in this territory during the time he is serving with the Armed Forces or Merchant Marines.**

16 V.I.C. § 106, *amended by* Act to Amend Title 16, Section 106, Virgin Islands Code, Pertaining to Residency Requirements of Members of the Armed Forces and the Merchant Marines in Actions for Divorce or Legal Separation, No. 5073, § 1, Sess. L. 1985, p. 72, 72-73 (June 4, 1985) (deletions indicated by stricken text; additions indicated in bold).

[Section 107. source law]

In an action for the dissolution of the marriage contract on account of adultery the defendant may admit the adultery and show in bar of the action: (1) That the act was committed by the procurement or with the connivance of the plaintiff; or, (2) That the act had been expressly forgiven or impliedly so, by the voluntary cohabitation of the parties after knowledge thereof; or, (\*3) That the plaintiff has been guilty of adultery also without the procurement or connivance of the defendant and not forgiven as provided in subdivision two of this section; or, (4) That the action has not been commenced within one year after the discovery of the act by the plaintiff.

When the action is for any of the causes specified in subdivisions three, four, five or seven of section 7 of this chapter, the defendant may admit the charge and show in bar of the action that the act was committed by the procurement of the plaintiff, or it has been expressly forgiven; and in case the action is founded on subdivision three of said section, the defendant may also show in bar thereof that the action was not prosecuted within one year after the same occurred to the plaintiff.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 10 (eff. Jan. 28, 1945).

Section 107. Bars to divorce actions

- (a) In an action for the dissolution of the marriage contract on account of adultery the defendant may admit the adultery and show in bar of the action that—
- (1) The act was committed by the procurement or with the connivance of the plaintiff;

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- (2) The act had been expressly forgiven or impliedly so, by the voluntary cohabitation of the parties after knowledge thereof; or
  - (3) The action has not been commenced within one year after the discovery of the act of the plaintiff.
- (b) When the action is for any of the causes specified in clauses (1), (4), (5) and (7) of section 104 of this title, the defendant may admit the charge and show in bar of the action that the act was committed by the procurement of the plaintiff, or that it has been expressly forgiven; and in case the action is founded on clause (3) of such section, the defendant may also show in bar thereof that the action was not prosecuted within one year after the same occurred to the plaintiff.

16 V.I.C. § 107 (1957), *repealed by* Act to Amend Title 16, Chapter 3, Virgin Islands Code, to Substantially Amend the Law Pertaining to Divorce, No. 3418, § 2, Sess. L. 1973, p. 45, 46 (Apr. 24, 1973).

[Section 108. source law]

After the commencement of an action, and before a judgment therein, the court or judge thereof may, in its discretion, provide by order as follows: (1) That the husband pay, or secure to be paid, to the Clerk of the Court such an amount of money as may be necessary to enable the wife to prosecute or defend the action, as the case may be; (2) For the care, custody, and maintenance of the minor children of the marriage during the pendency of the action; (3) for the freedom of the wife from the control of the husband during the pendency of the action and the Court may restrain either or both parties from disposing of the property of either party pending the action.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 11 (eff. Jan. 28, 1945).

Section 108. Interlocutory orders

After the commencement of an action, and before a judgment therein, the court may, in its discretion, provide by order—

- (1) That the husband pay, or secure to be paid, to the clerk of the court such an amount of money as may be necessary to enable the wife to prosecute or defend the action, as the case maybe;
- (2) For the care, custody, and maintenance of the minor children of the marriage during the pendency of the action; or
- (3) For the freedom of the wife from the control of the husband during the pendency of the action and the court may restrain either or both parties from disposing of the property of either party pending the action.

16 V.I.C. 108 § (1957).

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**Section 108. Interlocutory orders**

After the commencement of an action, and before a judgment therein, the court may, in its discretion, provide by order—

- (1) That ~~the husband pay, or secure to be paid, to the clerk of the court such an amount of money~~ **a party in need obtain from the other party such funds** as may be necessary to enable ~~the wife~~ **the party in need** to prosecute or defend the action, as the case maybe;
- (2) For the care, custody, and maintenance of the minor children of the marriage during the pendency of the action; or
- (3) For the freedom of the wife from the control of the husband during the pendency of the action and the court may restrain either or both parties from disposing of the property of either party pending the action.

16 V.I.C. § 108, *amended by* Act to Amend Chapter 3 of Title 16, Virgin Islands Code, to Provide That in a Divorce Action the Court May Require That the Party in Need Receive Funds From the Other Party to Prosecute or Defend the Action, No. 4561, § 1, Sess. L. 1981, p. 56, 56 (June 10, 1981).

[Section 109. source law]

Whenever a marriage shall be declared void or dissolved the Court shall have power to further decree as follows: (1) For the future care and custody of minor children of the marriage as it may deem just and proper having due regard to the age and sex of such children and unless otherwise manifestly improper giving the preference to the party not in fault; (2) For the recovery from the party in fault, and not allowed the care and custody of such children; such an amount of money, in gross or in installments, as may be just and proper for such party to contribute toward the nurture and education thereof; (3) For the recovery from the party in fault such an amount of money, in gross or installments, as may be just and proper for such party to contribute to the maintenance of the other; (4) For the delivery to the wife when she is not the party in fault, of her personal property in the possession or control of the husband at the time of giving the judgment; (5) For the appointment of one or more trustees to collect, receive, expend, manage, or invest, in such manner as the court shall direct, and any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody; (6) to change the name of the wife when she is not the party in fault.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 12 (eff. Jan. 28, 1945).

**Section 109. Final orders**

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Whenever a marriage is declared void or dissolved the court may further decree—

- (1) For the future care and custody of minor children of the marriage as it may deem just and proper having due regard to the age and sex of such children, unless otherwise manifestly improper giving the preference to the party not in fault;
- (2) For the recovery from the party in fault, and not allowed the care and custody of such children, such an amount of money, in gross or in installments, as may be just and proper for such party to contribute toward the nature and education thereof;
- (3) For the recovery from the party in fault such an amount of money, in gross or in installments, as may be just and proper for such party to contribute to the maintenance of the other;
- (4) For the delivery to the wife, when she is not the party in fault, of her personal property in the possession or control of the husband at the time of giving the judgements;
- (5) For the appointment of one or more trustees to collect, receive, expand, manage, or invest, in such manner as the court shall direct, any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody; or
- (6) To change the name of the wife when she is not the party in fault.

16 V.I.C. 109 § (1957).

#### Section 109. Final orders

Whenever a marriage is declared void or dissolved the court may, **without regard to any determination of the breakdown of the marriage was fault of one party or the rother**, further decree—

- (1) For the future care and custody of minor children of the marriage as it may deem just and proper, having due regard to the age and sex of such children, ~~unless otherwise manifestly improper giving the preference to the party not in fault~~ **and giving primary consideration to the needs and welfare of such children;**
- (2) For the recovery from the party ~~in fault, and not allowed~~ **granted** the care and custody of such children such an amount of money, in gross or in installments, as may be just and proper for such party to contribute toward the nature and education thereof;
- (3) For the recovery from ~~the a party in fault~~ **not granted care and custody of such children** such an amount of money, in gross or in installments, as may be just and proper for such party to contribute ~~to the maintenance of the other~~ **toward the nurture and education thereof;**

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- (4) For the delivery to the wife, ~~when she is not the party in fault~~, of her personal property in the possession or control of the husband at the time of giving the judgements;
- (5) For the appointment of one or more trustees to collect, receive, expand, manage, or invest, in such manner as the court shall direct, any sum of money ~~adjudged~~ **necessary** for the maintenance of the wife or the nurture and education of minor children committed to her; or
- (6) To change the name of the wife.

16 V.I.C. § 109, *amended by* Act to Amend Title 16, Chapter 3, Virgin Islands Code, to Substantially Amend the Law Pertaining to Divorce, No. 3418, § 3, Sess. L. 1973, p. 45, 46 (Apr. 24, 1973) (deletions indicated by stricken text; additions indicated in bold).

#### Section 109. Final orders

- (a) Whenever a marriage is declared void or dissolved the court may, without regard to any determination of the breakdown of the marriage was fault of one party or the other, further decree—
  - (1) For the future care and custody of minor children of the marriage as it may deem just and proper, having due regard to the age and sex of such children, and giving primary consideration to the needs and welfare of such children;
  - (2) For the recovery from the party not granted care and custody of such children such an amount of money, in gross or in installments, as may be just and proper for such party to contribute toward the nature and education thereof;
  - (3) For the recovery from a party not granted care and custody of such children such an amount of money, in gross or in installments, as may be just and proper for such party to contribute toward the nurture and education thereof;
  - (4) For the delivery to the wife of her personal property in the possession or control of the husband at the time of giving the judgements;
  - (5) For the appointment of one or more trustees to collect, receive, expand, manage, or invest, in such manner as the court shall direct, any sum of money necessary for the maintenance of the wife or the nurture and education of minor children committed to her; or
  - (6) To change the name of the wife.
- (b) **Determination raises rebuttable presumption that child reside with parent not perpetrator or legal guardian. In determining the future care and custody of minor children under subsection (a), a determination by the court that the domestic violence has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not the perpetrator of domestic**

**violence in the location of that parent's choice, within or outside the territory or with a legal guardian. This presumption shall also apply when a parent has been convicted for the death of the other parent, or when the child has been conceived by rape.**

- (c) Factors court must consider. In addition to the other factors that the court considers in determining the custody of a child or visitation by a parent, and where the court has made a finding of domestic violence, the court shall consider each of the following:**
- (1) The safety and well-being of the child and of the parent who is the victim of domestic violence.**
  - (2) The perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.**
  - (3) If a parent is absent or relocates because of an act of domestic violence by the other parent, the absence or relocation may not be a factor that weighs against the parent in determining the custody or visitation.**
- (d) Visitation by parent who committed violence.**
- (1) A court may award visitation by a parent who committed domestic violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic violence can be made. In a visitation order, a court may take any of the following actions:**
    - (A) order an exchange of the child to occur in a protected setting;**
    - (B) order visitation supervised in a manner to be determined by the court;**
    - (C) order the perpetrator of domestic violence to attend and complete to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of visitation;**
    - (D) order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation;**
    - (E) order the perpetrator of domestic violence to pay a fee to defray the cost of supervised visitation;**
    - (F) Prohibit overnight visitation;**
    - (G) Require a bond from the perpetrator of domestic violence for the return and safety of the child; and**
    - (H) Impose any other condition that is considered**

**necessary to provide for the safety of the child, the victim of domestic violence, or other family or household member.**

- (2) Whether or not visitation is allowed, the court may order the address of the child or the victim of domestic violence to be kept confidential.**
- (3) The court may refer, but may not order an adult who is a victim of domestic violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic violence as a condition of receiving custody of a child, or as a condition of visitation.**
- (4) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.**
- (e) Domestic violence defined. For purposes of this section, domestic violence means domestic violence as defined in title 16 Virgin Islands Code, chapter 2, section 91, subsections (b) and (c).**

16 V.I.C. § 109, *amended by* Omnibus Justice Act of 2005, No. 6730, § 37, p. 68, 109-11 (May 5, 2005) (deletions indicated by stricken text; additions indicated in bold).

#### Section 109. Final orders

- (a) Whenever a marriage is declared void or dissolved the court may, without regard to any determination of the breakdown of the marriage was fault of one party or the other, further decree—
  - (1) For the future care and custody of minor children of the marriage as it may deem just and proper, having due regard to the age and sex of such children, and giving primary consideration to the needs and welfare of such children;
  - (2) For the recovery from the party not granted care and custody of such children such an amount of money, in gross or in installments, as may be just and proper for such party to contribute toward the nature and education thereof;
  - (3) For the recovery from a party not granted care and custody of such children such an amount of money, in gross or in installments, as may be just and proper for such party to contribute toward the nurture and education thereof;
  - (4) For the delivery to the wife of her personal property in the possession or control of the husband at the time of giving the judgements;
  - (5) For the appointment of one or more trustees to collect, receive, expand, manage, or invest, in such manner as the court shall direct, any sum of money necessary for the

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- maintenance of the wife or the nurture and education of minor children committed to her; or
- (6) To change the name of the wife.
  - (7) **For the award to the parties of all marital property, in accordance with principles of equitable distribution. For purposes of this paragraph, “marital property” means all real and personal property acquired by either spouse subsequent to the marriage, except:**
    - (A) **Property acquired by gift, bequest, devise, or descent;**
    - (B) **Property acquired in exchange for property acquired prior to the marriage, or in exchange for property acquired by gift, bequest, devise, or descent;**
    - (C) **Property acquired by a spouse after a decree of legal separation;**
    - (D) **Any judgement or property obtained by judgment awarded to a spouse from the other spouse;**
    - (E) **Property excluded by valid, written agreement of the parties; and**
    - (F) **Income from property acquired by a method listed in subparagraphs (A) through (E), if the income is not attributable to the personal effort of a spouse.**
- (b) Determination raises rebuttable presumption that child reside with parent not perpetrator or legal guardian. In determining the future care and custody of minor children under subsection (a), a determination by the court that the domestic violence has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not the perpetrator of domestic violence in the location of that parent’s choice, within or outside the territory or with a legal guardian. This presumption shall also apply when a parent has been convicted for the death of the other parent, or when the child has been conceived by rape.
- (c) Factors court must consider. In addition to the other factors that the court considers in determining the custody of a child or visitation by a parent, and where the court has made a finding of domestic violence, the court shall consider each of the following:
- (1) The safety and well-being of the child and of the parent who is the victim of domestic violence.
  - (2) The perpetrator’s history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.
  - (3) If a parent is absent or relocates because of an act of domestic violence by the other parent, the absence or

- relocation may not be a factor that weighs against the parent in determining the custody or visitation.
- (d) **Visitation by parent who committed violence.**
- (1) A court may award visitation by a parent who committed domestic violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic violence can be made. In a visitation order, a court may take any of the following actions:
- (A) order an exchange of the child to occur in a protected setting;
- (B) order visitation supervised in a manner to be determined by the court;
- (C) order the perpetrator of domestic violence to attend and complete to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of visitation;
- (D) order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation;
- (E) order the perpetrator of domestic violence to pay a fee to defray the cost of supervised visitation;
- (F) Prohibit overnight visitation;
- (G) Require a bond from the perpetrator of domestic violence for the return and safety of the child; and
- (H) Impose any other condition that is considered necessary to provide for the safety of the child, the victim of domestic violence, or other family or household member.
- (2) Whether or not visitation is allowed, the court may order the address of the child or the victim of domestic violence to be kept confidential.
- (3) The court may refer, but may not order an adult who is a victim of domestic violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic violence as a condition of receiving custody of a child, or as a condition of visitation.
- (4) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.
- (e) **Domestic violence defined.** For purposes of this section, domestic violence means domestic violence as defined in title 16 Virgin Islands Code, chapter 2, section 91, subsections (b) and (c).

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16 V.I.C. § 109, *amended by* Act to Amend Title 16, Chapter 3, s 109(a) of the Virgin Islands Code by Providing for the Equitable Distribution of Marital Real and Personal Property Upon Divorce, No. 7702, § 1, p. 375, 375-76 (Dec. 19, 2014).

[Section 110. source law]

At any time after a judgment is given the court, upon the motion of either party on notice, may set aside, alter or modify so much of the judgment as may provide alimony or for the appointment of trustees, for the care and custody of the minor children, or the nurture and education thereof, or the maintenance of either party in the action.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 13 (eff. Jan. 28, 1945).

Section 110. Modification of final orders

At any time after a judgment is given the court, upon the motion of either party on notice, may set aside, alter or modify so much of the judgment as may provide alimony or for the appointment of trustees, for the care and custody of the minor children, or the nurture and education thereof, or the maintenance of either party in the action.

16 V.I.C. § 110 (1957).

[Section 111. source law]

A judgment declaring a marriage void or dissolved by the action or claim of either party shall have the effect to terminate such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, until the action has been heard and determined on appeal, and if no appeal be taken, until the expiration of the period allowed by law to take such appeal; and if he or she does so contract, such party shall be liable thereof as if such judgment had not been given. The within provisions shall be retrospective and all marriage contract heretofore entered into by divorced persons, in conformity with the within provisions, are valid and binding.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 14 (eff. Jan. 28, 1945).

Section 111. Effect of decree

A judgment declaring a marriage void or dissolved by the action or claim of either party shall have the effect to terminate such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, until the action has been heard and determined on appeal, and if no appeal be taken, until the expiration of the period allowed by law to take such appeal; and if

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he or she does so contract, such party shall be liable thereof as if such judgment had not been given. ~~The within provisions shall be retrospective and all marriage contract heretofore entered into by divorced persons, in conformity with the within provisions, are valid and binding.~~

16 V.I.C. § 111 (1957) (deletions from language of source law (Bill No. 14, § 14 (V.I. Legis. Assem. 1944) indicated by stricken text; additions indicated in bold).

#### Section 111. Effect of decree

A judgment declaring a marriage void or dissolved by the action or claim of either party shall have the effect to terminate such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, until the action has been heard and determined on appeal, and if no appeal be taken, until the expiration of the period allowed by law to take such appeal; and if he or she does so contract, such party shall be liable thereof as if such judgment had not been given; **Provided, however, that the parties to an uncontested action to void or dissolve a marriage shall be capable of contracting marriage with a third person immediately after said judgment is declared.**

16 V.I.C. § 111, *amended by* Act to Amend Title 16, Chapter 3, Virgin Islands Code, Pertaining to the Period of Time After Granting of a Divorce Decree During Which the Parties Involved Are Incapable of Contracting Marriage With a Third Person, No. 3357, § 1, p. 85, 85 (Apr. 29, 1974) (deletions indicated by stricken text; additions indicated in bold).

#### Section 15.

All prior laws and ordinances or parts thereof in conflict with the provisions of this Act are hereby repealed and shall be void and of no effect.

Law Concerning Actions to Declare Void or Dissolve the Marriage Contract, and for Other Purposes, Dec. 29, 1944 (Bill no. 14), § 15 (eff. Jan. 28, 1945).

### **Chapter 4. Uniform Child-Custody Jurisdiction and Enforcement Act**

#### Section 116. Definitions

In this chapter:

- (1) 'Abandoned' means left without provision for reasonable and necessary care or supervision.
- (2) 'Child' means an individual who has not attained 18 years of age.
- (3) 'Child-custody determination' means a judgment, decree, or other word of a court providing for the legal custody, physical custody, or vision with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

- (4) 'Child-custody proceeding' means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for a divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under subchapter 3.
- (5) 'Commencement' means the filing of the first pleading in a proceeding.
- (6) 'Court' means an entity authorized under the law of a State to establish, enforce, or modify a child-custody determination.
- (7) 'Home state' means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the State in which the child lived from birth with any of the person mentioned. A period of temporary absence of any of the mentioned persons is part of the period.
- (8) 'Initial determination' means the first child-custody determination concerning a particular child.
- (9) 'Issuing court' means the court that makes a child-custody determination for which enforcement is sought under this chapter.
- (10) 'Issuing State' means the State in which a child-custody determination is made.
- (11) 'Modification' means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
- (12) 'Person' means an individual, corporation, business trust, estate, trust partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality, public corporation; or any other legal or commercial entity.
- (13) 'Person acting as a parent' means a person, other than a parent, who:
  - (A) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary, absence, within one year immediately

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before commencement of a child-custody proceeding;  
and

(B) Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

(14) 'Physical custody' means the physical care and supervision of a child.

(15) 'State' means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) 'Tribe' means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a State.

(17) 'Warrant' means an order issued by a court authorizing enforcement officers to take physical custody of a child.

16 V.I.C. § 116 (2005); Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 77-78 (May 5, 2005).

#### Section 120. Effect of child-custody determination

A child-custody determination made by a court of this State that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this State or notified in accordance with s 122 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

16 V.I.C. § 120 (2005); Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 79 (May 5, 2005).

#### Section 122. Notice to persons outside state

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the State in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the State in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

16 V.I.C. § 122 (2005); Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 80 (May 5, 2005).

#### Section 127. Initial child-custody jurisdiction

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- (a) Except as otherwise provided in s 130, a court of this State has jurisdiction to make an initial child-custody determination only if:
- (1) This State is the home State of the Child on the date of the commencement of the proceeding, or was the home State of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in the State;
  - (2) A court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under s 133 or s 134, and;
    - (A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and
    - (B) Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;
  - (3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under s 133 or 134; or
  - (4) No court of any other State would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).
- (b) Subsection (a) is the exclusive jurisdiction basis for making a child-custody determination by a court of this State.
- (c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

16 V.I.C. § 127 (2005); Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 82-83 (May 5, 2005).

**Section 128. Exclusive, continuing jurisdiction**

- (a) Except as otherwise provided in s 133, a court of this State which has made a child-custody determination consistent with s 127 or s 129 has exclusive, continuing jurisdiction over the determination until:
- (1) A court of this State determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

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(2) A court of this State or a court of another State determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(b) A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under s 127.

16 V.I.C. § 128 (2005); Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 83 (May 5, 2005).

#### Section 129. Jurisdiction to modify determination

Except as otherwise provided in s 130, a court of this State may not modify a child-custody determination made by a court of another State unless a court of this State has jurisdiction to make an initial determination under s127(a)(1) or (2) and:

(1) The court of the other State determines it no longer has exclusive, continuing jurisdiction under s 128 or that a court of this State would be a more convenient forum under s 133;  
or

(2) A court of this State or a court of the other State determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other State.

16 V.I.C. § 129 (2005); Act to Enact the Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 83-84 (May 5, 2005).

#### Section 130. Temporary emergency jurisdiction

(a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this chapter and a child-custody proceeding has not been commenced in a court of a State having jurisdiction under § 127 through § 129, a child-custody determination made under this section remains in effect until an order is obtained from a court of a State having jurisdiction under § 127 through § 129. If a child-custody proceeding has not been or is not commenced in a court of a State having jurisdiction under § 127 through § 129, a child-custody determination made under this section becomes a final determination, if it so provides and this State becomes the home State of the child.

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- (c) If there is a previous child-custody determination that is entitled to be enforced under this chapter, or a child-custody proceeding has been commenced in a court of a State having jurisdiction under § 127 through § 129, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the State having jurisdiction under § 127 through § 129. The order issued in this State remains in effect until an order is obtained from the other State within the period specified or the period expires.
- (d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a State having jurisdiction under § 127 through § 129, shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to § 127 through § 129, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another State under a statute similar to this section shall immediately communicate with the court of that State to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

16 V.I.C. § 130 (2005); Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 84-85 (May 5, 2005).

**Section 131. Notice; opportunity to be heard; joinder**

- (a) Before a child-custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 122 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.
- (b) This chapter does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.
- (c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this chapter are governed by the law of this State as in child-custody proceedings between residents of this State.

16 V.I.C. § 120 (2005); Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 85 (May 5, 2005).

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**Section 132. Simultaneous proceedings**

- (a) Except as otherwise provided in § 130, a court of this State may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another State having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other State because a court of this State is a more convenient forum under § 133.
- (b) Except as otherwise provided in § 130, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to § 134. If the court determines that a child-custody proceeding has been commenced in a court in another State having jurisdiction substantially in accordance with this chapter, the court of this State shall stay its proceeding and communicate with the court of the other State. If the court of the State having jurisdiction substantially in accordance with this chapter does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.
- (c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another State. If a proceeding to enforce a child-custody determination has been commenced in another State, the court may:
- (1) stay the proceeding for modification pending the entry of an order of a court of the other State enforcing, staying, denying, or dismissing the proceeding for enforcement;
  - (2) enjoin the parties from continuing with the proceeding for enforcement; or
  - (3) proceed with the modification under conditions it considers appropriate.

16 V.I.C. § 132 (2005); Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 85-86 (May 5, 2005).

**Section 134. Jurisdiction declined by reason of conduct**

- (a) Except as otherwise provided in § 130 or by other law of this State, if a court of this State has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

- (1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
  - (2) a court of the State otherwise having jurisdiction under § 126 through § 129 determines that this State is a more appropriate forum under § 133; or
  - (3) no court of any other State would have jurisdiction under the criteria specified in § 127 through § 129.
- (b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under § 127 through § 129.
- (c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this chapter.

16 V.I.C. § 120 (2005); Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 87-88 (May 5, 2005).

**Section 136. Appearance of parties and child**

- (a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.
- (b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to § 122 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.
- (c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.
- (d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child,

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Swan, J., concurring-Appendix A  
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the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

16 V.I.C. § 120 (2005); Omnibus Justice Act of 2005, No. 6730, § 18, p. 68, 89-90 (May 5, 2005).

### **Chapter 9. Age of Majority and Emancipation**

#### **Section 261. Age of majority; effects**

All persons are deemed to have arrived at majority at the age of 21 years, and thereafter shall have control of their own actions and business and have all the rights and be subject to all the liabilities of persons of full age.

16 V.I.C. § 261 (1957) (sources are 1921 Codes, Title II, ch. 4, § 2).

#### **Section 261. Age of majority; effects**

All persons are deemed to have arrived at **the age of majority** at the age of ~~21~~ **18** years, and thereafter shall have control of their own actions and business and have all the rights and be subject to all the liabilities of persons of full age.

16 V.I.C. § 261, *amended by* Act to Amend Chapter 9 of Title 16 of the Virgin Islands Code, Pertaining to Emancipation by Parental Consent and to Lower the Age of Majority From Twenty-one to Eighteen Years of Age, No. 3335, § 2, p. 508, 508-09 (Nov. 29, 1972).

### **Chapter 17. Grandparents' Visitation Rights**

#### **Section 602. Declaration of public policy**

It is the express policy of this Territory to encourage continuing contact between a minor child and parents and grandparents who have shown the ability to act in the best interest of the child and to further encourage parents and grandparents to share in the rights and responsibilities of raising their children after the parents have separated or dissolved their marriage or relationship.

16 V.I.C. § 602 (2002); Act to Amend Title 16 of the Virgin Islands Code to Enact the Virgin Islands Grandparents' Visitation Rights Act, No. 6509, § 1, p. 293, 294 (June 17, 2002).

#### **Section 604. Action by grandparent for right of visitation.**

(a) A grandparent of a minor child may petition the court for reasonable rights of visitation of a minor child when one or more of the following circumstances exists:

- (1) The parents of the minor child are currently living separately and apart on a permanent or indefinite basis.
- (2) One of the parents has been absent for not less than one month, without the other parent's knowing the whereabouts of the absent parent.
- (3) The child is not residing with either parent and has not been legally adopted.

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Swan, J., concurring-Appendix A

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- (4) The child's parent, who is the child of the grandparents, has died and the parent has not married a spouse who has legally adopted the child.
- (b) The petitioner shall give notice of the petition by personal service, pursuant to the Rules of the Superior Court, to each of the parents of the child, any stepparent, and any person who has physical custody of the child.

16 V.I.C. § 604 (2002); Act to Amend Title 16 of the Virgin Islands Code to Enact the Virgin Islands Grandparents' Visitation Rights Act, No. 6509, § 1, p. 293, 294-95 (June 17, 2002).

**Section 605. Factors to be considered by the court in granting visitation rights**

The court may grant a grandparent reasonable rights of visitation or access to a minor child upon finding that the rights of visitation or access are in the best interest of the child and would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the child. In applying this standard, the court shall consider the following factors:

- (a) Whether such visitation would be in the best interest of the child;
- (b) Whether such visitation would interfere with any parent-child relationship or with a parent's authority over the child;
- (c) The nature of the relationship between the grandparent and the minor child, including but not limited to, the frequency of contact, and whether the child has lived with the grandparent and length of time of such residence, and the motivation of the grandparent and capacity to give the child love, affection and guidance;
- (d) Whether there is reasonable cause to believe that the child's physical or emotional health would be endangered by such visitation or lack of it;
- (e) The nature of the relationship between the grandparent and the parent of the minor child, including friction between the grandparent and the parent, and the effect such friction would have on the child;
- (f) The age of the child;
- (g) The circumstances that resulted in the absence of a nuclear family, whether by divorce, death, relinquishment or termination of parental rights, or other cause;
- (h) The recommendation regarding visitation made by any guardian ad litem appointed for the child or by a child welfare agency;
- (i) Any preference or wishes expressed by the child, if the child is of sufficient age and maturity to express a meaningful preference; and

July 11, 2019

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT*Willis v. People*

S. Ct. Crim. No. 2015-0078

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- (j) Any such other factors as the court may find appropriate or relevant to the petition for visitation.

16 V.I.C. § 605 (2002); Act to Amend Title 16 of the Virgin Islands Code to Enact the Virgin Islands Grandparents' Visitation Rights Act, No. 6509, § 1, p. 293, 295 (June 17, 2002).

**Section 606. Notice; standing to intervene**

- (a) Once a grandparent has been granted visitation rights, the grandparent shall be given proper notice of any petition or order providing for a change in custody or visitation rights, and the grandparent shall have standing to intervene and be heard in any hearing affecting the grandparent's visitation rights.
- (b) Any order granting, modifying or denying parent visitation rights shall not affect visitation rights granted to a grandparent pursuant to this chapter, absent a specific finding pursuant to section 608 of this chapter.
- (c) If the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody or visitation to the grandparent or not, the court may recognize the grandparent as having the same standing as a parent for evaluating what custody arrangements are in the best interest of the child.

16 V.I.C. § 606 (2002); Act to Amend Title 16 of the Virgin Islands Code to Enact the Virgin Islands Grandparents' Visitation Rights Act, No. 6509, § 1, p. 293, 296 (June 17, 2002).

**Section 608. Termination or modification of visitation rights**

Upon petition by either parent and a finding that a significant change of circumstances has occurred where visitation is no longer in the best interest of the child, the court may modify or terminate grandparent visitation rights. Any order denying or terminating grandparent visitation shall be in writing and shall state its reasons for denial or termination. An order denying or terminating visitation shall be a final order for the purposes of appeal.

16 V.I.C. § 608 (2002); Act to Amend Title 16 of the Virgin Islands Code to Enact the Virgin Islands Grandparents' Visitation Rights Act, No. 6509, § 1, p. 293, 296 (June 17, 2002).

**For Publication**

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

<b>LOUIS MILTON WILLIS,</b>	)	<b>S. Ct. Crim. No. 2015-0078</b>
Appellant/Defendant,	)	Re: Super. Ct. Crim. No. 74/2014 (STT)
	)	
v.	)	
	)	
<b>PEOPLE OF THE VIRGIN ISLANDS</b>	)	
Appellee/Plaintiff.	)	
	)	
	)	

SUPREME COURT  
2019 JUL 11 PM 1:14

On Appeal from the Superior Court of the Virgin Islands  
Division of St. Thomas & St. John  
Superior Court Judge: Hon. Michael C. Dunston

Argued: March 13, 2018  
Filed: July 11, 2019

**BEFORE:** **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

**APPEARANCES:**

**Kele C. Onyejekwe, Esq.**  
Appellate Public Defender  
St. Thomas, U.S.V.I.  
*Attorney for Appellant,*

**Royette V. Russell, Esq.**  
Assistant Attorney General  
St. Croix, U.S.V.I.  
*Attorney for Appellee.*

**ORDER OF THE COURT**

**CABRET, Associate Justice.**

**AND NOW** consistent with the reasons given in the accompanying opinion, it is hereby  
**ORDERED** that the Superior Court's October 1, 2015 judgment and commitment is

*Willis v. People*  
S. Ct. Crim. No. 2015-0078  
Order of the Court  
Page 2 of 2

**AFFIRMED.** It is further

**ORDERED** that copies of this order be directed to the appropriate parties.

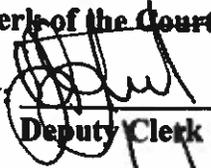
**SO ORDERED** this 11<sup>th</sup> day of July, 2019.

**BY THE COURT:**

  
**MARIA M. CABRET**  
Associate Justice

**ATTEST:**

**VERONICA J. HANDY, ESQ.**  
Clerk of the Court

By:   
Deputy Clerk

Dated: 7/11/19

**Copies to (with accompanying Opinion of the Court):**

- Justices of the Supreme Court
- Judges and Magistrate Judges of the Superior Court
- Kele C. Onyejekwe, Esq.
- Royette V. Russell, Esq.
- Veronica J. Handy, Esq., Clerk of the Supreme Court
- Estrella H. George, Clerk of the Superior Court
- Joseph T. Gasper II, Esq., Superior Court Law Librarian
- Supreme Court Law Clerks
- Supreme Court Secretaries
- Order Book
- Westlaw
- Lexis/Michie

# APPENDIX

## B



10/06/2015

VEROMICA HANDY, ESQUIRE  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

**PEOPLE OF THE VIRGIN ISLANDS,**

**Plaintiff,**

**vs.**

**LOUIS MILTON WILLIS,**

**GERARD CASTOR.**

**Defendant.**

**CASE NO. ST-14-CR-74**

**CASE NO. ST-14-CR-75**

**JUDGMENT AND COMMITMENT**

THIS MATTER came on for Sentencing on Thursday, September 17, 2015, before the Honorable Michael C. Dunston. The People appeared through Assistant Attorney General Denise George-Counts, Esq., and the Defendant appeared personally with counsel Treston E. Moore, Esq.

The Court advised the parties that a Memorandum Opinion and Order had been entered earlier on that day denying Defendant's post-conviction motion for judgment of acquittal and new trial. The Court inquired as to the accuracy of the presentence investigation report and counsel for the People offered a single correction, which was duly noted on the record. The Court then heard allocution and recommendations from both defense counsel and counsel for the People, as well as testimony from Janeen Claxton on behalf of the People, and two exhibits were identified and admitted into evidence on behalf of the People. The Defendant was then given an opportunity to make a statement on his behalf, and he did.

There being no legal cause shown or appearing to the Court why sentence should not be pronounced, it is

**ORDERED, ADJUDGED, and DECREED** that the jury having found the Defendant LOUIS MILTON WILLIS, GUILTY of Conspiracy to Evade or Defeat Tax, in violation of Title 33 V.I.C. § 1522, Count One, and Willful Failure to Collect or Pay Overt Tax – Aiding and Abetting, in violation of Title 33 V.I.C. § 1523, Count Two of the Second Amended Information, the Court enters a JUDGMENT OF CONVICTION thereon; and it is

**ORDERED** that with regard to Count One, Conspiracy to Evade or Defeat Tax, Defendant is sentenced to a term of imprisonment in the Bureau of Corrections for two (2) years, with said sentence to run consecutive to the federal sentence imposed in Defendant's case in the District Court, and Defendant is fined Five thousand dollars (\$5,000.00); and it is

**ORDERED** that Count Two, Willful Failure to Collect or Pay Overt Tax – Aiding and Abetting, is deemed merged with the offense charged in Count One and the imposition of sentence on Count One is stayed, but were the Court to impose a separate sentence thereon the Court would sentence Defendant to a term of imprisonment in the Bureau of Corrections for two (2) years, with said sentence to run consecutive to the federal sentence imposed in Defendant's case in the District Court, and Defendant fined Five thousand dollars (\$5,000.00); and it is

**ORDERED** that Defendant is assessed Seventy-five dollars (\$75.00) as and for court costs; and it is

10/06/2015

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

JUDGMENT AND COMMITMENT  
*People of the Virgin Islands vs. Louis Willis ST-14-CP-24*  
October 1, 2015. Page 3 of 3

**ORDERED** that Defendant's court costs and fine shall be paid to the Superior Court of the Virgin Islands, Cashier's Division within six (6) months of his release from the Bureau of Corrections; and it is

**ORDERED** that Property No. 1B-2 Estate Solberg Little Northside Quarter, St. Thomas, Virgin Islands, used to secure the Defendant's Release, is hereby EXONERATED; and it is

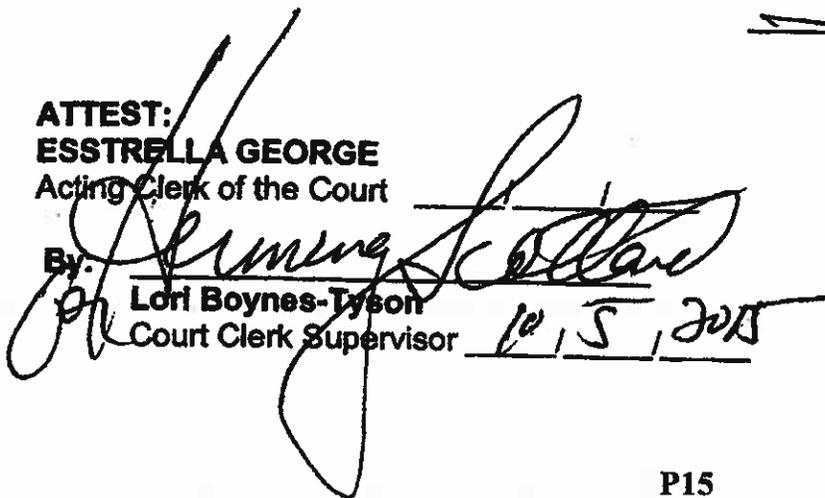
**ORDERED** that, the jury having found the Defendant LOUIS MILTON WILLIS, NOT GUILTY of Fraud and False Statements – Aid or Assistance, in violation of Title 33 V.I.C. § 1525, Count Three of the Second Amended Information, the Court enters a JUDGMENT OF ACQUITTAL thereon; and it is

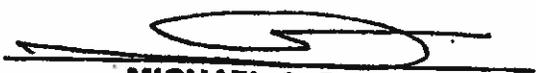
**ORDERED** that the record reflect that Defendant was advised of his right to file a Notice of Appeal within thirty (30) days of Judgment being entered; and it is

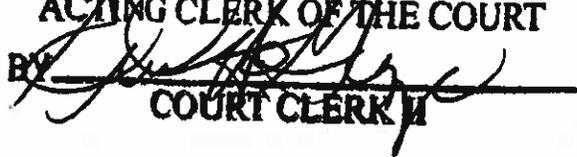
**ORDERED** that copies of this Order shall be directed to Defendant; counsel of record; the Office of Probation; and the Virgin Islands Police Department, Records Division.

**DATED:** October 1, 2015

**ATTEST:**  
**ESSTRELLA GEORGE**  
Acting Clerk of the Court

By:   
**Lori Boynes-Tyson**  
Court Clerk Supervisor 10/5/2015

  
**MICHAEL C. DUNSTON**  
Judge of the Superior Court  
of the Virgin Islands

A CERTIFIED TRUE COPY  
DATE 10/6/15  
**ESTRELLA H. GEORGE**  
ACTING CLERK OF THE COURT  
BY   
COURT CLERK II

# APPENDIX

C



08/01/2017

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

that Balbo Construction Corporation was current in the filing and payment of its tax obligations although Balbo Construction Corporation was in fact delinquent.

in violation of **T33 VIC 1522 - CONSPIRACY TO EVADE OR DEFEAT TAX.**

### COUNT TWO

On or about the period between January 1, 2002 through February 25, 2008 in St. Thomas, Virgin Islands, **LOUIS MILTON WILLIS**, aided and abetted Balbo Construction Corporation, which was required by Subtitle 1 of the Virgin Islands income tax law to collect, truthfully account for and pay over Gross Receipts Taxes, to willfully fail to collect or truthfully account for and pay over such taxes. Defendant **LOUIS MILTON WILLIS** aided Balbo Corporation or its president Gerrard Castor, in wilfully failing to file, collect, truthfully account for or pay all of its gross receipt taxes due between the years 2002 to 2007 through issuing false "tax clearance letters" and/or assisting in preparation of gross receipt returns filed in February 2008, several of which understated the company's gross income for the years 2004 through 2007, in violation of **Title 33 V.I.C. 1523 and T14 V.I.C. 11, WILLFUL FAILURE TO COLLECT OR PAY OVER TAX - AIDING AND ABETTING.**

### COUNT THREE

On or about February 1, 2008 through February 25, 2008 in St. Thomas Virgin Islands, **LOUIS MILTON WILLIS** did willfully aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising

08/01/2017

VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

3

under the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, in that **LOUIS MILTON WILLIS** prepared or assisted in the preparation and presentation to the Virgin Islands Bureau of Internal Revenue of false or fraudulent monthly gross receipt tax returns of Balbo Construction Corporation for tax years 2004 through 2007, which contained false statements regarding the gross income of Balbo Construction Corporation, in violation of **Title 33 V.I.C. 1525(2), FRAUD AND FALSE STATEMENTS - AID OR ASSISTANCE.**

DATED: 8/17/15**RESPECTFULLY SUBMITTED.****CLAUDE WALKER, ESQUIRE  
ACTING ATTORNEY GENERAL**BY: 

Denise George Courts  
Assistant Attorney General  
Department of Justice  
(340) 714-9636



# APPENDIX

## D

1 you a short break before I give you the  
2 final instructions in this case. We will  
3 recess for about ten minutes.

4 [JURY EXITS]

5 [Brief recess, thereafter trial resumes:]

6 [JURY ENTERS]

7 FINAL JURY INSTRUCTIONS

8 THE CLERK: People of the  
9 Virgin Islands versus Louis Milton Willis.

10 THE COURT: Ladies and  
11 Gentlemen, now that you have heard all of  
12 the evidence and the arguments of the  
13 Attorneys I will instruct you on the law.  
14 Before I do that, I want to thank you one  
15 more time for your assistance and your  
16 service as jurors. We are truly grateful  
17 for your help.

18 It is your duty to find the  
19 facts from all of the evidence. With  
20 those facts you'll apply the law as I  
21 instruct you. Instructing you on the law  
22 is my job and you must follow the law as I  
23 state it, whether you agree with it or  
24 not.

25 In following my instructions,

1       you should follow all of them and not  
2       single out some and ignore others. They  
3       are all equally important. And, you must  
4       not read into these instructions or into  
5       anything that I have said or done, during  
6       the course of this trial, any suggestion  
7       as to what you should find the facts to be  
8       or what your verdict should be. Those are  
9       matters in entirely up to you. Nor should  
10      you be influenced by my tone of voice or  
11      manner of speaking to one of Attorneys or  
12      a witness.

13                Except for my instructions to  
14      you on the law, you should disregard  
15      anything that I may have said or done  
16      during the this trial in deciding the  
17      facts.

18                There is nothing particularly  
19      different in the way that a Juror should  
20      consider the evidence in a trial from the  
21      way any reasonable and careful person  
22      would deal with any important question.

23                You are expected to use your  
24      good sense in considering the evidence  
25      reasonably and fairly and find the truth

1 using your common knowledge of the way  
2 people behave.

3 If the Defendant has been  
4 proven guilty, beyond a reasonable doubt,  
5 say so. If the Defendant has not been  
6 proven guilty, beyond a reasonable doubt,  
7 say so.

8 Your power is not arbitrary,  
9 but it must be exercised with discretion  
10 and in accordance with the rules of  
11 evidence as I instruct you.

12 It would be a violation of  
13 your sworn duty to base a verdict upon  
14 anything other than the evidence and my  
15 instructions. Justice through trial by  
16 jury depends on the willingness of each  
17 individual Juror to seek the truth from  
18 the same evidence and to arrive at a  
19 verdict by applying the same rules of law.

20 The evidence from which you  
21 are to decide what the facts are consist  
22 of the sworn testimony of witnesses, both  
23 on direct and cross examination,  
24 regardless of who called the witness; the  
25 exhibits that have been received into

1 evidence; and any facts to which the  
2 lawyer have agreed or stipulate.

3 Although you may consider only  
4 the evidence presented during the trial,  
5 using common sense and personal experience  
6 you are also permitted to draw reasonable  
7 conclusions that you find, I'm sorry, from  
8 facts that you find to have been proven.

9 Remember that certain things  
10 are not evidence. Unless I have  
11 specifically instructed you otherwise,  
12 nothing that the Attorneys have said is  
13 evidence, including their opening  
14 statements, their closing arguments, their  
15 objections and their questions. The  
16 lawyers are not witnesses. What they say  
17 may help you interpret the evidence, but  
18 it is not evidence.

19 If the facts, as you remember  
20 them from the evidence, differ from the  
21 way the lawyers have stated them, your  
22 memory controls. Lawyers have a duty to  
23 their clients to object when they believe  
24 that a question or an exhibit is improper  
25 under the rules of evidence.

1           You should not be influenced  
2           by those objections or by my rulings on  
3           them. If I sustained an objection to a  
4           question, you must ignore the question and  
5           not try to guess what the answer might  
6           have been. Similarly, if a lawyer ask a  
7           question that asserts something to be a  
8           fact, you may not consider the assertion  
9           by the lawyer as evidence of that fact.  
10          Only the witnesses' answers are evidence.

11           Anything that I've excluded  
12          from evidence or ordered stricken and  
13          instructed you to disregard, is not  
14          evidence.

15           The Second Amended Information  
16          is not evidence. The fact that a  
17          Defendant has been charged with crimes,  
18          proves nothing.

19           And finally anything you've  
20          seen or heard when the Court was not in  
21          session is not evidence.

22           Evidence may be direct or  
23          circumstantial. Direct evidence is simply  
24          evidence, like the testimony of an eye  
25          witness that directly proves a fact.

1 Circumstantial evidence is simply a chain  
2 of circumstances that indirectly proves a  
3 fact.

4 The law makes no distinction  
5 between the weight that you should give to  
6 either direct or circumstantial evidence,  
7 nor does the law say that one is better  
8 evidence than the other. You should  
9 consider all of the evidence, both direct  
10 and circumstantial and give it whatever  
11 weight you think it deserves.

12 I've indicated to you during  
13 the trial that certain evidence was  
14 admitted only for a particular limited  
15 purpose and not generally for all  
16 purposes. With the limited purpose for  
17 which evidence has been received, you may  
18 give it such weight as you think it  
19 deserves. But you may not use that  
20 evidence for any purpose other than the  
21 purpose I specified at the time the  
22 evidence was presented.

23 In deciding the facts you may  
24 have to decide which testimony to believe  
25 and not believe. You may believe

1 everything a witness says, part of it, or  
2 none of it. In deciding whether you  
3 believed any witness, I suggest you ask  
4 yourself a few questions:

5 Did the witness impress you as  
6 someone who was telling the truth? Did  
7 the witness demonstrate a bias or  
8 prejudice or resentment in this case? Did  
9 the witness have a personal interest in  
10 the outcome of case or a particular reason  
11 not to tell the truth?

12 Did the witness have the  
13 opportunity and ability to observe  
14 accurately the things he or she testified?  
15 Did the witness appear to understand the  
16 questions clearly and answer them  
17 directly? Did the witness seem to have a  
18 good memory?

19 Did the witness say or do  
20 something or fail to say or do something  
21 at an earlier time that was different from  
22 the testimony the witness gave during the  
23 trial? Or did the witness give testimony  
24 that differed from other evidence that you  
25 believed.

1           Of course, a simple mistake by  
2           a witness does not mean, necessarily, that  
3           the witness is not telling the truth, as  
4           he or she remembers it, because people see  
5           or hear things differently and sometimes  
6           forget things. So you need to consider  
7           whether a contradiction is an innocent  
8           lapse of memory or an intentional  
9           falsehood. And that may depend on whether  
10          it has to do with an important fact or  
11          only a small detail.

12           If a person is shown to have  
13          knowingly testified falsely concerning an  
14          important matter, you have the right to  
15          distrust the testimony of that witness  
16          concerning any matter. You may accept or  
17          reject some or all of the testimony of the  
18          witness and give it whatever weight you  
19          think it deserves.

20           The testimony of a witness may  
21          be discredited by a showing that the  
22          witness previously made statements that  
23          are different from the testimony the  
24          witness gave at trial.

25           Under Virgin Islands Law

1 earlier inconsistent statements are  
2 admissible in criminal trials only to  
3 impeach the credibility of the witness.  
4 You may use that evidence only to help you  
5 decide whether to believe the trial  
6 testimony of a witness and how much weight  
7 to give to it.

8           You've heard evidence that a  
9 witness has previously been convicted of a  
10 crime involving dishonesty and false  
11 statements. That evidence may be  
12 considered by you only for the purpose of  
13 determining the affect of the prior  
14 conviction on the credibility of the  
15 witness and for no other purpose.

16           You may consider the  
17 conviction only to help you decide whether  
18 to believe the witness' version of events  
19 and how much weight to give to his  
20 testimony.

21           Documents have been received  
22 in evidence from which portions have been  
23 deleted. These redactions are made for  
24 the purpose of ensuring that the evidence  
25 is presented to you in accordance with the

1 requirements of the law, to prevent  
2 confusion, or avoid error.

3 You should not concern  
4 yourself with the reasons for the removal  
5 of portions of the documents, nor should  
6 you attempt to guess what information  
7 might have been removed from the  
8 documents.

9 You may consider only the  
10 portions of the documents that have been  
11 admitted into evidence in arriving at your  
12 verdict.

13 Your decision should not be  
14 determined by the number of witnesses for  
15 or against a party, but should be based on  
16 all the facts in evidence. You may find  
17 that the testimony of a smaller number of  
18 witnesses, on one side, is more credible  
19 than the testimony of a greater number of  
20 witnesses on the other side.

21 The testimony of a single  
22 witness, if believable, is sufficient to  
23 prove any fact, if it convinces you, after  
24 consideration of all the evidence, that  
25 the fact has been proven, even if other

1 witnesses testified to the contrary.

2 The law permits the accused to  
3 testify on his own behalf. And the  
4 testimony of the Defendant is before you.  
5 As with the testimony of any witness, you  
6 must determine to what extent the  
7 testimony of the Defendant is credible.  
8 And the testimony of the Defendant is to  
9 be judged in the same way as that of any  
10 other witness.

11 You've heard that the  
12 Defendant made one or more statements. It  
13 is for you to decide first, whether the  
14 Defendant made the statements. And  
15 second, if so, how much weight you should  
16 give to it.

17 In making these decisions, you  
18 should consider all of the evidence  
19 including, the age, training, education  
20 occupation, physical and mental condition  
21 of the Defendant, as well as all of the  
22 circumstances under which the statements  
23 may have been made.

24 You've also heard testimony  
25 from Gerard Castor, who entered a plea

1 agreement that included an agreement to  
2 cooperate with the People and give  
3 truthful testimony in this trial.

4 The People are permitted to  
5 present the testimony of someone with whom  
6 they have entered into such an agreement,  
7 but you should consider this testimony  
8 with great care and caution.

9 In evaluating the testimony of  
10 a co-defendant, you should consider this  
11 factor, along with the others I called to  
12 your attention. Whether the testimony of  
13 the witness has been influenced by the  
14 People's agreement is for you to  
15 determine, and you may give his testimony  
16 such weight as you think it deserves.

17 The Defendant has pled not  
18 guilty to the crimes charged. The law  
19 presumes that the Defendant is innocent  
20 and the Defendant has no obligation to  
21 prove his innocence or to present any  
22 evidence. It is up to the People to  
23 prove, beyond a reasonable doubt, that the  
24 Defendant is guilty, and this burden stays  
25 on the People at all times.

1           You must find the Defendant  
2 not guilty, unless the Government  
3 convinces you, beyond a reasonable doubt,  
4 that he is guilty.

5           A reasonable doubt is what the  
6 term implies, a doubt that is reasonable.  
7 The People are not required to produce  
8 evidence that will exclude every  
9 conceivable possibility of the Defendant's  
10 innocence because almost everything in  
11 life is open to some degree of doubt.

12           The People are only required  
13 to prove a defendant's guilt, beyond a  
14 reasonable doubt, not beyond all possible  
15 doubt.

16           A reasonable doubt is a fair  
17 doubt based upon reason and common sense,  
18 the kind of doubt that will make a  
19 reasonable person hesitate to act. Proof  
20 beyond a reasonable doubt, then must be  
21 proof of such a convincing character that  
22 you would not hesitate to rely and act on  
23 it in the most important of matters.

24           While it's rarely possible to  
25 prove anything to an absolute certainty,

1 you must also remember that the Defendant  
2 must never be convicted on mere suspicion  
3 or speculation.

4 Reasonable doubt may also  
5 arise from the absence of evidence or a  
6 lack of proof. If the Jury views the  
7 evidence in the case as reasonably  
8 permitting either of two conclusions, one  
9 of innocence, the other of guilt, the Jury  
10 must adopt the conclusion of innocence.

11 A separate crime is charged in  
12 each count of the Second Amended  
13 Information. Each charge, and the  
14 evidence pertaining to each charge, should  
15 be considered separately by the Jury.

16 The fact that you may find the  
17 Defendant guilty or not guilty as to one  
18 of the Counts should not control your  
19 verdict as to any other count.

20 You're here to decide only  
21 whether the People have proven, beyond a  
22 reasonable doubt, that the Defendant is  
23 guilty of the crimes with which he is  
24 charged. The Defendant is not on trial  
25 for any act, conduct or offense not

1       alleged in the Second Amended Information.  
2       Nor are you concerned with the guilt or  
3       innocence of any person not on trial in  
4       this case.

5                If the evidence convinces you,  
6       beyond a reasonable doubt, of the guilt of  
7       the Defendant for one or more of the  
8       crimes charged, you should so find, even  
9       though you may believe that one or more  
10      other persons, who are not charged in the  
11      Second Amended Information, are also  
12      guilty of the same or some other offense.

13               Similarly, if you are not  
14      convinced, beyond a reasonable doubt, that  
15      the Defendant committed one or more  
16      offenses charged in the Second Amended  
17      Information, you should find the Defendant  
18      not guilty of those offenses, regardless  
19      of whether one or more other persons, who  
20      are not charged in the Second Amended  
21      Information, is guilty of those or other  
22      crimes.

23               I'll not read the Second  
24      Amended Information to you because you'll  
25      have a copy in the jury room. In summary,

1 Count I charges the Defendant with  
2 conspiracy to evade or defeat gross  
3 receipt taxes.

4 Count II charges willful  
5 failure to collect or pay gross receipt  
6 taxes.

7 And Count III charges fraud  
8 and false statements.

9 I'll now instruct on the  
10 elements of the offenses charged. After  
11 considering all of the evidence, if you  
12 find that the People have proven each and  
13 every element of a crime with which the  
14 Defendant is charged, beyond a reasonable  
15 doubt, you should find the Defendant  
16 guilty of that charge.

17 After considering all of the  
18 evidence, if you find that the People have  
19 not proven one or more elements of a crime  
20 with which the Defendant is charged,  
21 beyond a reasonable doubt, you should find  
22 the Defendant not guilty of that charge.

23 In order to prove the offense  
24 of conspiracy to evade or defeat gross  
25 receipt taxes as charged in Count I of the

1 Second Amended Information, the People  
2 must prove each of following elements  
3 beyond a reasonable doubt:

4 During the period between  
5 January 1st, 2002 and February 25, 2008 on  
6 St. Thomas US Virgin Islands, the  
7 defendant, Louis Milton Willis, conspired  
8 with another person to evade or defeat  
9 gross receipts tax, a tax imposed under  
10 Subchapter I of Title 33 of the Virgin  
11 Islands Code or by Virgin Islands Income  
12 Tax Law, with intent to defraud the  
13 Government of the Virgin Islands of money  
14 or property, and at least one of the  
15 conspirators committed at least one of the  
16 following acts to affect the object of the  
17 conspiracy:

18 From 2002 to 2006, while  
19 Director of the Virgin Islands Bureau of  
20 Internal Revenue, Louis Willis issued to  
21 Balboa Construction Corporation tax  
22 clearance letters that falsely stated that  
23 Balbo Construction Corporation was current  
24 in the filing and payment of its tax  
25 obligations, although Balboa Construction

1 Corporation was in fact delinquent in the  
2 filing of tax returns or the payment of  
3 taxes during that period.

4 You'll note that the Second  
5 Amended Information charges that the  
6 offenses were committed on or about a  
7 certain date or time period. The People  
8 do not have to prove with certainty the  
9 exact date of the alleged offense. It is  
10 sufficient if the People prove beyond a  
11 reasonable doubt the offense was committed  
12 on a date or during a period of time  
13 reasonably near the date or period  
14 alleged.

15 To act fraudulently, means to  
16 commit an act by knowingly misrepresenting  
17 or concealing a significant fact.

18 To act knowingly, means to  
19 commit an act voluntarily and  
20 intentionally and not because of a mistake  
21 or accident.

22 To act intentionally, means to  
23 purposely commit an act without regard to  
24 the law.

25 And to act unlawfully, means

1 to commit an act that is contrary to law.

2 A conspiracy is an agreement  
3 or understanding between two or more  
4 persons to commit a crime. The agreement  
5 or understanding does not have to be  
6 expressed or formal, nor does it need to  
7 be in writing. The agreement need not  
8 include all the details of how the  
9 conspiracy is to be carried out, nor is it  
10 necessary that the members of the  
11 conspiracy have directly stated between  
12 themselves the details or purpose of the  
13 scheme.

14 And it need not be proved that  
15 the conspirators actually succeeded in  
16 accomplishing their unlawful plan.

17 You should understand that  
18 merely being present at the scene of an  
19 event or merely associating with other  
20 persons, does not mean that a person has  
21 joined a conspiracy. A person who has no  
22 knowledge of a conspiracy, but who happens  
23 to act in way that advances some purpose  
24 of the conspiracy does not thereby become  
25 a member of the conspiracy.

1           But, a person may join a  
2           conspiracy without knowing all the details  
3           of the agreement or understanding and  
4           without knowing who all the other members  
5           of the conspiracy are. And, it is not  
6           necessary that the person agrees to play  
7           any particular part in carrying out the  
8           conspiracy.

9           A person may become a member  
10          of a conspiracy even if that person agrees  
11          to play only a minor role in the  
12          conspiracy as long as the person has an  
13          understanding of the unlawful nature of  
14          the plan and voluntarily and intentionally  
15          joins it.

16          The People must prove beyond a  
17          reasonable doubt that during the existence  
18          of the conspiracy, at least one member of  
19          the conspiracy performed at least one of  
20          the overt acts described in the Second  
21          Amended Information, for the purpose of  
22          furthering and helping to achieve the  
23          object of the conspiracy.

24          The Second Amended Information  
25          allege certain overt acts. The People do

1 not have to prove that all of these acts  
2 were committed or that any of these acts  
3 were themselves illegal.

4 Also, the People do not have  
5 to prove that each Defendant committed any  
6 of the overt acts. The People must prove  
7 beyond a reasonable doubt that at least  
8 one member of the conspiracy committed at  
9 least one of the overt acts alleged in the  
10 Second Amended Information and committed  
11 it during the time that the conspiracy  
12 existed for the purpose of furthering or  
13 helping to achieve the objects of the  
14 conspiracy.

15 In order to return a verdict  
16 of guilty of the conspiracy, you must  
17 unanimously agree on the overt act that  
18 you find was committed. If you cannot  
19 unanimously agree that the commission of  
20 the overt act has been proven, by a  
21 reasonable doubt, you must find the  
22 Defendant not guilty.

23 You may consider acts  
24 knowingly done and statements knowingly  
25 made, by a Defendant's co-conspirators

1 during the existence of the conspiracy and  
2 in furtherance of the conspiracy as  
3 evidence pertaining to the Defendant, even  
4 though the acts were done or the  
5 statements were made in the absence of and  
6 without the knowledge of the Defendant.

7 This include acts done or  
8 statements made before the Defendant  
9 joined the conspiracy, because a person  
10 who knowingly, voluntarily and  
11 intentionally joins an existing conspiracy  
12 is responsible for all the conduct of the  
13 co-conspirators from the beginning of the  
14 conspiracy to the end.

15 A criminal act committed in  
16 furtherance of a conspiracy by one member  
17 of the conspiracy is attributable to the  
18 other conspirators for the purpose of  
19 holding them responsible for that criminal  
20 act.

21 The People may prove the guilt  
22 of the Defendant through evidence of  
23 criminal acts committed within the scope  
24 of and during the course of a conspiracy  
25 of which the Defendant was a member

1 providing the criminal acts were  
2 reasonably foreseeable as a necessary and  
3 natural consequence of the conspiracy.

4 You may find the Defendant  
5 guilty of a crime charged in the Second  
6 Amended Information that was committed by  
7 other members in a conspiracy of which the  
8 Defendant was a member if the People  
9 proved, beyond a reasonable doubt, that a  
10 conspiracy existed, and that there was an  
11 agreement or an understanding between  
12 individuals to align themselves in a  
13 criminal venture; the Defendant was part  
14 of the conspiracy; one or more of the  
15 other persons in the conspiracy with the  
16 Defendant committed a substantive criminal  
17 act, and the substantive criminal act was  
18 committed in furtherance of and during the  
19 course of the conspiracy of which the  
20 Defendant was a member.

21 In order to prove the offense  
22 the willful failure to collect or pay over  
23 gross receipt taxes as charged in Count  
24 II, the People must prove each of the  
25 following elements, beyond a reasonable

1       doubt:

2                   During the period between  
3       approximately January 1st, 2002 and  
4       February 25, 2008, the defendant, Louis  
5       Milton Willis aided and abetted Balbo  
6       Construction Corporation, which was  
7       required by Subchapter I of Title 33 of  
8       the Virgin Islands Code or by Virgin  
9       Islands Income Tax Law to collect, account  
10      for, and pay over gross receipts tax in  
11      willfully failing to collect or truthfully  
12      account for and pay over those taxes.

13                   A person may be found guilty  
14      of an offense even if he did not  
15      personally do every act constituting the  
16      offense charged, if he aided or abetted  
17      the commission of the offense.

18                   In order to have aided or  
19      abetted the commission of an offense the  
20      Defendant must, either before or at the  
21      time the crime was committed; have known  
22      that the offense was being committed or  
23      going to be committed; have knowingly  
24      acted in some way for the purpose of  
25      causing, encouraging, or aiding in the

1 commission of the offense; and have  
2 intended that the crime be committed.

3 For you to find the Defendant  
4 guilty of an offense by reason of aiding  
5 and betting, the People must prove, beyond  
6 a reasonable doubt, that all of the  
7 elements of the offense were committed by  
8 some person or persons and that the  
9 Defendant aided and abetted in the  
10 commission of the crime.

11 You should understand that  
12 merely being present at the scene of an  
13 event or merely associating with others  
14 does not prove that a person has become an  
15 aider and abettor. A person who has no  
16 knowledge that a crime is being committed  
17 or about to be committed, but who happens  
18 to act in a way that advances some offense  
19 does not thereby become an aider and  
20 abettor.

21 Subchapter I of Title 33 of  
22 the Virgin Islands Code and Virgin Islands  
23 Income Tax Law requires every individual  
24 firm, corporation or association doing  
25 business in the Virgin Islands to report

1 and pay a tax on its gross receipts. As  
2 used in this instructions the term gross  
3 receipts means all receipts, whether cash  
4 or approved the tax payer receives for  
5 services or derives from trade, business,  
6 commerce or sales, as well as the value  
7 accruing from the sale of tangible  
8 personal property or services or both  
9 including rentals, fees, or other  
10 emoluments, however designated, without  
11 any deduction on account of the cost of  
12 the property sold, the cost of materials  
13 used, labor costs, royalties, taxes,  
14 interest or discount paid, or any expenses  
15 whatsoever. These provisions apply to  
16 contractors with the Government of the  
17 Virgin Islands for public works projects  
18 or undertakings.

19 In order to prove the offense  
20 of fraud and false statements as charged  
21 in Count III, the People must prove each  
22 of following elements, beyond a reasonable  
23 doubt:

24 On or about February 1st,  
25 2008, through -- I'm sorry, 2002, through

1 -- on or about January 1st, 2002 through  
2 February 25, 2008, on St. Thomas, US  
3 Virgin Islands, the defendant, Louis  
4 Milton Willis, willfully aided or assisted  
5 in or procured, counselled or advised the  
6 preparation or presentation of a return,  
7 affidavit, claim or other document, in  
8 connection with a matter arising under the  
9 Internal Revenue Laws that was fraudulent  
10 or false in any material matter.

11 A matter is material if it is  
12 significant or of such a nature that  
13 knowledge of the matter would have the  
14 potential to affect a person's decision  
15 making.

16 The intent or knowledge of a  
17 person, at any given time, may not  
18 ordinarily be proven directly because  
19 there is no way of directly observing the  
20 human mind at work. In determining what a  
21 person knew or intended, at a particular  
22 time, you may consider any statements made  
23 or not made or any acts done or not done  
24 by that person and all the other facts and  
25 circumstances in evidence.

1           You may infer, but you are not  
2           required to infer, that a person intends  
3           the natural and probable consequences of  
4           an act he knowingly does or knowingly  
5           fails to do.

6           Each of the offenses charged  
7           in the Second Amended Information requires  
8           proof of specific intent. Counts I and II  
9           require proof that the Defendant intended  
10          to evade or defeat the filing and payment  
11          of taxes.

12          And, Count III, requires proof  
13          that the Defendant fraudulently and  
14          intended to make a material false  
15          statement.

16          A person acts in good faith  
17          when he has an honestly held belief,  
18          opinion or understanding that his conduct  
19          is lawful, even though the belief, opinion  
20          or understanding turns out to be  
21          inaccurate or incorrect.

22          If you find that the Defendant  
23          acted in good faith with regard to any  
24          particular offense, his belief would be a  
25          complete defense to that charge because

1 good faith on the part of the Defendant  
2 would be inconsistent with the Defendant  
3 acting with the required mental state.

4 But, a Defendant does not act  
5 in good faith if, even though he honestly  
6 held a certain belief, opinion, or  
7 understanding, he also knowingly made  
8 false statements or misrepresentations to  
9 others.

10 It is the People's burden to  
11 prove each element of the offense,  
12 including the mental state element. And  
13 the Defendant does not have the burden of  
14 proving good faith. Good faith is a  
15 defense because it is inconsistent with a  
16 mental state the People are required to  
17 prove, beyond a reasonable doubt, to  
18 establish the Defendant's guilt to the  
19 offense charged.

20 In deciding whether the People  
21 proved that the Defendant acted with the  
22 required mental state or instead that he  
23 acted in the good faith, you should  
24 consider all of the evidence presented in  
25 the case that may bear on that Defendant's

1 state of mind.

2 If you find, from the  
3 evidence, that the Defendant acted in good  
4 faith, as I've defined it, or if you find,  
5 for any other reason, that the People have  
6 failed to prove, beyond a reasonable  
7 doubt, that the Defendant acted with the  
8 required mental state, you must find the  
9 Defendant not guilty of that offense.

10 Proof of motive is not a  
11 necessary element of any crime with which  
12 the Defendant is charged. Proof of motive  
13 does not establish guilt, nor does lack of  
14 proof of motive establish that the  
15 Defendant is innocent.

16 If the guilt of the Defendant  
17 is shown, beyond a reasonable doubt, it is  
18 immaterial what the motive for the crime  
19 was or whether any motive has been shown.  
20 If the presence or absence of motive is a  
21 circumstance that you may consider in  
22 bearing on the intent of the Defendant.  
23 The People do not have to prove motive.

24 You're instructed that if I  
25 have asked any questions of any of the

1 witnesses, made comments to any of the  
2 Attorneys or said or done anything during  
3 the trial or instructing you now, whereby  
4 it seems to you that I'm inclined to favor  
5 the case of either the People or the  
6 Defendant, you must remove any such  
7 impression from your minds and not allow  
8 yourselves to be influenced by it because  
9 no such impression was intended to be  
10 created.

11 What the verdict shall be is  
12 the exclusive duty and responsibility of  
13 the Jury. As I've told you many times,  
14 you are the sole judges of the fact.

15 I previously advised you that  
16 you should not read any news stories or  
17 articles or listen to any radio or  
18 television reports about this case or  
19 about anyone involved in it during the  
20 trial.

21 I also suggested that you  
22 avoided reading any newspapers and avoid  
23 listening to any television or radio news  
24 casts at all during the trial. But, there  
25 has been extensive press coverage of this

1 matter and it is possible that you may  
2 have accidentally found yourself reading  
3 or listening to something that you should  
4 not have before you could do anything  
5 about it.

6 If so, you must not discuss  
7 any information from news reports with  
8 your fellow jurors at any time, including  
9 your deliberations, you must put it out of  
10 your mind and you must not consider it in  
11 arriving at your verdict.

12 Reporters writing about this  
13 trial may not have listened to all of the  
14 evidence and may have gotten information  
15 from people who did not testify under  
16 oath, subject to cross examination. Or  
17 the reporter may have emphasized an  
18 unimportant point, made unfounded  
19 inferences or simply have been wrong.

20 News reports are not part of  
21 the evidence and you must not permit any  
22 information from them to influence your  
23 judgment in arriving at a true verdict.

24 It is important you understand  
25 that this case must be decided only upon

1 the evidence presented in Court and the  
2 instructions I give you.

3 The punishment provided by law  
4 for the offenses charged in the First  
5 Amended Information is a matter  
6 exclusively for the Court to decide and  
7 should never be considered by the Jury in  
8 any way in arriving at an impartial  
9 verdict as to the offenses charged.

10 You have been chosen and sworn  
11 only to try the issues of fact presented  
12 by the parties. Under no circumstances  
13 should your deliberations be influenced by  
14 bias, passion, prejudice, sympathy, pity  
15 or public opinion. In every respect your  
16 judgment should be considered deliberate  
17 and objective and based on the facts and  
18 reasonable inferences logically supported  
19 by the evidence.

20 Also, speculation and  
21 conjecture must play no role in the  
22 performance of the your duties.

23 Both the People and the  
24 Defendant expect that you will carefully  
25 and impartially consider all of the

1 evidence, follow the law as stated by the  
2 Court, and reach a just verdict regardless  
3 of the consequences.

4 Some of you may have taken  
5 notes. Those notes are not evidence and  
6 should not -- should only aid the memory  
7 of the Juror who took the notes and must  
8 not be given greater weight than each of  
9 your independent, individual memories of  
10 the evidence in the case.

11 Any notes taken by any Juror  
12 concerning this case should not be  
13 disclosed to anyone other than a fellow  
14 Juror and must be given to the Marshal at  
15 the end of case.

16 I'm sure you'll be pleased to  
17 hear that I now come to the final part of  
18 these instructions, the rules for your  
19 deliberations. Upon retiring to the jury  
20 room, you must first elect one of your  
21 members to act as your foreperson to  
22 preside over your deliberations and to be  
23 your spokesperson in Court.

24 The opinion or vote of the  
25 foreperson carries no greater weight than

1 that of any other juror. Your verdict  
2 must represent the collective judgment of  
3 the jury, and in order for you to return a  
4 verdict, each juror must agree to it. In  
5 other words, your verdict must be  
6 unanimous.

7 During the trial you may have  
8 formed impressions as to how it should be  
9 decided. Do not allow those impressions  
10 to prevent you from fairly and frankly  
11 discussing this case with any of your  
12 fellow jurors who may have a different  
13 point of view.

14 It is your duty to give  
15 careful attention to the views of your  
16 fellow jurors, to consult with one  
17 another, and to deliberate with a view to  
18 reaching an agreement if you can do so  
19 without violence to individual judgment.

20 Each of you must decide the  
21 case for yourself. Do not hesitate to  
22 re-examine and change your opinion if you  
23 are convinced it is wrong, but do not  
24 surrender your honest belief as to the  
25 weight or effect of the evidence solely

1 because of the opinion of your fellow  
2 jurors or for the mere purpose of  
3 returning a verdict.

4 Remember at all times you are  
5 not partisans. You are judges, judges of  
6 the facts. Your sole interest is to seek  
7 the truth from the evidence presented  
8 during the trial.

9 A copy of these instructions  
10 will be available in the jury room for you  
11 to consult if you find it necessary, and  
12 that should avoid most, if not all,  
13 questions during your deliberations. But  
14 if it becomes necessary to communicate  
15 with me during your deliberations, you may  
16 send a note, signed by your foreperson by  
17 one or more other members of Jury, through  
18 the Marshal.

19 No member of the Jury should  
20 ever attempt to communicate with me by any  
21 means other than a signed writing. And I  
22 will never communicate with any member of  
23 the Jury other than in writing or orally  
24 here in court. The Marshals, as well as  
25 all other persons, are forbidden to

1       communicate in any way or manner with any  
2       member of the jury concerning the  
3       evidence, your opinions or the  
4       deliberations.

5               Bear in mind also that you  
6       never to reveal, to any person, not even  
7       to me, how the jury stands either by the  
8       number of votes for or against conviction,  
9       or otherwise on the question of whether  
10       the People have sustained the burden of  
11       proof until you have reached a unanimous  
12       verdict or have been discharged.

13               To assist you in communicating  
14       your verdict, forms of verdict have been  
15       prepared for you. There are two forms for  
16       each offense charged in the Second Amended  
17       Information, one for a not guilty verdict  
18       and one for a guilty verdict.

19               When you have made a unanimous  
20       determination of the guilt or innocence of  
21       the Defendant as to a count of the Second  
22       Amended Information, you will select and  
23       complete the appropriate form indicating  
24       your verdict of either guilty or not  
25       guilty.

1           Your foreperson will date the  
2 verdict form, and each of you will sign  
3 the appropriate form for each count.  
4 Then, advise the Marshal that you've  
5 reached a verdict and you'll be returned  
6 to the courtroom. Your foreperson must  
7 bring the verdict forms with him or her.

8           I'll ask if you've reached a  
9 verdict and if so the foreperson should  
10 stand and either announce the Jury's  
11 verdict as to each Count, one at a time,  
12 by reading the completed form of verdict  
13 that you've signed or ask that the Court  
14 announce the verdict.

15           The foreperson should then  
16 hand up verdict forms for the Court's  
17 inspection. And upon request of either  
18 the People or the Defendant, the Clerk  
19 will poll each Juror.

20           When you receive the  
21 instructions, the written instructions you  
22 will see that the last portion of those  
23 instructions are the verdict forms. There  
24 are, as I indicated two for each offense  
25 charged. One for a not guilty verdict,

1       one for a guilty verdict.

2               When you have reached a  
3 verdict, you select the appropriate form,  
4 this one is for Count I, you would then,  
5 the foreperson would sign on the indicated  
6 line and date the verdict form and each of  
7 the other jurors agreeing to that verdict  
8 would sign on one of the lines below.

9               You'll see that there are also  
10 two forms for Count II, one for not  
11 guilty, one for guilty. And two forms for  
12 Count III.

13              Now, after I speak with the  
14 Attorneys one last time, I'll permit you  
15 to retire for your verdict. Counsel  
16 approach.

17                               **[Sidebar conference]**

18              THE COURT: I saw a few typos  
19 in there that I'll correct before I send  
20 them to the Jury. And I'll make sure that  
21 all the references to the Information  
22 include the Second Amended Information.

23              But first, are there any  
24 instructions that I indicated that I would  
25 give that I failed to give?

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ATTORNEY MOORE: No.

ATTORNEY GEORGE-COUNTS: I  
didn't see any.

ATTORNEY MOORE: Your Honor, I  
didn't see any either. I frankly have no  
particular objection to the instructions  
as given.

I do want to renew my motion  
for Judgment of Acquittal on the grounds  
stated at the end of the Government's  
case. And I have no additional argument  
to add at this time in the interest of  
time.

THE COURT: All right.  
Certainly. All right. Do the People have  
any objections?

ATTORNEY GEORGE-COUNTS:  
Objection to the?

THE COURT: To the  
instructions as given?

ATTORNEY GEORGE-COUNTS: No.

THE COURT: All right. The  
renewed motion is denied based on the same  
reasons previously given.

ATTORNEY MOORE: Thank you,

1 Your Honor.

2 [End of sidebar]

3 THE COURT: Ladies and  
4 Gentlemen, at this point in the trial I'd  
5 like to say that there aren't many  
6 opportunities for me as a Judge to make  
7 people happy, but I'm going to make three  
8 of you happy at this point.

9 The alternates will not  
10 deliberate with the 12 of you who will  
11 decide this case. So once, I step outside  
12 the courtroom and you are permitted to  
13 deliberate, you three may leave.

14 However, I ask you to continue  
15 to follow my instructions regarding not  
16 discussing this case, not looking at the  
17 news, not reading the newspapers etc.  
18 Because, it's possible that you still may  
19 be called to deliberate.

20 So until a verdict has been  
21 reached in this case, I ask you to comply  
22 with those instructions. With that, I  
23 will permit the Jury to retire to  
24 deliberate.

25 [JURY EXITS]

1 THE COURT: Counsel, the  
2 redactions on the transcript, have you  
3 taken care of that?

4 ATTORNEY GEORGE-COUNTS: Yes.  
5 It's not totally finished because my  
6 marker is going dry. But, I'm thinking we  
7 can make a copy by just putting a white  
8 paper over that.

9 THE COURT: I'll leave you to  
10 that. I'll make those corrections. We  
11 will stand in recess.

12 ATTORNEY MOORE: Your Honor?

13 THE COURT: Yes.

14 ATTORNEY MOORE: I apologize,  
15 Your Honor, are we to stay here until then  
16 and then if we are allowed to leave the  
17 courtroom, are we allowed to return to our  
18 offices?

19 THE COURT: Sure, as long as  
20 you're on-call.

21 ATTORNEY MOORE: Thank you,  
22 Your Honor.

23 THE COURT: In fact, you don't  
24 have to stay. I'm going to make those  
25 changes in terms of typos on the verdict

1 forms and give them to the Clerk.

2 So once the two of you have  
3 agreed on the redactions to that exhibit,  
4 you're free to go.

5 ATTORNEY MOORE: Thank you,  
6 Your Honor.

7 THE COURT: Thank you.

8 **[Recess/jury deliberates, trial resumes:]**

9 **[Jury enters]**

10 THE CLERK: Good evening,  
11 People of the Virgin Islands versus Louis  
12 Milton Willis.

13 ATTORNEY GEORGE-COUNTS:  
14 Denise George-Counts for the People.

15 ATTORNEY MOORE: Good evening,  
16 Treston Moore on behalf of Mr. Louis  
17 Willis, who is present with me in Court.  
18 Good evening Ladies and Gentlemen.

19 THE COURT: Ladies and  
20 Gentlemen, good evening have you reached a  
21 verdict?

22 JURY IN UNISON: Yes, we have,  
23 Your Honor.

24 THE COURT: All right. Do you  
25 wish to read the verdict or have the Court