Title 6.

Civil Procedure.

CHAPTER 1.

PROCESS.

SUBCHAPTER I.

Issuance, Service and Return.

§ 1. Definition; issuance of process. — (1) *Definition.* As used in this Code, the term "process" shall include all forms of writs, warrants, summonses, citations, libels and orders used in judicial proceedings.

(2) *Designation of private persons.* The court issuing any process in any proceeding may specially appoint and name in the process any person it deems suitable to execute or serve the process, except that a witness summons may not be served by a party or by a person who is less than eighteen years of age.

A private person to whom a process is directed for service or execution shall, upon acceptance of the said process, be responsible for the proper execution or service of such process according to law. No private person shall be compelled by any court or official to accept a process directed to him for service or execution. The special appointments authorized by this section shall be used freely when this will effect a saving of time or expense. (Code 1966, § 249(a) and (c); Code 1970, tit. 6, § 1.)

§ 2. Service and execution of process. — Every official who is made responsible by law for the service or execution of process and every private person who accepts the responsibility for the service or execution of process shall serve or execute such process as prescribed by law within a reasonable time after the receipt of such process unless prevented from doing so by conditions beyond his control. (Code 1966, § 250; Code 1970, tit. 6, § 2.)

§ 3. Return of service or execution. — The chief of police or policemen shall certify, and a private person shall report under oath, or affirm by endorsement on or attached to every process delivered to him for execution or service the manner and time of such execution or service or the reason for failure to make such execution or service. The process so endorsed, together with a statement of all fees and expenses charged, shall be returned without delay to the court or official by which issued. In no event shall the process be returned later than the date specified by the issuing court or official. (Code 1966, § 251; Code 1970, tit. 6, § 3.)

SUBCHAPTER II.

Fees and Costs.

§ 31. Fees. — Each chief of police, policeman or person authorized to execute or serve process, other than a member of the Micronesia police executing or serving a process in a criminal or civil contempt proceedings, or in juvenile delinquency proceedings, shall be entitled to collect the following fees for duties performed by him:

(1) For serving any form of process, one dollar plus three cents per mile for any travel actually performed and necessary in connection with the service. Any process delivered to the chief of police or any policeman shall be sent by him to a policeman who is located where he can serve it more quickly or with less travel;

(2) For levying a writ of execution and making a sale thereunder, the fees provided above for serving of any process, plus five dollars for conducting the sale, and five cents for every dollar collected up to fifty dollars, and two cents for every dollar collected over fifty dollars.

(3) In addition to the above, any chief of police shall be allowed his actual, reasonable and necessary expenses for caring for any property seized under an attachment or levy of execution; provided, however, that no caretaker or watchman shall be allowed in excess of one dollar for each twelve hours of service. (Code 1966, §§ 256 and 249(b); Code 1970, tit. 6, § 31.)

§ 32. Prepayment for service. — Except when the process is issued on behalf of the Trust Territory or an officer or agency thereof or under section 704 of this title, any chief of police, policeman, or other person authorized to serve or execute process may require the person requesting him to act to prepay his fees and estimated expenses or give reasonable security therefor before serving or executing any process. (Code 1966, § 257; Code 1970, tit. 6, § 32.)

§ 33. Disposition of proceeds. — Each chief of police, policeman or other person authorized to serve or execute process, shall be entitled to retain for his own use the fees authorized in this subchapter, provided he is not an employee of the Trust Territory as a member of the Micronesia police or otherwise when the services are performed. If he is such an employee, he shall remit monthly to the treasurer of the Trust Territory all fees collected for services and travel in servicing or executing process, less any reasonable expenses actually paid

by him personally for travel in connection with these duties. Being a salaried employee of a municipality, however, shall not prevent a policeman or other authorized person from retaining his fees for his own use. (Code 1966, § 258; Code 1970, tit. 6, § 33.)

SUBCHAPTER III.

Foreign Service of Process.

§ 41. Jurisdiction over acts of nonresidents. — Any person, corporation or legal entity, whether or not a citizen or resident of the Trust Territory, who in person or through an agent does any of the acts enumerated in this subchapter, thereby submits himself or its personal representative to the jurisdiction of the courts of the Trust Territory as to any cause of action arising from:

(1) The transaction of any business within the Trust Territory;

(2) The operation of a motor vehicle within the Trust Territory;

(3) The operation of a vessel or craft within the territorial waters or airspace of the Trust Territory;

(4) The commission of a tortious act within the Trust Territory;

(5) Contracting to insure any person, property or risk located within the Trust Territory at the time of contracting;

(6) The ownership, use or possession of any real estate within the Trust Territory;

(7) Entering into an express or implied contract, by mail or otherwise, with a resident of the Trust Territory to be performed in whole or in part by either party in the Trust Territory;

(8) Acting within the Trust Territory as director, manager, trustee or other officer of any corporation organized under the laws of or having a place of business within the Trust Territory, or as executor or administrator of any estate within the Trust Territory;

(9) Causing injury to persons or property within the Trust Territory arising out of an act of omission outside of the Trust Territory by the defendant, provided in addition, that at the time of the injury either:

(a) The defendant was engaged in the solicitation or sales activities within the Trust Territory; or

(b) Products, materials, or things processed, serviced or manufactured by the defendant anywhere were used or consumed within the Trust Territory; and

(10) Living in the marital relationship within the Trust Territory notwithstanding subsequent departure from the Trust Territory, as to all obligations arising for alimony, child support or property rights under title 39 of this Code, if the other party to the marital relationship continues to reside in the Trust Territory. (P. L. No. 7-24, § 1.)

§ 42. Personal service outside the Trust Territory. — Service of process may be made upon any person subject to the jurisdiction of the courts of the Trust Territory under this subchapter by personally serving the summons upon the defendant outside the Trust Territory. Such service has the same force and effect as though service had been personally made within the Trust Territory. (P. L. No. 7-24, § 2.)

§ 43. Manner of service. — Service of summons shall be made under this subchapter in like manner as service within the Trust Territory by any officer or person authorized to make service of summons in the state or jurisdiction

where the defendant is served. An affidavit of the server shall be filed with the court issuing said summons stating the time, manner and place of service. The court may consider the affidavit or any other competent proofs in determining whether service has been properly made. (P. L. No. 7-24, § 3.)

§ **44. Default.** — No default shall be entered until the expiration of at least thirty days after service. A default judgment rendered on service made under this subchapter may be set aside only on a showing which would be timely and sufficient to set aside a default judgment entered upon personal service within the Trust Territory. (P. L. No. 7-24, § 4.)

§ **45. Effect of jurisdiction limited.** — Only causes of action arising from acts or omissions enumerated in this subchapter may be asserted against a defendant in an action in which jurisdiction over him is based upon this subchapter. (P. L. No. 7-24, § 5.)

§ **46. Effect of act on other methods of service.** — Nothing contained in this subchapter limits or affects the right to serve any process in any other manner now or hereafter provided by law. (P. L. No. 7-24, § 6.)

CHAPTER 2

ABSENT DEFENDANTS.

Sec.

§ **51. Order to appear or plead.** — In any action in the high court for annulment, divorce or adoption or to enforce or remove any lien upon or claim to real or personal property within the Trust Territory, or to adjudicate title to any interest in such property, where any defendant cannot be served within the Trust Territory, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a certain day. (Code 1966, § 338; Code 1970, tit. 6, § 51.)

§ **52. Personal service of order.** — Such orders may be served on the absent defendant personally, wherever found, or, in the case of property, upon the person or persons in possession or charge thereof, if any, or by mailing, postage prepaid, a copy of the order to the absent defendant at his last known address. Where personal service is not practicable, the order shall be posted in one or more conspicuous places as the court may direct, for a period of not less than two weeks. (Code 1966, § 338; Code 1970, tit. 6, § 52.)

§ **53. Procedure if absent defendant fails to appear or plead.** — If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the Trust Territory, but any adjudication shall, as regards the absent defendant without appearance, affect only the property or status which is the subject of the action. (Code 1966, § 338; Code 1970, tit. 6, § 53.)

§ **54. Judgment may be set aside.** — Any defendant not so personally notified may at any time within one year after final judgment enter his appearance and thereupon the court shall set aside the judgment and permit such defendant to plead, on payment of such costs as the court deems best; provided, however, that this right shall not extend to decrees of annulment, divorce or adoption. (Code 1966, § 338; Code 1970, tit. 6, § 54.)

CHAPTER 3.

VENUE.

§ 101. General provisions. — (1) Except as otherwise provided, a civil action in which one of the defendants lives in the Trust Territory shall be brought in a court within whose jurisdiction the defendant or the largest number of defendants live or have their usual places of business or employment.

(2) If an action is based on a wrong not connected with a contract, it may be brought in a court within whose jurisdiction the case of action arose.

(3) An action to collect a tax may be brought in a court within whose jurisdiction the defendant may be served.

(4) A civil action against a defendant who does not live in the Trust Territory may be brought in a court within whose jurisdiction the defendant can be served or his property can be attached.

(5) A civil action by or against the executor, administrator, or other representative of a deceased person for a cause of action in favor of or against the deceased may be brought in any court in which it might have been brought by or against the deceased. (Code 1966, § 339(a); Code 1970, tit. 6, § 101.)

Motion for change of venue denied where libel action is brought in Mariana Islands District against newspaper distributed throughout Trust Territory. — In libel action by chief public defender for the Trust Territory, a resident of Saipan, against newspaper published in the Marshall Islands and distributed throughout the Trust Territory, venue in the Mariana Islands District was, under both statute and the better common law view, properly laid, and motion for change of venue to the Marshall Islands District, made on ground it would be inequitable to require the action to be defended in Saipan, would be denied. St. Pierre v. The "Micronitor," 6 TTR 249 (1973).

§ 102. Admiralty and maritime. — Suit in an admiralty and maritime matter shall be brought in the district within which the defendant can be served, or within which his property can be attached, or, when the suit is against property itself, in the district within which the ship, goods or other thing involved can be seized. (Code 1966, § 339(b); Code 1970, tit. 6, § 102.)

§ 103. Actions brought in high court. — (1) An action in the high court to enforce or remove any lien upon or claim to real or personal property within the Trust Territory, or to adjudicate title to any interest in such property, or any action affecting title to land within the Trust Territory or any interest therein, shall be brought in the district where the property or some part of it is located.

(2) Any other action in the high court in which one of the parties is a resident of the Trust Territory shall be brought in the district in which one of the parties thereto lives or has his usual place of business or employment or, if the action is based upon a wrong not connected with a contract, it may be brought in the district in which the cause of action arose.

(3) In all other cases, actions in the high court may be brought in the district within which any defendant can be served or his property attached. (Code 1966, § 339(c); Code 1970, tit. 6, § 103.)

Motion for change of venue denied where libel action is brought in Mariana Islands District against newspaper distributed throughout Trust Territory. — In libel action by chief public defender for the Trust Territory, a resident of Saipan, against newspaper published in the Marshall Islands and distributed throughout the Trust Territory, venue in the Mariana Islands District was, under both statute and the better common law view, properly laid, and motion for change of venue to the Marshall Islands District, made on ground it would be inequitable to require the action to be defended in Saipan, would be denied. St. Pierre v. The "Micronitor," 6 TTR 249 (1973).

§ 104. Change of venue. — (1) Nothing in this chapter shall impair the jurisdiction of a court over any matter involving a party who does not make timely and sufficient objection to the venue.

(2) If a matter is brought in the wrong venue, the court in which it is brought may, on its own motion or otherwise, transfer it to any court in which the matter might properly have been brought.

(3) The high court, if it deems the interests of justice will be served thereby, may hear any matter in a district other than that in which it is brought, or may hear it partly in one district and partly in another district or districts, or may transfer it from one district to another. (Code 1966, § 339(d); Code 1970, tit. 6, § 104.)

Motion for change of venue denied where libel action is brought in Mariana Islands District against newspaper distributed throughout Trust Territory. — In libel action by chief public defender for the Trust Territory, a resident of Saipan, against newspaper published in the Marshall Islands and distributed throughout the Trust Territory, venue in the Mariana Islands District was, under both statute and the better common law view, properly laid, and motion for change of venue to the Marshall Islands District, made on ground it would be inequitable to require the action to be defended in Saipan, would be denied. St. Pierre v. The "Micronitor," 6 TTR 249 (1973).

CHAPTER 4.

SURVIVAL OF ACTIONS.

Sec.

§ 151. Survival of claims after death of tort-feasor or other person liable. — (1) A cause of action based on tort shall not be lost or abated because of the death of the tort-feasor or other person liable. An action thereon may be brought or continued against the personal representative of the deceased person, but punitive or exemplary damages may not be awarded nor penalties adjudged in the action.

(2) Where a cause of action arises simultaneously with or after the death of the tort-feasor or other person who would have been liable if his death had not occurred simultaneously with the act, omission, circumstance or event giving rise to the cause of action, or if his death had not intervened between the wrongful act, omission, circumstance or event and the coming into being of the cause of action, an action to enforce it may be maintained against the personal representative of the tort-feasor or other person. (Code 1966, § 25A; Code 1970, tit. 6, § 151.)

CHAPTER 5.

ACTIONS FOR WRONGFUL DEATH.

§ 201. Liability in action for wrongful death; proceedings. — (1) When the death of a person is caused by wrongful act, neglect or default such as would have entitled the party injured to maintain an action and recover damages in respect thereof if death had not ensued, the person or corporation which would have been liable if death had not ensued, or the administrator or executor of the estate of such person, as such administrator or executor, shall be liable to an action for damages notwithstanding the death of the person injured, and although the death was caused under circumstances which make it in law murder in the first or second degree, or manslaughter.

(2) When the action is against such administrator or executor the damages recovered shall be a valid claim against the estate of such deceased person.

(3) When death is caused by wrongful act, neglect or default in another state, territory or foreign country, for which a right to maintain an action and recover damages in respect thereof is given by a statute of that jurisdiction, such right of action may be enforced in the Trust Territory. Every such action brought under this section shall be commenced within the time prescribed for the commencement of such actions by the statute of such other state, territory or foreign country. (Code 1966, § 25(a); Code 1970, tit. 6, § 201.)

Extent of personal representative's right to sue. — Personal representative of deceased may bring any action for wrongful death such as would have entitled party injured to maintain action if death had not ensued. Ychitaro v. Lotius, 3 TTR 3 (1965).

Wrongful death damages provision construed. — A wrongful death statute, in confining the damages recoverable to compensation for pecuniary loss, merely intends that no compensation be given for the loss of things without a definite pecuniary value. Sepeti v. Fitek, 5 TTR 613 (1972).

§ 202. Action to be brought in name of personal representative; beneficiaries of action. — Every action for wrongful death must be brought in the name of the personal representative of the deceased, but shall be for the exclusive benefit of the surviving spouse, the children and other next of kin, if any, of the decedent as the court may direct. (Code 1966, § 25(b); Code 1970, tit. 6, § 202.)

Limitation on damages award. — Court may award damages in wrongful death actions not exceeding ten thousand dollars, proportional to pecuniary injury resulting from such death, to surviving spouse, children or other next of kin. Ychitaro v. Lotius, 3 TTR 3 (1965).

Extent of personal representative's right to sue. — Personal representative of deceased may bring any action for wrongful death such as would have entitled party injured to maintain action if death had not ensued. Ychitaro v. Lotius, 3 TTR 3 (1965).

Logical person to represent deceased. — Logical person to represent deceased in wrongful death action in Truk is father or maternal uncle of deceased child. Ychitaro v. Lotius, 3 TTR 3 (1965).

Proper name to bring action in is procedural matter. — Requirement of bringing action for wrongful death in name of personal representative of deceased is procedural matter which should not affect question of liability except to protect defendant from actions by other claimants. Ychitaro v. Lotius, 3 TTR 3 (1965).

§ 203. Damages; limitation period; action may be settled by personal representative. — (1) The trial court may award such damages, not exceeding the sum of one hundred thousand dollars, as it may think proportioned to the pecuniary injury resulting from such death, to the persons, respectively, for whose benefit the action was brought; provided, however that where the decedent was a child, and where the plaintiff in the suit brought under this chapter is the parent of such child, or one who stands in the place of a parent pursuant to customary law, such damages shall include his mental pain and suffering for the loss of such child, without regard to provable pecuniary damages.

(2) Except as otherwise provided, every such action shall be commenced within two years after the death of such person.

(3) A personal representative appointed in the Trust Territory may, with the consent of the court making such appointment, at any time before or after the commencement of the suit, settle with the defendant the amount to be paid. (Code 1966, § 25(c); Code 1970, tit. 6, § 203; P.L. No. 4C-36, § 1.)

Support obligation does not affect entitlement to damages. — Whether there is an obligation under Trukese custom to support parents or other members of the family, largely depending on their need, does not affect the next of kin's entitlement to damages for pecuniary loss under the wrongful death statute. Sepeti v. Fitek, 5 TTR 613 (1972).

Construction of "pecuniary". — The word "pecuniary" as used in death statutes has been said not to be used in a sense of the immediate loss of money or property but to look to prospective advantages of a pecuniary nature that have been cut off by the premature death of the person from whom the benefit would have come. Sepeti v. Fitek, 5 TTR 613 (1972).

Annuity and mortality tables. — The introduction of annuity and mortality tables is not a prerequisite to a recovery of substantial damages for wrongful death and the court is entitled to estimate life expectancy from observation of the witnesses, the survivors, and from such other evidence as may be available. Sepeti v. Fitek, 5 TTR 613 (1972).

Life expectancy of next of kin. — The life expectancy of the next of kin, if they are the only survivors, must govern the pecuniary benefits they might reasonably expect to receive from the decedent had his life not been cut short. Sepeti v. Fitek, 5 TTR 613 (1972).

CHAPTER 6.

ACTIONS AGAINST THE TRUST TERRITORY.

§ 251. Claims permitted in trial division; set-offs, counterclaims, etc.; jury; funds for payments of judgments. — (1) Actions upon the following claims may be brought against the government of the Trust Territory in the trial division of the high court which shall have exclusive original jurisdiction thereof:

(a) Civil actions against the government of the Trust Territory for the recovery of any tax alleged to have been erroneously or illegally collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the tax laws.

(b) Any other civil action or claim accruing on or after September 23, 1967, against the government of the Trust Territory founded upon any law of this jurisdiction or any regulation issued under such law, or upon any express or implied contract with the government of the Trust Territory, or for liquidated or unliquidated damages in cases not sounding in tort.

(c) Civil actions against the government of the Trust Territory on claims for money damages, accruing on or after September 23, 1967, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the government of the Trust Territory, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) In any claim or proceeding brought pursuant to this section, the trial division of the high court's jurisdiction shall extend to any set-off, counterclaim or other claim or demand whatever on the part of the government of the Trust Territory against any plaintiff commencing an action under this section.

(3) Notwithstanding the provisions of chapter 8, title 5 of this Code or any district legislation that may be adopted pursuant thereto, all actions brought under this section shall be tried by the court without a jury.

(4) Judgments rendered pursuant to this section shall be paid from such funds as may be appropriated by the Congress of Micronesia or the Congress of the United States for that purpose. (Code 1966, Ch. 5; Code 1970, tit. 6, § 251.)

Sovereign immunity; suits against nations. — Implicit in sovereignty of nations is right to determine how, when and under what circumstances they may be sued. Urrimech v. Trust Territory, 1 TTR 534 (1958).

Claims originating during Japanese administration. — Although the Code now allows the maintenance of actions against the Trust Territory and its agents for claims arising after the effective date of this section there is no longer any provision of law allowing actions arising from claims originating during the Japanese administration. Rivera v. Trust Territory, 4 TTR 140 (1968).

Federal tort claims act to be followed. — The legislative history of statute demonstrates an intent to follow United States federal tort claims act. Ikosia v. Trust Territory (Tr. Div., December, 1975).

Right of defendant in ejectment suit to name government as party defendant where he claims title through government. — In suit of ejectment against defendant whereby he claimed title through Trust

Territory government, the defendant was entitled as a matter of law to an order making the government a party defendant at any time up to trial. Chutaro v. Sandbargen, 5 TTR 541 (1971).

Plaintiff has standing to maintain action against government where complaint alleges violation of law by High Commissioner. — Plaintiffs had standing to maintain unconsented to action against the government where complaint alleged the High Commissioner acted in violation of law providing that lease be executed only after obtaining advice and opinion of the district land advisory board. Guerrero v. Johnston, 6 TTR 124 (1972).

Plaintiff has no cause of action against government where complaint alleges negligent maintenance of equipment by fireman. — Plaintiff has no cause of action against the government where plaintiff has pled facts which charge fireman with failure to act and negligently maintaining fire equipment so it could not be used and where statute subjects government to liability for loss of property under the circumstances where the government, if a private person, would be liable to claimant in accordance with the law of the place where the act or omission occurred. Ikosia v. Trust Territory (Tr. Div., December, 1975).

§ 252. Exceptions. — The trial division of the high court shall not have jurisdiction under the foregoing section 251 of:

(1) Any civil action or claim for a pension.

(2) Any claim based on an act or omission of an employee of the government, exercising due care, in the execution of a law or regulation, whether or not such law or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of any agency or employee of the government, whether or not the discretion involved be abused.

(3) Any claim arising in respect of the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer.

(4) Any claim for damages caused by the imposition or establishment of a quarantine by the government of the Trust Territory or any agency thereof.

(5) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse or process, libel, slander, misrepresentation, deceit or interference with contract rights.

(6) Any claim arising outside of the Trust Territory. (Code 1966, Ch. 5; Code 1970, tit. 6, § 252.)

Federal tort claims act to be followed. — The legislative history of statute demonstrates an intent to follow United States federal tort claims act. Ikosia v. Trust Territory (Tr. Div., December, 1975).

Plaintiffs have standing to maintain unconsented to action against government where complaint alleges violation of law by High Commissioner. — Plaintiffs had standing to maintain unconsented to action against the government where complaint alleged the High Commissioner acted in violation of law providing that lease be executed only after obtaining advice and opinion of the district land advisory board. Guerrero v. Johnston, 6 TTR 124 (1972).

Plaintiff has no cause of action against government where complaint alleges negligent maintenance of equipment by fireman. — Plaintiff has no cause of action against the government where plaintiff has pled facts which charge fireman with failure to act and negligently maintaining fire equipment so it could not be used and where statute subjects government to liability for loss of property under circumstances where the government, if a private person, would be liable to claimant in accordance with the law of the place where the act or omission occurred. Ikosia v. Trust Territory (Tr. Div., December, 1975).

§ 253. Actions in tort. — Actions may be brought against the government of the Trust Territory, which shall be liable to the same extent as a private

person under like circumstances, for tort claims; provided, that the government of the Trust Territory shall not be liable for interest prior to judgment or for punitive damages. (Code 1966, Ch. 5; Code 1970, tit. 6, § 253.)

Federal tort claims act to be followed. — The legislative history of statute demonstrates an intent to follow United States federal tort claims act. Ikosia v. Trust Territory (Tr. Div., December, 1975).

CHAPTER 7.

LIMITATION OF ACTIONS.

§ 301. Presumption of satisfaction of judgment. — A judgment of any court shall be presumed to be paid and satisfied at the expiration of twenty years after it is rendered. (Code 1966, § 315; Code 1970, tit. 6, § 301.)

§ 302. Limitation of twenty years. — (1) The following actions shall be commenced only within twenty years after the cause of action accrues:

(a) Actions upon a judgment;

(b) Actions for the recovery of land or any interest therein.

(2) If the cause of action first accrued to an ancestor or predecessor of the person who presents the action, or to any other person under whom he claims, the twenty years shall be computed from the time when the cause of action first accrued. (Code 1966, § 316; Code 1970, tit. 6, § 302.)

Accrual of action for return of lands taken by Japanese government. — Where claims for return of lands taken by Japanese government in 1927 was undisposed of and pending in courts of Japanese administration at time war began, it was existing cause of action on December 1, 1941, and also on May 28, 1951, and is considered to have accrued on latter date. Rusasech v. Trust Territory, 1 TTR 472 (1958).

Where party's claim for return of land taken by Japanese government in 1925 was effectively stayed by coming of war, and no machinery was set up by Trust Territory government for filing of such claims until January 11, 1951, filing of claim with district land title officer on May 25, 1954, was in apt time. Rusasech v. Trust Territory, 1 TTR 472 (1958).

Claim for property taken 40 years prior not cognizable. — Where taking of private property by Japanese navy occurred 40 years prior to filing of claim, and 30 years have transpired since last effort to regain possession was made, claim is not cognizable by court of equity. Martin v. Trust Territory, 1 TTR 481 (1958).

Effect of war on cause of action. — Where a party's claim for return of land was an existing cause of action at the time further action in the Japanese courts was stopped on account of war, the claim was an existing cause of action on December 7, 1941. Since no adequate machinery was set up by the Trust Territory government for filing of claims againt the government for return of land or payment of compensation until January 11, 1951, a claim filed with the district land title officer on February 23, 1954, was filed in apt time, the limitation of actions for the recovery of land within the Trust Territory being 20 years. Santos v. Trust Territory, 1 TTR 463 (1958).

Where prosecution of party's claim was effectively restrained by coming of war, and no adequate machinery was set up by the Trust Territory government for filing of appellant's claims until January 11, 1951, party's claim filed with land title officer on January 4, 1956, was filed in apt time. Esebei v. Trust Territory, 1 TTR 495 (1958).

When present limitation went into effect. — Adverse possession, under which one can establish ownership by holding adverse possession of land under claim of ownership for period of statute limiting bringing of actions for recovery of land, cannot be applied in the Trust Territory until 1971 because present 20-year limitation went into effect in 1951 and began to run on that date as to causes of action then existing. Kanser v. Pitor, 2 TTR 481 (1963).

A route often used to bar an action to recover real property is the doctrine of adverse possession. However, this section, which

establishes a 20-year statute of limitation on land matters, will not go into effect until 1971 because section 310 of title 6 of the Code accrued all prior causes of action as of May 28, 1951. Oneitam v. Suain, 4 TTR 62 (1968).

The Trust Territory 20-year statute of limitations for adverse possession of land does not become operative until 1971 because this section did not go into effect until May 28, 1951. Armaluuk v. Orrukem, 4 TTR 474 (1969).

Adverse possession, under which one can establish ownership by holding adverse possession of land under claim of ownership for the period of the statute limiting the bringing of actions for recovery of land, cannot be applied in Trust Territory until 1971 because present 20-year limitation went into effect in 1951 and began to run at that time as to causes of action then existing. Osaki v. Pekea, 5 TTR 255 (1970).

Requirements for establishing adverse possession. — The fact that claimant harvested food for his use on adjoining lands did not establish the "open, notorious, exclusive and hostile possession" required to obtain title by either adverse possession for the statutory period or by laches for an equivalent period. Osaki v. Pekea, 5 TTR 255 (1970).

Limitation on actions for recovery of land. — Actions for recovery of land in Trust Territory are subject to limitation of 20 years, except that all causes of action existing on May 28, 1951, are deemed to have accrued on that date. Ei v. Inasios, 2 TTR 317 (1962).

§ 303. Limitation of two years. — The following actions shall be commenced only within two years after the cause of action accrues:

(1) Actions for assault and battery, false imprisonment, or slander;

(2) Actions against a chief of police, policeman or other person duly authorized to serve process, for any act or omission in connection with the performance of his official duties.

(3) Actions for malpractice, error, or mistake against physicians, surgeons, dentists, medical or dental practitioners, and medical or dental assistants.

(4) Actions for injury to or for the death of one caused by the wrongful act or neglect of another, except as otherwise provided in sections 201-203 of this title, or a depositor against a bank for the payment of a forged or raised check, or a check which bears a forged or unauthorized endorsement. (Code 1966, § 317; Code 1970, tit. 6, § 303.)

Statutory limitation of tort actions — Judicial notice. — Judicial notice may be taken without request by party, of common law, constitutions and public statutes in force in part of Trust Territory, including statutory limitation of tort actions to two years. Butirang v. Uchel, 3 TTR 382 (1967).

Where complaint for personal injury shows on its face that cause of action arose more than three years prior to filing of complaint, court will take judicial notice that action is barred. Butirang v. Uchel, 3 TTR 382 (1967).

Statutory limitation for land actions. — The statute of limitations for an action for recovery of land or any interest therein does not begin to run until the plaintiff has notice that anyone else claims the land. The statute of limitations in such a case cannot be construed in any other manner. Muna v. Trust Territory (App. Div., May, 1977).

§ 304. Actions by or against the estate of a deceased person. — Any action by or against the executor, administrator or other representative of a deceased person for a cause of action in favor of, or against, the deceased shall be brought only within two years after the executor, administrator or other representative is appointed or first takes possession of the assets of the deceased. (Code 1966, § 318; Code 1970, tit. 6, § 304.)

Statutory limitation against estates applied to recovery of land. — The two-year statute of limitations relating to actions against representatives of decedents in possession of an estate precluded plaintiffs from recovering the land from defendants some ten years after the defendants took possession and control of the land upon the death of their predecessor. Obkal v. Armaluuk, 5 TTR 3 (1970).

Limitation not applicable when action is against government. — Where action is not against land trustee representing estate of deceased person but is against the government for return of land transferred to the government by the land trustee, statute is not applicable. Crisostimo v. Trust Territory (App. Div., April, 1976).

§ 305. Limitation of six years. — All actions other than those covered in the preceding sections of this chapter shall be commenced within six years after the cause of action accrues. (Code 1966, § 319; Code 1970, tit. 6, § 305.)

Removal of limitation on action to recover balance due on mutual or open account. — The bar to suit created by six-year statute of limitations for an action to recover balance due on a mutual or open account, or upon a cause of action upon which partial payments have been made, can be removed by a promise to pay, partial payment or an acknowledgment of the debt from which a promise can be inferred. Techong v. Peleliu Club, 6 TTR 275 (1973).

Claims for construction work and erection of neon sign. — Where claims asserted are for original construction work and for erection of a neon sign, section sets out applicable statutes of limitation. Techong v. Peleliu Club (App. Div., April, 1976).

Action against government for return of land transferred to it by estate of deceased. — Where action is not against land trustee representing estate of deceased person but is against the government for return of land transferred to the government by the land trustee, the so-called "catch-all" statute is applicable and is the proper statute of limitations to apply. Crisostimo v. Trust Territory (App. Div., April, 1976).

§ 306. Disabilities. — If the person entitled to a cause of action is a minor or is insane or is imprisoned when the cause of action first accrues, the action may be commenced within the times limited in this chapter after the disability is removed. (Code 1966, § 320; Code 1970, tit. 6, § 306.)

§ 307. Mutual account. — In an action brought to recover the balance due upon a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account. (Code 1966, § 321; Code 1970, tit. 6, § 307.)

Removal of limitation on action to recover balance due on mutual or open account. — The bar to suit created by six-year statute of limitations for an action to recover balance due on a mutual or open account, or upon a cause of action upon which partial payments have been made, can be removed by a promise to pay, partial payment or an acknowledgment of the debt from which a promise can be inferred. Techong v. Peleliu Club, 6 TTR 275 (1973).

Removal of statute of limitations bar on claim for money due. — Although claim for money due, based on completed items of account, was asserted after applicable statute of limitations had run out, the bar of limitations was removed as to the amount ultimately proven to be due where defendants acknowledged that it was true they owed some sum of money, but alleged it was not true that the sums stated in the complaint were the sums owed as of the date stated in the complaint. Techong v. Peleliu Club, 6 TTR 275 (1973).

Accrual of statute of limitations applying to action for balance due on mutual and open account. — Where plaintiff entered charges for merchandise sold defendant, credited defendant with payments received, and, at the end of each year, prepared a statement of indebtedness remaining for the year, there was a mutual and open account and statute of limitations providing that, for an action for balance due on a mutual and open account, the cause of action accrues at the time of the last item in the account applied, not general six-year statute of limitations, so that items entered by plaintiff more than six years before suit and claimed by plaintiff were not barred. George N. Market, Inc. v. Peleliu Club, 6 TTC 458 (1974).

§ 308. Extension of time by absence from the Trust Territory. — If at the time a cause of action shall accrue against any person he shall be out of the Trust Territory, such action may be commenced within the times limited in this chapter after he comes into the Trust Territory. If, after a cause of action shall have accrued against a person he shall depart from and reside out of the Trust Territory, the time of his absence shall be excluded in determining the time limited for commencement of the action. (Code 1966, § 322; Code 1970, tit. 6, § 308; P.L. No. 4C-55, § 1.)

§ 309. Extension of time by fraudulent concealment. — If any person who is liable to any action shall fraudulently conceal the cause of action from the knowledge of the person entitled to bring it, the action may be commenced at any time within the times limited within this chapter after the person who is entitled to bring the same shall discover or shall have had reasonable opportunity to discover that he has such cause of action, and not afterwards. (Code 1966, § 323; Code 1970, tit. 6, § 309; P.L. No. 4C-55, § 2.)

§ 310. Effect upon causes existing on May 28, 1951. — For the purposes of computing the limitations of time provided in this chapter, any cause of action existing on May 28, 1951 shall be considered to have accrued on that date. (Code 1966, § 324; Code 1970, tit. 6, § 310.)

Effect of war. — Where Japanese courts determined clan's claim for return of property taken by government in 1939, and within two years and any other effective action that might have been taken was barred by coming of war, adequate time for recourse to courts or elsewhere for redress of wrongs was not available to clan prior to change of sovereignty. Tamael v. Trust Territory, 1 TTR 520 (1958).

Where prosecution of party's claim for return of property taken by Japanese government was effectively stayed because of coming of World War II, and no machinery was set up for filing of such claims until January 11, 1951, party's claim is timely filed under applicable land management regulation. Tamael v. Trust Territory, 1 TTR 520 (1958).

Where party's claim for return of land taken by Japanese government in 1925 was effectively stayed by coming of war, and no machinery was set up by Trust Territory government for filing of such claims until January 11, 1951, filing of claim with district land title officer on May 25, 1954, was in apt time. Rusasech v. Trust Territory, 1 TTR 472 (1958).

Where action filed by party in high court of Japanese government was stopped on account of war, and Trust Territory law provides that cause of action existing on May 28, 1951, is considered to have accrued on that date, party's claim was existing cause of action on December 7, 1941, and also on May 28, 1951. Esebei v. Trust Territory, 1 TTR 495 (1958).

Where claim for return of lands taken by Japanese government in 1927 was undisposed of and pending in courts of Japanese administration at time war began, it was existing cause of action on December 1, 1941, and also on May 28, 1951, and is considered to have accrued on latter date. Rusasech v. Trust Territory, 1 TTR 472 (1958).

Accrual of limitation on actions involving land. — Twenty-year limitation on actions involving land or interests therein is not yet applicable in Trust Territory since, for purpose of computing time, any cause of action existing on May 21, 1951, is considered to have accrued on that date. Naoro v. Inekis, 2 TTR 232 (1961).

Accrual of limitations in general. — For purpose of determining impact of limitations, any cause of action existing on May 28, 1951, is considered to have accrued on that date. Santos v. Trust Territory, 1 TTR 463 (1958).

Accrual of adverse possession claims. — Adverse possession, under which one can establish ownership by holding adverse possession of land under claim of ownership for the period of the statute of limiting the bringing of actions for recovery of land cannot be applied in Trust Territory until 1971 because present 20-year limitation went into effect in 1951 and began to run at that time as to causes of action then existing. Kanser v. Pitor, 2 TTR 481 (Tr. Div., 1963); Osaki v. Pekea, 5 TTR 255 (1970).

The 20-year statute of limitations within which an action to recover land may be brought is not a bar to recovery until 1971. Penno v. Katarina, 3 TTR 416 (1968).

A route often used to bar an action to recover real property is a doctrine of adverse possession, however, section 302 of title 6 of the Code, which establishes a 20-year statute of limitation on land matters, will not go into effect until 1971 because this section accrued all prior causes of action as of May 28, 1951. Oneitam v. Suain, 4 TTR 62 (1968).

§ 311. Limitation of time for commencing. — A civil action or proceedings to enforce a cause of action mentioned in this chapter may be commenced within the period of limitation herein prescribed, and not thereafter, except as otherwise provided in this chapter. (P.L. No. 4C-55, § 3.)

§ 312. Reckoning of period. — Except as otherwise provided, periods herein prescribed shall be reckoned from the date when the cause of action accrued. (P.L. No. 4C-55, § 3.)

§ **313. Contrary agreements.** — No agreement made subsequent to the effective date of this section for a period of limitation different from the period described in this chapter shall be valid. (P.L. No. 4C-55, § 3.)

§ **314. Existing rights of action.** — Revision of this chapter shall not be construed to extinguish any rights or remedies which have accrued to any party prior to such revision, unless specifically provided otherwise. (P.L. No. 4C-55, § 3.)

CHAPTER 8.

NEW TRIAL; APPEAL AND REVIEW.

§ 351. Effect of irregularities. — No error in either the admission or exclusion of evidence, and no error or defect in any ruling or order, or in anything done or omitted by the court, or by any of the parties shall constitute a ground for granting a new trial, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. (Code 1966, § 337; Code 1970, tit. 6, § 351.)

Appellant's burden. — In an appeal the burden is on the appellant to affirmatively show that there has been some error and that he has been prejudiced thereby. Eram v. Trust Territory, 3 TTR 442 (1968).

Appellate courts — Standard for disturbing lower court judgments. — Appellate courts in the Trust Territory are not expected to disturb judgment for error in admission or exclusion of evidence, or any other error, unless refusal to take such action appears inconsistent with substantial justice. Borja v. Trust Territory, 1 TTR 280 (1955).

Appellate courts in Trust Territory may not disturb judgment for error in admission or exclusion of evidence, or any other error, unless refusal to take such action appears inconsistent with substantial justice. Oingerang v. Trust Territory, 2 TTR 385 (1963).

Error of trial court in receipt or rejection of evidence or other procedural irregularity is not a ground for disturbing a judgment on appeal by virtue of this section unless refusal to take such action appears to the court inconsistent with substantial justice. Jetnil v. Lajoun, 5 TTR 366 (1971).

Erroneous admission of evidence. — If erroneous admission of evidence is highly prejudicial to an accused, it will be deemed to be "inconsistent with substantial justice" and warrant disturbing a judgment. Trust Territory v. Miller, 6 TTR 193 (1972).

Erroneous citation of code provision. — That judgment order was based upon section of former code and should, rather, have recited provisions of code then in effect did not warrant disturbing the order. In re Alleged Delinquent Minor, 6 TTR 3 (1972).

Erroneous and inappropriate words. — Where a part of written judgment contained erroneous and inappropriate words, but the findings were fully supported by the record and the court correctly decided the case, there was no reversible error. Lino v. Trust Territory, 6 TTR 561 (1973).

§ 352. When appeals may be taken. — Any appeal authorized by law may be taken by filing a notice of appeal with the presiding judge of the court from which the appeal is taken, or with the clerk of court for the district in which the court was held, within thirty days after the imposition of sentence or entry of the judgment, order or decree appealed from, or within such longer time as may be prescribed by rules of procedure adopted by the chief justice of the Trust Territory under section 202 of title 5 of this Code. (Code 1966, § 198; Code 1970, tit. 6, § 352.)

Nature of right of appeal. — Right of appeal is one granted by this Code and is not matter of inherent right or requirement of substantial justice. You v. Gaameu, 2 TTR 264 (1961); Aguon v. Rogoman, 2 TTR 258 (1961); Abrams v. Johnston (App. Div., November, 1975).

Review of record by appellate court. — In order to avoid substantial injustice, appellate court may in its discretion review the record in cases where appeal is not timely filed. Aguon v. Rogoman, 2 TTR 258 (1961).

Requirement of timely filing. — Jurisdiction of court is dependent upon timely filing of the notice of appeal. Abrams v. Johnston (App. Div., November, 1975).

Timely filing of notice essential. — Filing of notice of appeal within time limitation of Trust Territory code is essential to jurisdiction of court in absence of most unusual circumstances. Aguon v. Rogoman, 2 TTR 258 (1961); You v. Gaameu, 2 TTR 264 (Tr. Div., 1961).

Filing of notice of appeal within time limited by provisions of this Code is essential to the jurisdiction of the court upon appeal in the absence of some most unusual circumstance. Exception to timely filing of notice of apeal is recognized where the failure to file is the result of default of some officer of the court. Ngiralois v. Trust Territory, 3 TTR 637 (App. Div. 1968).

Requirement of written notice. — Written notice of appeal in criminal proceedings is required in Trust Territory. Uchel v. Trust Territory, 3 TTR 578 (App. Div. 1965).

Filing requirement for notice of second appeal. — Notice of second appeal after first appeal results in remand must be filed within time limited by this Code after judgment based on new trial. You v. Gaameu, 2 TTR 264 (1961).

Calculation of time-period for filing. — Where statute provides that notice of appeal in a civil action shall be filed within thirty days after entry of judgment, the running of time commences as of the date of entry of judgment and not as of the date counsel is in receipt of notice thereof. Abrams v. Johnston (App. Div., November, 1975).

Failing to file timely notice — Result. — Where appellant in civil action fails to file notice of appeal within time permitted by law, appeal will be dismissed for want of jurisdiction and want of prosecution. Aguon v. Rogoman, 2 TTR 258 (1961).

Where notice of appeal was filed one day later than 30-day period for filing, and no unusual circumstances warranted exception to rule that late appeal will not be accepted, appeal would be dismissed. San Nicolas v. Bank of America, 6 TTR 568 (1973).

Late payment of filing fee results in untimely notice. — Appeal is not perfected until filing fee is paid; so that where notice of appeal was filed 31 days after entry of judgment and filing fee was not paid until 52 days after entry of judgment, notice was not effective until 52 days after judgment and was thus untimely under 30-day filing limit statute. Aldan v. Bank of America, 6 TTR 570 (1973).

Filing requirement exception. — Relief from requirement of timely filing is available only under most unusual circumstances. The only circumstance recognized by court has been that the failure to file on time was the result of some default on the part of an officer of the court. Abrams v. Johnston (App. Div., November, 1975).

Default of court officer. — Exception to requirement of timely filing of appeal in Trust Territory is recognized where delay is result of default of officer of court. Aguon v. Rogoman, 2 TTR 258 (1961); You v. Gaameu, 2 TTR 264 (Tr. Div., 1961).

Failure of clerk to volunteer information concerning appeal; appellant's ignorance of time limit. — Neither failure of clerk of courts to volunteer information as to possibility of appeal in civil action nor appellant's apparent ignorance of time limit for appeal is sufficient excuse for late filing. Aguon v. Rogoman, 2 TTR 258 (1961).

Appellant's ignorance or failure to inquire about filing. — Mere ignorance of or failure to inquire about the law is insufficient excuse for late filing of appeal. You v. Gaameu, 2 TTR 264 (1961).

§ 353. Right of Trust Territory government to appeal. — (1) In a criminal case, the government shall have the right of appeal only when a written enactment intended to have the force and effect of law has been held invalid. Action on any such appeal shall be limited as provided in section 355 of this chapter.

(2) In civil cases, the government shall have the same right of appeal as private parties. (Code 1966, § 198; Code 1970, tit. 6, § 353.)

§ 354. Review of district and community courts' decisions. — The trial division of the high court shall review on the record every final decision of the district courts and the community courts in annulment, divorce, and adoption cases in which no appeal has been taken, and it may, in its discretion, review on the record any other final decision of a district or community court in which no appeal has been taken. (Code 1966, § 199; Code 1970, tit. 6, § 354.)

High court review of district court order. — District court judgment placing juvenile in delinquency proceeding in custody of his uncle having been brought to high court's attention

by habeas corpus proceeding, court would exercise its discretion and review the order, even though habeas corpus was not granted. In re Alleged Delinquent Minor, 6 TTR 3 (1972).

§ 355. Powers of courts on appeal or review. — (1) The high court on appeal or review and the district court on appeal shall have power to affirm, modify, set aside, or reverse the judgment or order appealed from or reviewed and to remand the case with such directions for a new trial or for the entry of judgment as may be just.

(2) The findings of fact of the trial division of the high court in cases tried by it shall not be set aside by the appellate division of that court unless clearly erroneous, but in all other cases the appellate or reviewing court may review the facts as well as the law.

(3) In a criminal case, the appellate or reviewing court may set aside the judgment of conviction, or may commute, reduce (but not increase), or suspend the execution of the sentence, and, if the defendant has appealed or requested a new trial, the appellate or reviewing court may order a new trial; but if the government has appealed in a criminal case as authorized in section 353 of this chapter, the appellate or reviewing court may not reverse any finding of not guilty, and its powers shall be limited to a reversal of any determination of invalidity of an enactment intended to have the force of law. (Code 1966, § 200; Code 1970, tit. 6, § 355.)

Paramount interest of appellate court. — The paramount interest of appellate court is to assure that all efforts are made to consider any basis upon which the appellant in a criminal case may have a valid claim to reverse his conviction. Edwards v. Trust Territory (App. Div., February 1977).

Authority to review a point of law on its own motion. — Although the general rule is that appellate review is generally limited to matters complained of or points raised in the appeal, an appellate court may take up a point of law on its own motion if there is a basis for it in the record. The reviewing court is not bound to accept concessions of the parties as establishing the law applicable to a case. Crisostimo v. Trust Territory (App. Div., April, 1976).

Authority to review law of laches on appeal. — Pursuant to statute there is no restraint in reviewing the law of laches as it applies to case on appeal and which may be applicable to other cases pending or not yet filed. Crisostimo v. Trust Territory (App. Div., April, 1976).

Available evidence not covered by prosecution. — Where it appears probable that there is evidence available on point not covered by prosecution in criminal trial, court will remand case with such directions as may be just, instead of merely reversing judgment and acquitting accused. Itelbong v. Trust Territory, 2 TTR 595 (1964).

Authority to review facts as well as law. — The trial division of the high court on appeals from district courts may review facts as well as law. Aiichi v. Trust Territory, 3 TTR 290 (1967).

The trial division of the high court may review the facts as well as the law in the record of an appeal from the district court. Rengiil v. Derbai, 6 TTR 181 (1973).

Disadvantage in evaluating credibility of trial court witnesses. — Although trial division of the high court on appeals from district courts may review facts as well as law, it is not in as good a position as trial court to pass on credibility of witnesses who appeared and testified personally in trial court. Timulch v. Trust Territory, 3 TTR 208 (1966).

Nature of review of facts. — Though court was authorized by statute to review facts, it could not do so where they related to unresolved major conflicts in the evidence; and case would be remanded for resolution of the conflict. Ngiratulemau v. Merei, 6 TTR 245 (1973).

It is a principle of appellate review that where the evidence is in substantial conflict, the finding of the judge or jury is presumed to have been correct, and the evidence will not be reweighed by the appellate court. Trust Territory v. Macaranas (App. Div., April, 1976).

Finding of fact by trial division of the high court will not be set aside by appellate division unless clearly erroneous. Yamashiro v. Trust Territory, 2 TTR 638 (App. Div. 1963); Osawa v. Ludwig, 3 TTR 594 (App. Div., 1966); Helgenberger v. Trust Territory, 4 TTR 530 (App. Div., 1969).

Requirement that trial court findings be clearly erroneous. — Appellate court will not set aside findings of facts of trial court unless clearly erroneous. Jatios v. Levi, 1 TTR 578 (App. Div. 1954).

The findings of the trial court based upon the evidence will not be set aside unless there is

manifest error. Arriola v. Arriola, 4 TTR 486 (App. Div. 1968).

Substantial evidence in support of trial court's findings. — Trial court's findings were not clearly erroneous, and thus would not be set aside, where there was substantial evidence to support them. Rasa v. Trust Territory, 6 TTR 535 (1973).

Findings of master's report. — Where the trial division of the high court adopts findings of master's report, appellate court is limited in review and may not set aside fact findings unless clearly erroneous. Osawa v. Ludwig, 3 TTR 594 (App. Div. 1966).

Inability of appellate division to reweigh evidence. — The appellate division of the high court may not set aside findings of fact of the trial division unless the findings are clearly erroneous. The appellate division cannot reweigh the evidence and decide whether in its opinion it should reach the same or different conclusion as the trial judge did as to the facts. Ilisari v. Tarolimau (App. Div., April, 1976).

The appellate division of the high court on appeal from a decision of the trial division cannot reweigh the evidence and decide whether in its opinion it should reach the same or different conclusion as the trial judge did as to the facts. Arriola v. Arriola, 4 TTR 486 (App. Div. 1968).

Case remanded where essential point was omitted by prosecution at trial. — Where essential point in criminal prosecution has been omitted through inadvertence or misunderstanding, and it is probable there is evidence available on it, accused is not entitled to acquittal on appeal as matter of right, and case will be remanded with such directions for new trial as may be just. Tkoel v. Trust Territory, 2 TTR 513 (1964).

In criminal proceedings in the Trust Territory, where essential point of prosecution's case is omitted through inadvertence or misunderstanding, and it is probable there is sufficient evidence available on it, appellate court will remand case with such directions for new trial as may be just, instead of merely reversing judgment. Firetamag v. Trust Territory, 2 TTR 413 (1963).

Failure of counsel on appeal to point out applicable parts of trial transcript. — Where appellant's counsel asks court to review transcript of trial court to determine if trial court was clearly erroneous and counsel does not even bother to point out what parts of the transcript are applicable, counsel is in fact asking appellate court to reweigh the evidence. Edwards v. Trust Territory (App. Div., February, 1977).

Repeat of assertions made before the trial judge. — Where notice of appeal and brief of appellant is nothing more than a repeat of the assertions made before the trial judge, there is nothing to demonstrate that the findings were clearly erroneous and the findings of fact of the trial judge shall not be set aside. In re Estate of Bulele (App. Div., January, 1977).

Appellate power to set aside judgment and remand. — The trial division of the high court has broad powers on appeal to set aside judgment and remand case with such directions for new trial as may be just, instead of merely reversing judgment. Ngirmidol v. Trust Territory, 1 TTR 273 (1955).

Essential elements of offense not alleged. — Appellate court may order new trial and direct trial court to permit amendment of complaint where complaint does not allege essential elements of offense. Willianter v. Trust Territory, 3 TTR 227 (1966).

Approach of appellate court to evidence presented at trial. — It is the function of the trial court to make determinations of fact which are dependent on conflicting evidence; it is not the function of the appellate court to do so. Likewise, in considering a case on appeal, the appellate court must make every reasonable presumption in favor of the determinations of the trial court. An appellate court will not examine the evidence in an attempt to determine whether it more strongly favors one conclusion or another; that is to say, that on appeal the appellate court may not consider the sufficiency of the evidence as it relates to the weight or probative value of conflicting evidence. Not only must the appellate court refrain from reweighing the evidence, its duty is to make every reasonable presumption in favor of the correctness of the decision of the lower court. Olper v. Damarlane (App. Div., January, 1977).

Presumption in favor of trial court determination. — The trial division of the high court may review facts as well as law on appeal from district courts but will make every reasonable presumption in favor of determination of trial court. Soilo v. Trust Territory, 2 TTR 368 (1962).

Judgment of trial judge accorded weight. — Where the trial judge was the exclusive judge of the credibility of witnesses and the weight to be given to their testimony, a judgment supported by the testimony of a witness who has not been discredited and whose testimony is not inherently improbable will be affirmed. Trust Territory v. Macaranas (App. Div., April, 1976).

Evidence considered in light favorable to government. — Under this Code and general principles of law, appellate court on criminal appeal is obligated to consider evidence in light most favorable to government. Uchel v. Trust Territory, 3 TTR 578 (App. Div. 1965).

In criminal appeal, court is under obligation of this Code and general principles of law to consider evidence in light most favorable to the

government. Debesol v. Trust Territory, 4 TTR 556 (App. Div. 1969).

Relief from land commission determination. — Relief from a land commission determination is obtainable only by appeal, and not by declaratory judgment or default judgment. Arriola v. Arriola, 6 TTR 287 (1973).

Where record on appeal from land commission was inadequate and did not show who had appeared before the registration team, and the team members and claimants were inexperienced in establishing a record for appeal, and the statutory notice of hearing before the registration team did not actually reach appellant and the other claimants, court would, though appellant never appeared before the registration team and was not shown to be a party and aggrieved, as required by statute to appeal, remand for determination of claimants' claims. Arriola v. Arriola, 6 TTR 287 (1973).

§ 356. Stay of execution. — Pending review or the hearing and determination of an appeal, execution of the judgment, order or sentence of a court will not be stayed unless:

(1) The appellate court, reviewing court or the trial court orders a stay for cause shown and upon such terms as it may fix; or

(2) As otherwise provided by law. (Code 1966, § 201; Code 1970, tit. 6, § 356; P.L. No. 4C-17, § 1.)

Execution of judgment stayed by order only. — Execution of judgment will not be stayed pending appeal unless either appellate or reviewing or trial court orders stay for cause shown and upon such terms as it may fix. Mottan v. Lanjen, 2 TTR 347 (1962).

§ 357. Decisions of appellate division of high court final until action by U.S. Congress. — Unless and until the Congress of the United States provides for an appeal to a court created by act of Congress, the decisions of the appellate division of the high court shall be final. (Code 1966, § 202; Code 1970, tit. 6, § 357.)

Nature of appellate division of high court. — Where appellant has been afforded a full adversary hearing before a disciplinary panel in the appellate division of the high court, the decision is final as the appellate division of the high court is the highest court of the Trust Territory. Abrams v. Trust Territory High Court Disciplinary Panel (App. Div., May, 1977).

Nature of decisions of appellate division. — The decisions of the appellate division of the high court constitute the "supreme law" of the Trust Territory. "Iroij" on Jebdrik's Side v. Jakeo, 5 TTR 670 (1972).

CHAPTER 9.

FEES AND COSTS; DISPOSITION OF FINES.

SUBCHAPTER I.

Fees and Costs.

§ 401. Witness fees for travel. — (1) Except as otherwise provided in this chapter, every person attending as a witness in any judicial proceeding shall be entitled to receive three cents per mile for going from and returning to his place of residence or usual place of business or employment, whichever is nearer, to the place where he is to appear as a witness, unless suitable transportation is provided without expense to him.

(2) If transportation is not provided without expense to him, the witness shall be entitled to receive the generally accepted prevailing charge for such transportation, in place of the three cents per mile, for the part of his travel for which such transportation is reasonably needed and this charge shall be considered as part of his mileage.

(3) If part, but not all, of his transportation is provided without expense to him, the witness shall only be entitled to receive mileage for the part of his travel for which transportation is not provided to him without expense to him. Except as otherwise provided by subsection (4), section 404 of this chapter, this mileage shall be paid by the party on whose behalf the witness is called or summoned, for each trip the witness is reasonably required to make.

(4) If the witness is summoned, the mileage for one round trip shall be tendered to him at the time the witness summons is served, and the mileage for any further trips required shall be tendered in advance of each trip, except when the witness summons is issued on behalf of the Trust Territory or an officer or agency thereof or under section 404 of this chapter. (Code 1966, § 259; Code 1970, tit. 6, § 401.)

Compensation of witnesses. — A witness is entitled to no compensation for his time and travel other than that specified in this Code, and in certain cases, witness in Trust Territory may have to testify without any fee. Moap v. Kapuich, 1 TTR 449 (1958).

Limitation on travel fees. — Witness' right to fees for travel is limited by words "unless suitable transportation is provided without expense to him" in applicable Trust Territory law. Moap v. Kapuich, 1 TTR 449 (1958).

Requirement that witnesses cooperate concerning travel. — Parties and witnesses should cooperate in making the best of what transportation to site of trial is available at moderate cost and commonly used between points involved, and parties' counsel should arrange for transportation that is as convenient for witness as reasonably can be, but witnesses should not refuse transportation because it will not permit them to do personal business or because trip is not by most direct or convenient route possible. Moap v. Kapuich, 1 TTR 449 (1958).

No reimbursement for travel to victory party. — Witness may not claim reimbursement for travel to "celebration" of victory of person for whom he testifies. Moap v. Kapuich, 1 TTR 449 (1958).

§ 402. Witness fees for subsistence. — In any case in which a witness has attended or been summoned to attend before any court and it is necessary for him to remain in attendance for more than one day at a point so far removed from his residence or usual place of business or employment as to prohibit return thereto from day to day, the court before whom he has attended or been summoned may determine the amount reasonably needed to cover the witness' subsistence per day while in attendance, and this sum shall be tendered to the witness in advance by the party on whose behalf the witness was called or summoned, except when the summons is issued under section 404 of this chapter or where suitable subsistence is provided without expense to the witness. (Code 1966, § 260; Code 1970, tit. 6, § 402.)

Compensation of witnesses. — A witness is entitled to no compensation for his time and travel other than that specified in this Code, and in certain cases, witness in Trust Territory may have to testify without any fee. Moap v. Kapuich, 1 TTR 449 (1958).

§ 403. Effect of failure to tender sufficient witness fees. — The failure to tender the sums specified in sections 401 and 402 of this chapter for mileage or subsistence, or any part of either or both, however, shall not exempt the witness from complying with the summons if he has the means to comply. Any question as to the sufficiency of the amount tendered shall be brought promptly to the attention of the court or official before whom appearance is required, and the same is hereby authorized to make such order as to payment of the witness fees as is just. (Code 1966, § 261; Code 1970, tit. 6, § 403.)

Compensation of witnesses. — A witness is entitled to no compensation for his time and travel other than that specified in this Code, and in certain cases, witness in Trust Territory may have to testify without any fee. Moap v. Kapuich, 1 TTR 449 (1958).

§ 404. Proceedings when persons unable to pay fees. — (1) Any court may authorize the commencement, prosecution or defense of any case, action or proceeding, civil or criminal, or any appeal therein, without prepayment of fees for serving of process, jury fees, witness fees or filing fees, or giving security therefore by a permanent resident of the Trust Territory who makes a statement under oath that he is unable to pay such fees or give security therefor. This statement under oath shall state the nature of the case, action, or proceedings, defense, or appeal, and that the person making the statement believes that he is entitled to relief.

(2) The officers of the court and the designated policeman shall issue and serve all process, and perform all duties in such cases without prepayment of fees or the giving of security therefor. Witnesses shall attend as in other cases.

(3) The court may dismiss the case, action or proceeding if the statement that the person is unable to pay fees is untrue, or if the court is satisfied that the case, action or proceeding is malicious or has no substantial basis.

(4) The court before whom any criminal case is pending or a judge thereof may order at any time that a witness summons be issued and served without prepayment of fees upon request of an accused who cannot pay witness fees. The request shall be supported by a statement under oath in which the accused shall state the name and address of each witness and the testimony which he is expected by the accused to give if summoned, and shall show that the evidence of the witness is material to the defense, that the accused cannot safely go to the trial without the witness, and that the accused is actually unable to pay the fees of the witness. If the court or judge orders the witness summons to be issued and served without prepayment of fees the fees of the witness so summoned shall be paid in the same manner in which similar fees are paid in case of a witness summoned on behalf of the government.

(5) In the event that a court authorizes a party to proceed without payment of fees pursuant to this section, the director of the administrative office, Trust Territory judiciary, shall pay all fees which would otherwise be due under subsection (3) of section 405 of this chapter to the court reporter or other person who prepares a transcript. Such payment shall be made from funds appropriated for the operation of the judiciary and allocated to the district in which the proceeding appealed from was held. (Code 1966, § 262; Code 1970, tit. 6, § 404; P.L. No. 6-101, § 2.)

Compensation of witnesses. — A witness is entitled to no compensation for his time and travel other than that specified in this Code, and in certain cases, witness in Trust Territory may have to testify without any fee. Moap v. Kapuich, 1 TTR 449 (1958).

Appeal perfected without payment of transcript cost. — An appeal can be perfected without payment of cost of transcript in accordance with rule 32f(1), rules of criminal procedure, also applicable to civil procedure, and this section. Mendiola v. Quitugua, 5 TTR 351 (1971).

§ 405. Schedule of court fees. — Each clerk of courts shall charge and collect the following fees with regard to work handled by his office, and each community court shall charge and collect these fees with regard to work handled by it:

(1) *Filing of fees in civil actions.*

(a) For filing of notice of appeal from the appellate division of the high court, five dollars;

(b) For filing of notice of appeal from the district court to the trial division of the high court, one dollar;

(c) For trial in the trial division of the high court, two dollars and fifty cents;

(d) For filing of complaint under the small claims procedure, twenty-five cents;

(e) For filing of motion for new trial under the usual procedure after a small claims judgment, twenty-five cents;

(f) For filing of complaint in a district court or community court under the small claims judgment, fifty cents;

(g) For filing of complaint in the trial division of the high court, one dollar.

(2) *Copy of records.* For a copy of any record, or other paper in his custody, comparison thereof, and certifying it to be a true copy, twenty-five cents plus ten cents for each hundred words in excess of the first hundred.

(3) *Transcripts of evidence and notes of hearing.* For a transcript of evidence in case of appeal from the trial division of the high court in either criminal or civil cases, one dollar per page, or part thereof, for the original and two copies ordered at the same time, and fifty cents per page, or part thereof, for each additional copy ordered at the same time. Any party desiring to raise an issue on appeal from the trial division to the appellate division of the high court depending on the whole or any part of the evidence, shall order at his own expense an original and not less than two copies of the transcript of evidence, the original for the court, one copy for the party ordering the transcript, and one copy for each of the opposite parties.

(4) *Recording land transfer documents.* For recording of all land transfers, fifty cents, except that there shall be no charge where the Trust Territory is the grantor. (Code 1966, § 263; Code 1970, tit. 6, § 405; P.L. No. 6-101, § 4.)

§ 406. Disposition of court fees. — (1) All court fees collected under section 405 of this chapter by any community court shall be remitted monthly or as nearly so as reliable means of transmission will reasonably permit to the clerk of courts for the district.

(2) All court fees collected by any clerk of courts under subsections (1), (2), and (4) of section 405 of this chapter, or received by him from any community court, shall be remitted monthly or as more often as may be directed by the chief justice, to the treasurer of the Trust Territory through the district finance officer.

(3) All court fees collected by any clerk of courts under subsection (3) of section 405 of this chapter shall be paid to the court reporter or other person who prepares the transcript, in addition to the regular compensation provided to such reporter or other person. (Code 1966, § 264; Code 1970, tit. 6, § 406; P.L. No. 6-101, § 1.)

§ 407. Additional costs may be taxed. — The court may allow and tax any additional items of cost or actual disbursement, other than fees of counsel, which it deems just and finds have been necessarily incurred for services which were actually and necessarily performed. (Code 1966, § 265; Code 1970, tit. 6, § 407.)

Plaintiff bringing action in good faith not charged with additional costs. — Where plaintiff in good faith brings action to determine ownership of land in Truk, plaintiff will not be charged with additional costs which may be granted in cases where action is groundless, even though evidence to refute plaintiff's claim is strong. Irons v. Mailo, 3 TTR 194 (1966).

Costs not allowed party to an action. — This section does not allow costs incurred for traveling and living expenses by a party to an action. Penno v. Katarina, 3 TTR 416 (1968).

§ 408. Allocation of costs. — All fees and expenses paid or incurred under this chapter for the service of process, witness fees, or filing fees on appeal, by any party prevailing in any matter other than a criminal proceeding, shall be taxed as part of the costs against the losing party or parties unless the court shall otherwise order; provided, that no fees paid to a witness who is a party in interest and is called and examined on his own behalf or on behalf of others jointly interested with him shall be allowed or taxed as costs; and provided further, that no costs shall be taxed against the United States of America or the Trust Territory. (Code 1966, § 265; Code 1970, tit. 6, § 408.)

Personal expenses not allowed party to an action. — Personal expenses incurred by a party to an action are not allowable under this section. Penno v. Katarina, 3 TTR 416 (1968).

§ 409. Apportionment of costs. — Where there is more than one prevailing or losing party, costs may be apportioned by the court as it deems just. (Code 1966, § 265; Code 1970, tit. 6, § 409.)

SUBCHAPTER II.

Disposition of Fines.

§ 451. Court fines. — All fines imposed by any court shall be paid into the treasury of the Trust Territory; except, that any fine imposed by any court under the authority of any district or municipal law shall be paid into the treasury of the jurisdiction which enacted the law. (Code 1966, § 175(a); Code 1970, tit. 6, § 451; P.L. No. 5-54, § 1.)

§ 452. Civil fines. — (1) Any fine imposed in accordance with law by anyone other than a court shall be paid into the treasury of the Trust Territory, unless the law under which it is imposed otherwise directs. Such fines shall be

considered civil fines and no person shall be imprisoned solely for failure to pay them, but any such fine may be collected in the manner provided for collection of taxes in chapter 7, title 77 of this Code, or as may be provided in the law under which the fine is imposed, provided it is not inconsistent with this section.

(2) In any civil suit to collect such a fine, the written statement of the person who assessed the fine shall have the same effect as that of the treasurer of a taxing unit under section 152 of title 77 of this Code. (Code 1966, § 175(c); Code 1970, tit. 6, § 452.)

CHAPTER 10.

UNIFORM SINGLE PUBLICATION ACT.

§ 501. Single publication to give rise to one cause of action only. — No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one edition of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions. Nothing in this section shall be construed as creating a cause of action which does not otherwise exist. (P.L. No. 4C-20, § 1.)

§ 502. Judgment as bar to other actions. — A judgment in any jurisdiction or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in section 501 of this chapter shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance. (P.L. No. 4C-20, § 1.)

CHAPTER 11.

CONTRIBUTION AND TORT-FEASORS ACT.

§ 551. Short title. — This chapter may be cited as the "Contribution Among Joint Tort-feasors Act." (P.L. No. 4C-22, § 1.)

§ 552. Right of contribution. — (1) Except as otherwise provided in this chapter, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(2) The right of contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tort-feasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(3) There is no right of contribution in favor of any tort-feasor who has intentionally, wilfully, or wantonly caused or contributed to the injury or wrongful death.

(4) A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement nor is he entitled to recover in respect to any amount paid in a settlement which is in excess of what was reasonable.

(5) A liability insurer, who by payment has discharged in full or in part the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(6) This chapter does not impair any right of indemnity under existing law. Where one tort-feasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(7) This chapter shall not apply to breaches of trust or of other fiduciary obligation. (P.L. No. 4C-22, § 1.)

§ 553. Pro rata shares. — In determining the pro rara shares of tort-feasors in the entire liability:

(1) Their relative degrees of fault shall not be considered;

(2) If equity requires, the collective liability of some as a group shall constitute a single share; and

(3) Principles of equity applicable to contribution generally shall apply. (P.L. No. 4C-22, § 1.)

§ 554. Enforcement. — (1) Whether or not judgment has been entered in an action against two or more tort-feasors for the same injury or wrongful death, contribution may be enforced by separate action.

(2) Where a judgment has been entered in an action against two or more tort-feasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(3) If there is a judgment for the injury or wrongful death against the tort-feasor seeking contribution, any separate action by him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(4) If there is no judgment for the injury or wrongful death against the tort-feasor seeking contribution, his right of contribution is barred unless he has either:

(a) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him and has commenced his action for contribution within one year after payment, or

(b) Agreed while action is pending against him to discharge the common liability and has within one year after agreement paid the liability and commenced his action for contribution.

(5) The recovery of a judgment for an injury or wrongful death against one tort-feasor does not of itself discharge the other tort-feasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(6) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution. (P.L. No. 4C-22, § 1.)

§ **555. Release or covenant not to sue.** — When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) It does not discharge any of the other tort-feasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and,

(2) It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor. (P.L. No. 4C-22, § 1.)

§ **556. Retroactivity.** — This act shall not be deemed to create any right or remedy to any joint tort-feasor in favor of whom the provisions of this chapter would otherwise apply, where such joint tort-feasor's cause of action accrued prior to the effective date of this chapter, and to this extent the provisions of this chapter are not retroactive. (P.L. No. 4C-22, § 1.)