



DISTRICT COURTS ACT 2016

SAMOA

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DISTRICT COURTS ACT 2016

AN ACT to repeal the District Courts Act 1969 and to apply reformed arrangements relating to the constitution, powers and procedures of the District Courts of Samoa and the Divisions of the Court, and for related purposes.

[Assent and commencement Date: 9 February 2016]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1

PRELIMINARY

1. Short title and commencement - (1) This Act may be cited as the District Courts Act 2016.

(2) This Act commences on the date of its assent by the Head of State.

2. Interpretation - (1) In this Act, unless the context otherwise requires:

“bailiff” means a bailiff or deputy bailiff and any person acting as bailiff holding that office under this Act, and includes any person acting in that position;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry, and includes any person acting in that position;

“child” means any person below the age of 18 years;

“Court” or “District Court” means a District Court of Samoa constituted under this Act;

“defendant” means:

(a) in civil proceedings - any person against whom proceedings have been commenced or an application for relief has been made, and includes any party served with notice of or entitled to attend the proceedings otherwise than as plaintiff; or

(b) in any other proceedings - any person charged with an offence or for any other order which the Court has jurisdiction to make.

“Fa’amasino Fesoasoani” means a Fa’amasino Fesoasoani holding office under this Act;

“Judge” means a District Court Judge holding office under this Act, and includes the Senior District Court Judge appointed under section 7;

“Judicial Service Commission” means the Judicial Service Commission constituted by Article 72 of the Constitution;

“matter”, in any civil proceedings, means any proceeding in a Court which may be commenced as prescribed otherwise than by statement of claim;

“Minister” means the Minister responsible for Justice and Courts Administration;

“Ministry” means the Ministry responsible for Justice and Courts Administration;

“officer”, in relation to a Court, includes all of the following:

- (a) a Registrar or Assistant Registrar of the Court;
- (b) any other administrative officer in the service of the court (including clerks, bailiffs and interpreters);
- (c) any police officer acting in support of a Court in accordance with this Act.

“party”, in any civil proceedings, includes every person served with notice of, or attending, any proceeding other than as a witness or spectator, whether named as a party to that proceeding or not;

“plaintiff” includes every person seeking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of civil proceedings;

“police officer” means any sworn member of the Samoa Police Service;

“prescribed” means prescribed by this Act or by Rules of Court for the time being in force;

“proceedings” with reference to civil proceedings, includes both actions and matters;

“Registrar” means the Registrar of the District Court;

“Repealed Act” means the District Court Act 1969, as amended;

“Rules” and “Rules of Court” means District Court Rules made under the authority of this Act;

“Rules Committee” means the Rules Committee as established under the Judicature Ordinance 1961.

(2) A non-suit, determination, direction, decision, judgment or order is regarded for all lawful purposes to be given or made when it is delivered (whether orally or in writing), whether or not reasons for it are subsequently delivered, and whether or not a formal judgment or order is subsequently drawn up, signed and sealed.

3. Act binds the Government - This Act binds the Government.

PART 2 THE DISTRICT COURTS

4. District Courts continued - (1) The District Courts established under the repealed Act as subordinate Courts of record are continued, and are constituted, empowered, administered and staffed in accordance with this Act.

(2) Divisions of the District Court may be created by an Act of Parliament.

(3) Each Division of the District Court has a seal, which must be kept by the Registrar or Assistant Registrar responsible for a Division.

5. Places for sittings of the Court - (1) The Minister has authority to appoint places in Samoa in which District Courts are to be permanently located.

(2) The Minister has authority to amend or revoke any appointment made under subsection (1).

(3) Nothing in this section prevents a Judge from holding sittings of a Court at any place the Judge considers convenient.

*Division 1 - District Court Judges
and Fa'amasino Fesoasoani*

6. Appointment and qualifications of Judges - (1) All appointments to the office of District Court Judge under the repealed Act are taken to have been made under the authority of this Act, and any terms or conditions applicable to the appointment continue to have full force and effect.

(2) Subject to subsection (3), the Head of State, acting on the advice of the Judicial Service Commission, has authority to appoint by warrant, fit and proper persons to be Judges.

(3) A person is not eligible to be appointed as a Judge unless the person has been admitted and practiced as a barrister in Samoa or in an approved country for a period of, or for periods amounting in the aggregate to, not less than 8 years.

(4) For the purposes of this section, the Head of State, acting on the advice of the Judicial Service Commission, has authority to designate by Order any country as an approved country if, in the

opinion of the Commission, that country has a legal system similar to that applying in Samoa.

(5) The Head of State, acting on the advice of the Judicial Service Commission, has authority to permit a Judge to hold an office that is taken to be compatible with the office of Judge.

7. Senior District Court Judge - (1) The Head of State, acting on the advice of the Judicial Service Commission, has authority to appoint a District Court Judge to hold the office of Senior District Court Judge.

(2) The Senior District Court Judge has authority to do all or any of the following:

- (a) to delegate any function, duty or responsibility to a Judge or Fa'amasino Fesoasoani, or to authorise a Judge or Fa'amasino Fesoasoani to do anything necessary for the efficient administration or operation of the District Courts;
- (b) to ensure the professional development of Judges and Fa'amasino Fesoasoani, and require that Judges or Fa'amasino Fesoasoani undertake any course of training or instruction;
- (c) to approve and apply any roster or allocation of responsibilities applicable to Judges or Fa'amasino Fesoasoani;
- (d) to ensure that Judges and Fa'amasino Fesoasoani are allocated to all places where the Court sits, and to facilitate the movement of Judges or Fa'amasino Fesoasoani to all places where the Court has sittings; or
- (e) to otherwise give any directions or take any action necessary for the efficient administration and operation of the District Courts.

8. Appointment of Fa'amasino Fesoasoani - (1) All appointments to the office of Fa'amasino Fesoasoani under the repealed Act are taken to have been made under the authority of this Act, and any terms or conditions applicable to such appointments continue to have full force and effect.

(2) The Head of State, acting on the advice of the Judicial Service Commission, has authority to appoint by warrant, fit and proper persons to be Fa'amasino Fesoasoani.

9. Salaries and entitlements - (1) A Judge and Fa'amasino Fesoasoani (including any appointed temporarily under section 12) is entitled to be paid such salary, allowances and entitlements as are fixed by the Head of State, acting on the advice of Cabinet after receiving the advice of the Judicial Service Commission.

(2) Leave and other entitlements for Judges must not be less favourable than those given to Chief Executive Officers of Ministries, and must also reflect the nature of the office held.

(3) In the absence of a determination of entitlements under this section Judges are to be given the entitlements given to Chief Executive Officers of Ministries.

(4) Judges are to receive pension entitlements which are not less favourable than those payable to Members of Parliament, and for this purpose Regulations made under this Act may provide for all of the following:

- (a) the utilisation of the Judiciary Retirement Fund established under Part XI of the National Provident Fund Act 1972, or any other Fund and financial mechanism, for the pension scheme applicable to Judges;
- (b) additional contributions from the government and Judges to those provided for under Part XI of the National Provident Fund Act 1972, to fund the pension scheme applicable to Judges;
- (c) spouse entitlements which are not less favourable to those payable to the spouses of Members of Parliament; and
- (d) any other matter relevant to the management of a pensions scheme for Judges, and the entitlements under the scheme.

(5) All salaries, allowances and entitlements referred to in this section are deemed taken as appropriated for those purposes.

10. Tenure and removal from office - (1) The Head of State, acting on the advice of the Judicial Service Commission and subject to any grounds or procedures, if any, prescribed by Regulations under this Act, has authority by Order, to remove a Judge or Fa'amasino Fesoasoani from office on the grounds of inability or misconduct.

(2) A district court Judge or Faamasino Fesoasoani holds office until he or she reaches the age of 68 years unless extended by the Head of State, acting on the advice of the Judicial Service Commission.

(3) A Fa'amasino Fesoasoani is regarded to have vacated the office if he or she is removed from the office of a Land and Titles Court Judge on any grounds related to inability or misconduct.

(4) Nothing done by a Judge or a Fa'amasino Fesoasoani in the performance of his or her duties, is to be regarded invalid for either of the following reasons:

(a) by reason that he or she has reached the retirement age;

or

(b) by reason that his or her term of office has expired.

(5) A Judge or Fa'amasino Fesoasoani may resign from his or her office in writing addressed to the Chief Executive Officer, and such resignation takes effect when it is received by the Chief Executive Officer, or on an agreed date.

11. Other statutory offices held by Judges - (1) A Judge is, by virtue of his or her office, taken to have been appointed a Coroner, unless an Act which makes provision in relation to the appointment and responsibilities of Coroners provides to the contrary.

(2) Regulations made under this Act may prescribe for a Judge to hold any other office for any other purpose or function under law.

12. Acting Judges and Fa'amasino Fesoasoani - (1) The Head of State, acting on the advice of the Judicial Service Commission, has authority to temporarily appoint by warrant a Judge or Fa'amasino Fesoasoani to hold office until a permanent appointment is made, or for such other time as is specified in the Warrant.

(2) The power to make a temporary appointment under subsection (1) is exercisable in any of the following circumstances:

- (a) after the removal, retirement or resignation of any Judge or Fa'amasino Fesoasoani;
- (b) during the illness or absence of any Judge or Fa'amasino Fesoasoani; and
- (c) in any other circumstances where a temporary appointment is needed.

(3) Only persons who are qualified to be appointed as Judges are eligible for temporary appointment under this section.

(4) No qualified person is precluded from appointment as a Judge under this section by reason only of the fact that he or she has attained the age of 68 years.

13. Oath of Office - (1) An oath in the form in subsection (3) must be taken by a Judge and Fa'amasino Fesoasoani, and by an acting District Court Judge or Fa'amasino Fesoasoani, prior to exercising any authority of that office.

(2) The oath to be taken under this section shall be administered by a District Court Judge, or if no District Court Judge is available for that purpose, by a Justice of the Supreme Court.

(3) The oath taken under this section must be in the following form:

“I..... swear by Almighty God that I will well and truly serve the Independent State of Samoa in the office of, in accordance with the Constitution and the law; and I will do right to all manner of people, without fear or favour, affection or ill will.”.

Division 2 - The Registrar and Assistant Registrars

14. The Registrar and Assistant Registrars - (1) A public servant must be appointed to the office of Registrar of the District Court, and any person appointed to this office must hold any qualifications determined for that office by the Judicial Services Commission.

(2) One or more public servants may be appointed to the office of Assistant Registrar of the District Court, and Assistant Registrars may be appointed to any Division of the Court.

(3) The Chief Executive Officer has authority to hold the office of Registrar if no other public servant is currently appointed to that office.

(4) Where the Chief Executive Officer is not the Registrar, the Registrar is responsible to the Chief Executive Officer and the Minister for the efficient operation of the District Court, and the implementation of this Act.

(5) Each Assistant Registrar is subject to the direction and control of the Registrar, and subject to that direction and control, all of the following apply to an Assistant Registrar:

- (a) he or she has the same powers and enjoys the same privileges as the Registrar;
- (b) he or she has authority to perform the same duties as the Registrar; and
- (c) he or she is subject to the same provisions and penalties as if he or she were the Registrar.

(6) The Registrar and Assistant Registrars are accountable to all Judges in the performance of their duties, and must comply with all directions given by a Judge so as to ensure the efficient operation and administration of the District Courts in accordance with this Act.

(7) Nothing in this section affects or detracts from the authority of a Registrar or Assistant Registrar in relation to the performance of any function or the exercise of any power prescribed by any law or by the Rules of Court.

(8) Without limiting the generality of subsection (7), the Registrar has authority to do all of the following:

- (a) to adjourn proceedings if a Judge is unable to attend the sitting;
- (b) to issue any process out of Court, subject to the authority of a Judge to recall or cancel any such process;
- (c) to administer an oath;
- (d) to endorse a warrant of arrest; and
- (e) to extend the bail of a person attending Court on a day on which criminal proceedings are listed before the Court.

(9) Whenever exercising any lawful power, a Registrar or Assistant Registrar is entitled to the same immunities and privileges as a Judge.

15. Duties in relation to court records - (1) The Registrar must keep all necessary records in relation to the proceedings of all District Courts.

(2) The Registrar and Assistant Registrars have authority to do all of the following:

- (a) to make any entry in the court's records, as directed by a Judge or Fa'amasino Fesoasoani, or as required by the Rules;
- (b) to authorise a copy or extract of any such entry; and
- (c) to affix the seal of the Court to any court document, and to otherwise sign and certify a court record as being a true copy or correct extract of the record.

(3) A certified record or extract is to be admitted in all Courts, and accepted by all other persons, as evidence of the entry and of the relevant proceedings, and the regularity of those proceedings is to be assumed, unless a court determines the contrary.

(4) If the existence or content of a record of the Court is in dispute, the Court has authority to determine the issue, and to order that any appropriate action is taken in relation to the records of the court.

Division 3 - Bailiffs and other court officers

16. Appointment of bailiffs - (1) A public servant must be appointed as Chief Bailiff of the District Court, and appointments of other bailiffs are to be made to ensure the efficient administration and operation of the District Court.

(2) A Judge, or a Fa'amasino Fesoasoani sitting in any proceedings of the Court, may appoint a police officer or other person to act as bailiff at any Court or place.

(3) Whenever a summons, warrant or other process issued under the authority of the Court is received by any police officer for service or execution, the police officer is regarded for all legal purposes to be bailiff of the Court.

17. Powers and duties of bailiffs - (1) All of the following apply to bailiffs of the Court, and to any person who acts in that capacity under this Act:

- (a) he or she must attend each sitting of the Court to which he or she is appointed for such time as is required, unless excused by the Court;
- (b) he or she must serve all summonses and orders, and execute all warrants issued by a Court when directed to do so;
- (c) he or she must comply with all rules and regulations relating to the execution of the office; and
- (d) he or she is subject to the lawful directions of a Judge, Fa’amasino Fesoasoani or the Registrar.

(2) A bailiff has the powers of a police officer under this Act, and must take an oath of the nature required of police officers appointed under law.

18. Duties of all court officers - (1) All persons holding a position relevant to the District Courts must comply with all of the following:

- (a) any role, responsibility or duty prescribed for that office by the Rules of Court or regulations made under this Act; and
- (b) any direction given by a Judge or Fa’amasino Fesoasoani in relation to a court proceeding, or to a record relevant to a proceeding held by that Judge or Fa’amasino Fesoasoani.

(2) The requirements of this section apply to all interpreters, clerks and other administrative officers of the Court, and to any other persons who perform duties relating to the administration of the Court.

PART 3
JURISDICTION OF THE COURTS

Division 1 - Civil Jurisdiction

19. Civil jurisdiction limits - (1) A Judge has authority to hear and determine any action founded on contract or on tort subject to both of the following limitations:

- (a) if the debt, demand or damage, or the value of the chattels claimed is not more than \$20,000; and
- (b) if the debt or demand claimed consists of a balance not exceeding \$20,000, after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of his or her claim or demand.

(2) A Judge has jurisdiction to hear and determine any action for the recovery of any penalty, expenses, contribution or other like demand which is recoverable by virtue of any law, if both of the following apply:

- (a) it is not expressly provided by that or any law that the demand is only recoverable in some other Court; and
- (b) the amount claimed in the action does not exceed the sum of \$20,000.

(3) Fa'amasino Fesoasoani have authority in relation to all of the following:

- (a) to hear and determine any action founded on contract or in tort if the debt, demand or damage, or the value of the chattels, claimed does not exceed the sum of \$2,000;
- (b) to hear and determine any action for the recovery of any expense, contribution or other demand which is recoverable by virtue of any law, if both of the following apply -
 - (i) it is expressly provided by law that the action may be heard and determined by a District Court;
 - (ii) the amount claimed in the action does not exceed the sum of \$2,000.

(4) The jurisdiction exercised by Fa'amasino Fesoasoani under this section must comply with the following:

- (a) any applicable written instructions issued by the Chief Justice;

- (b) or if no such instructions apply, any applicable instructions issued by the Senior District Court Judge.

20. Abandonment of part of claim to give Court jurisdiction

- (1) If a plaintiff has a cause of action for more than \$20,000 relating to any matter within the Court's civil jurisdiction, the plaintiff is entitled to abandon the excess so that a Judge has jurisdiction to hear and determine the action.

(2) If any action, in which the plaintiff has abandoned part of his or her claim under subsection (1), is heard in the Court, the plaintiff is not entitled to recover an amount exceeding \$20,000 (excluding costs), and the judgment of the Court is in full discharge of all demands in respect of the cause of action, and entry of the judgment is to be made accordingly.

(3) If a plaintiff has a cause of action for more than \$20,000 relating to any matter within the jurisdiction of the Fa'amasino Fesoasoani, the plaintiff is entitled to abandon any amount which exceeds the limit of the Fa'amasino Fesoasoani so that a Fa'amasino Fesoasoani has jurisdiction to hear and determine the action.

(4) If any action, in which the plaintiff has abandoned part of his or her claim under subsection (3) and is heard by a Fa'amasino Fesoasoani, the plaintiff is not entitled to recover an amount exceeding \$2,000 (excluding costs), and the judgment of the Court in the action is in full discharge of all demands in respect of the cause of action, and entry of the judgment is to be made accordingly.

21. Agreement of the parties for an action to proceed -

Without limiting the effect of section 31, if a Judge or Fa'amasino Fesoasoani would have had jurisdiction to hear any civil proceeding, but for the amount of the claim, the parties to the proceeding are entitled to consent to a Judge or Fa'amasino Fesoasoani (as the case may be) proceeding to hear and determine the proceedings, and in any such case, the Court has authority to make an order in excess of the limits applied under this Part.

22. Division of cause of action not allowed -

A cause of action may not be divided for the purpose of bringing more than 1 action

or making any counterclaim within the jurisdictional limits prescribed by this Part.

23. Ancillary civil jurisdiction - When exercising their civil jurisdiction, District Courts have authority to do any of the following:

- (a) to grant such relief, redress, or remedy (or combination of remedies), either absolute or conditional;
- (b) to give effect to every ground of defence or counterclaim (equitable or legal), which the Court considers ought to be granted or given in the like case by the Supreme Court; and
- (c) to make any order or exercise any authority or jurisdiction which, if it related to an action or proceeding pending in the Supreme Court, might be made or exercised by the Supreme Court in Chambers.

24. Jurisdiction in actions relating to land - (1) A Judge has jurisdiction to hear and determine any action for the recovery of freehold land, or any interest in land, if the assessed capital value of that land or interest does not exceed \$100,000, or the annual rental for that land does not exceed \$20,000.

(2) The Court has no jurisdiction to hear or determine any action which in any way relates to or affects customary land.

25. Jurisdiction to divide chattels - (1) If chattels, not exceeding \$20,000 in value, belong to persons in undivided shares, the persons having a half interest or more than a half interest may apply to a Judge for either of the following orders:

- (a) for division of the chattels, or any of them, according to a valuation or otherwise; and
- (b) for sale of the chattels and division of the proceeds.

(2) A Judge has jurisdiction to hear and determine an application made under subsection (1), and to make such order and give such consequential directions as the Judge thinks fit.

26. Equity jurisdiction - (1) A Judge has jurisdiction to hear and determine any of the following proceedings:

- (a) proceedings for enforcing any charge or lien, if the amount owing in respect of the charge or lien does not exceed the sum of \$20,000;
- (b) proceedings for the specific performance, or for the rectification, delivery up or cancellation of any agreement for the sale, purchase or lease of any property, if in the case of a sale or purchase, the purchase money, or, in the case of a lease, the value of the property, does not exceed the sum of \$20,000;
- (c) proceedings for the dissolution or winding up of any partnership (whether or not the existence of the partnership is in dispute), if the whole assets of the partnership do not exceed in amount or value the sum of \$20,000;
- (d) proceedings for relief against fraud or mistake, if neither the damage sustained nor the estate or fund in respect of which relief is sought exceeds in amount or value the sum of \$20,000; and
- (e) proceedings for the recovery of any specific or pecuniary legacy or share of residue presently payable not exceeding in value or amount the sum of \$20,000.

(2) No proceeding for the dissolution or winding up of a partnership or order in that regard prevents any creditor from petitioning for an adjudication of bankruptcy against the partnership firm or any member or members of it.

27. Administration in simple form - During the absence or inability of a Justice of the Supreme Court to act, from whatever cause, a District Court Judge has the jurisdiction and powers of a Justice of the Supreme Court to grant administration in simple form of the estate of any deceased person leaving estate in Samoa.

28. Exercise of civil jurisdiction under other laws - (1) If any power, authority or jurisdiction is given to a Judge or Fa'amasino Fesoasoani under any other laws, the proceedings must be conducted in accordance with this Act and the applicable Rules of

Court, unless some other procedure is specifically provided for or required under the other law.

(2) A Judge or Fa'amasino Fesoasoani when exercising power, authority or jurisdiction under another law has all the powers given under this Act and the Rules of Court.

(3) Nothing in this Act or the Rules derogates from or affects the provisions of the other law conferring any power, authority or jurisdiction on a Judge or Fa'amasino Fesoasoani, or on District Courts.

29. Summary relief in civil matters - (1) A Judge or Fa'amasino Fesoasoani has authority to deal summarily with any civil proceeding in accordance with any procedure prescribed by the Rules of Court.

(2) Any civil proceedings may be dealt with summarily by a Court on either of the following grounds:

- (a) by giving judgment in default if the defendant fails to file a defence or notice to that effect; and
- (b) by giving summary judgment in favour of a plaintiff if no defence to the proceeding is disclosed by the defendant, and the court is satisfied that the amount is due to the plaintiff from the defendant.

Division 2 - Criminal Jurisdiction

30. Criminal jurisdiction of Judges and Fa'amasino Fesoasoani - (1) A Judge has jurisdiction to hear, determine or pronounce sentence in respect of any information relating to any offence of the following natures:

- (a) an offence of any nature which is punishable only by a fine or forfeiture of an amount permitted under this Act; and
- (b) an offence of any nature which is punishable by a term of imprisonment which does not exceed 7 years, whether or not it is also punishable by a fine, penalty or forfeiture:

PROVIDED THAT in any proceedings in the Youth Court for any offence within the jurisdiction of that Court, the Judge may impose a sentence in excess of the limit under paragraph (b) if the maximum

penalty prescribed for that offence exceeds 7 years except for a charge of murder.

(2) A Judge has jurisdiction to hear and determine any proceedings commenced under the Customs Act 2014.

(3) Fa'amasino Fesoasoani have jurisdiction to hear, determine and impose sentence in respect of any information which charges the accused with either of the following:

(a) an offence the maximum penalty for which does not exceed a 1 year imprisonment term, or a fine not exceeding 5 penalty units, or both; or

(b) the crime of theft, provided the value of the property stolen does not exceed the sum of \$500.

(4) Fa'amasino Fesoasoani have authority to impose terms of imprisonment not exceeding 12 months in default of payment of any fine imposed by the Court.

(5) A Judge or Fa'amasino Fesoasoani has authority to order the transfer of any criminal proceeding which is not within the limits of jurisdiction prescribed by this section, to a court which has jurisdiction to hear and determine the proceeding.

(6) If an offender faces multiple charges in the District Court, and 1 or more of them is outside the jurisdiction stated in subsection (1), the Judge has authority to do either of the following:

(a) to order that all charges be transferred to the Supreme Court; or

(b) to transfer to the Supreme Court only those charges that are outside of the Court's jurisdiction, and to proceed to hear the charges that are within the Court's jurisdiction.

(7) If an order is made under subsection (6)(a) the matters transferred are to be all heard and determined by the Supreme Court.

(8) A Fa'amasino Fesoasoani must order the transfer of any criminal proceeding which is not within the limits of jurisdiction prescribed by this section, to be heard and determined by a Judge.

(9) Written notice of any decision made to transfer proceedings under this section must be given by the Registrar to the Prosecution and the defendant, as soon as the order is made to transfer proceedings.

PART 4
TRANSFER OF PROCEEDINGS

31. Transfer of civil proceedings when limit is exceeded - (1)

A Judge has authority to order the transfer of civil proceedings which have been commenced in the District Court to be heard and determined in the Supreme Court only if all of the following circumstances apply:

- (a) it becomes apparent that the claim or value of the property claimed, exceeds the monetary limit prescribed for a Judge under Part 3;
- (b) the plaintiff does not agree to abandon the part of his or her claim which exceeds the limit;
- (c) the parties do not agree that the Judge should proceed to hear and determine the matter.

(2) In addition to the grounds for transfer under subsection (1), a Judge has authority to order that proceedings commenced in the District Court be transferred for hearing and determination in the Supreme Court if it becomes apparent that any aspect of the claim, or any issue relevant to it, is outside the jurisdiction of the District Court for any reason that is not related to the monetary limits imposed under Part 3.

(3) If it appears to a Judge that the plaintiff or one of the plaintiffs knew or ought to have known that the Court had no jurisdiction in the proceedings, the Judge has authority to order that the proceedings be struck out, and in such event the Judge has authority to award costs to the same extent and recoverable in the same manner as if the Court had jurisdiction and the claim had not been established.

(4) Written notice of any decision made to transfer proceedings under this section must be given by the Registrar to any party who is not present or represented in court at the time that the order is made, or if the order is made in the absence of the parties.

32. Transfer of proceedings by Fa'amasino Fesoasoani - (1)

A Fa'amasino Fesoasoani has authority to order the transfer of civil proceedings to be heard and determined by a Judge only if all of the following circumstances apply:

- (a) it becomes apparent that the claim or value of the property claimed, exceeds the monetary limit prescribed for a Fa'amasino Fesoasoani under Part 3;
- (b) the plaintiff does not agree to abandon the part of his or her claim which exceeds the limit; and
- (c) the parties do not agree that the Fa'amasino Fesoasoani should proceed to hear and determine the matter.

(2) In addition to the grounds for transfer under subsection (1), a Fa'amasino Fesoasoani has authority to order that proceeding be transferred for hearing and determination by a Judge if it becomes apparent that any aspect of the claim, or any issue relevant to it, is outside the jurisdiction of the Fa'amasino Fesoasoani for any reason, not related to the monetary limits imposed under Part 3.

(3) If it appears to a Fa'amasino Fesoasoani that the plaintiff or one of the plaintiffs knew or ought to have known that the Fa'amasino Fesoasoani or the District Court had no jurisdiction in the proceedings, the Fa'amasino Fesoasoani has authority to order that the proceedings be struck out, and in such event the Fa'amasino Fesoasoani has authority to award costs to the same extent and recoverable in the same manner as if the Court had jurisdiction and the claim had not been established.

(4) Written notice of any decision made to transfer proceedings under this section must be given by the Registrar to any party who is not present or represented in court at the time that the order is made, or if the order is made in the absence of the parties.

33. Transfer of proceedings where there is a counterclaim -

(1) If a counterclaim, or set-off and counterclaim, involves a matter beyond the jurisdiction of the District Court, a Judge has authority to make any of the following orders:

- (a) that the whole proceedings be transferred to the Supreme Court;
- (b) that the whole proceedings be heard and determined in the District Court, if the defendant abandons the part of the counterclaim or set off which exceeds the limits of the Court's jurisdiction, or the parties agree to the matter being heard and determined by the District Court; and

(c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to the Supreme Court and that the proceedings on the plaintiff's claim be heard and determined in the District Court.

(2) If an order is made under subsection (1)(c), and judgment on the claim is given for the plaintiff, execution on that judgment is stayed until the proceedings transferred to the Supreme Court have been determined, unless the Supreme Court makes an order that execution can proceed.

(3) If no order is made under this section and a counterclaim or set off exceeds the monetary limits of the District Court during the hearing and determination of the proceedings the defendant is deemed to have abandoned the amount which exceeds the limit.

(4) If the Supreme Court makes any order under this section, the Registrar of the Supreme Court must send to the Registrar of the District Court a copy of the order.

34. Transfer of proceedings from Supreme Court to District Court - (1) If civil proceedings have been commenced in the Supreme Court which concern a subject-matter that is within the jurisdiction of the District Courts, the Supreme Court has authority to order that the proceedings be transferred to the District Court.

(2) If proceedings are ordered to be transferred under subsection (1), a sealed order to that effect must be sent to the Registrar of the District Court, together with all documents filed in the Supreme Court relating to the proceedings.

(3) When the requirements of subsection (2) are complied with, the proceedings are to be regarded as if they had been originally commenced in the District Court which has jurisdiction to deal with the proceedings.

(4) The transfer of proceedings under this section does not affect any right of appeal against the order directing the transfer, or the right to enforce in the Supreme Court any judgment signed or order made in the Supreme Court before the transfer.

35. Costs in transferred cases - (1) Subject to subsection (2), if a matter is ordered to be transferred pursuant to this Part, the costs of the whole proceedings (both before and after the transfer) are to

be determined by the Court to which the proceedings are transferred, subject to any order made by the Court which ordered the transfer.

(2) The costs associated with any part of the proceedings in an action transferred from the Supreme Court to the District Court which have taken place in the Supreme Court before the transfer, are subject to the Rules of the Supreme Court, and to the relevant scale of costs in the Supreme Court, unless the Supreme Court orders otherwise.

PART 5 CIVIL PROCEDURE

Division 1 - Parties

36. Capacity of parties to sue and be sued in the District Court - All of the following have full legal capacity to sue and be sued in proceedings taken in the District Court:

- (a) any legal person with legal capacity;
- (b) any duly appointed trustee, executor or administrator may sue and be sued in the Court as if he or she were a party in his or her own right, without joining any of the beneficiaries of the trust or estate, and in such proceedings the trustee, executor or administrator is deemed to be representative of the beneficiaries in the action;
- (c) any beneficiary of a trust or estate who is ordered by a Judge to be a party in any relevant proceedings;
- (d) a child who is suing for wages or piecework, or for work as an employee;
- (e) a child who is seeking to enforce any other legal right in respect of which he or she has legal capacity to enjoy or enforce;
- (f) a next friend or guardian *ad litem* of any person who is prevented from taking action in his or her own name and right by reason of any legal disability;
- (g) the duly appointed legal representative of any person suffering from mental incapacity, in accordance with any applicable law; and

- (h) a person entitled by law to take or defend an action on behalf of a person who has been declared to be bankrupt or insolvent.

37. Persons jointly liable - (1) If a plaintiff has a claim recoverable under this Act against 2 or more persons who are jointly liable, it is sufficient to serve any of those persons with the proceedings, and judgment can be obtained and execution issued against any person so served, even if the other persons who are jointly liable have not been served or sued, or may not be within the jurisdiction of the Court.

(2) If judgment is obtained against any person in accordance with subsection (1) and is satisfied either in part or for the whole amount by that person, he or she is entitled to take proceedings taken in the District Court to recover contribution from any other person who is jointly liable.

38. Proceedings against absent defendant - The Court has authority to hear and determine any civil proceedings against a defendant who is absent from Samoa if it is satisfied of either of the following:

- (a) that service has been effected on the defendant in accordance with the Rules; or
- (b) that the defendant has a duly appointed agent in Samoa authorised to sue and be sued on his or her behalf, and service has been effected on the agent in accordance with the Rules.

Division 2 - General matters of procedure

39. Right of appearance - (1) Unless otherwise provided by any other law, a party to any civil proceedings may appear and act personally or be represented by a barrister or solicitor of the Supreme Court of Samoa.

(2) In special circumstances the Court has authority to permit any party to appear by an agent authorised in writing by the party, or by any person holding a power of attorney from the party

authorising such person to sue and be sued for and in the name of the party.

(3) A person who is permitted to represent a party under subsection (2) is not entitled to receive any fee or payment for so appearing or acting, unless he or she is a barrister or solicitor.

(4) A corporation is entitled to appear and be represented by any officer of the corporation, or by a duly appointed attorney or agent of the corporation.

(5) Nothing in this section prevents a Judge or Fa'amasino Fesoasoani from permitting any person to appear before the Court on behalf of a party on an *amicus curiae* basis, if the interests of justice are served by the appearance.

40. Compelling witnesses - (1) A person who is summoned as a witness in a Court in any civil proceedings and who does either of the following:

(a) refuses or neglects, without sufficient cause, to appear or to produce any document or thing required by the summons to be produced; or

(b) refuses to be sworn or to give evidence, commits an offence and is liable to a fine not exceeding 100 penalty units.

(2) A witness who is summoned must be given sufficient money at the time of service, or at any time prior to the date of hearing, to enable that person to meet the expense of travelling to the court.

(3) A witness who has been summoned as a witness and who refuses or neglects to appear, is to be regarded as having had sufficient cause if he or she establishes to the satisfaction of the Court that no money was given or tendered as required by subsection (2).

(4) A person present in Court who is called upon to give evidence but refuses to be sworn or give evidence, whether or not he or she has been summoned or paid or tendered expenses, commits an offence and is liable to a fine not exceeding 500 penalty units, or to a term of imprisonment of up to 3 months, or both.

(5) The payment of a fine imposed under subsection (4), or the undergoing of a term of imprisonment for non-payment of such fine,

does not exempt a person from any action for disobeying a summons or refusing to be sworn or give evidence.

41. Witness expenses - (1) In any civil proceedings, a witness attending a Court upon a witness summons, and any other person giving evidence in the course of the proceedings, is entitled to have his or her expenses paid by the party for whom the evidence is given.

(2) The amount of expenses to be paid to a witness is to be assessed in accordance with any applicable scale, or as otherwise determined as being reasonable by the Court.

(3) The Court may disallow the whole or any part of such sum.

42. Evidence by affidavit or affirmation - (1) An affidavit or affirmation to be used in a Court may be sworn or made before any District Court Judge or Fa'amasino Fesoasoani or before any person authorised by law, but must not be a solicitor engaged in the proceedings.

(2) The Rules of Court may provide for the admission of an affidavit or affirmation sworn or made out of Samoa before any person authorised in the Rules.

43. Evidence of witness out of Court - (1) On application of a party, the Court has authority to make an order for the taking of the evidence on oath, before any officer of the Court or any other person or persons, and at any place either in or out of Samoa, of any witness, if it appears necessary in the interests of justice.

(2) A Court may order any deposition taken in accordance with subsection (1) to be filed in the Court, and has authority to empower any party to the proceeding to give such deposition in evidence at the proceeding, on such terms as the Court directs.

44. Other matters of civil procedure - Regulations made under this Act, or the Rules of Court, may make provision in relation to all or any of the following:

- (a) summons to witnesses, and any other matter relevant to compelling witnesses or the production of documents;

- (b) giving evidence by way of affidavit in any circumstances, and in relation to any stage or aspect of civil proceedings;
- (c) interpleader proceedings;
- (d) referring any matter, or any issue arising in any civil proceedings to an arbitrator or referee;
- (e) referring any aspect of an action to the Registrar or a referee for inquiry, if it concerns matters relating to the examination of documents, land or chattels or any scientific or local investigation, or the assessment of financial accounts or records;
- (f) the removal of judgments between the District Court and the Supreme Court;
- (g) the authority of the Court to set aside a judgment or order made by a Judge, Fa'amasino Fesoasoani or Registrar;
- (h) the re-hearing of any proceeding if a judgment or order is set aside;
- (i) the authority of a Judge to set aside proceedings of Fa'amasino Fesoasoani;
- (j) the authority of a Judge to set aside an order or decision of a Registrar; or
- (k) any other matters of civil procedure that are not inconsistent with this Act.

Division 3 - Judgments and orders

45. Effect of judgments and orders - (1) A judgment or order of a District Court is final and conclusive between the parties, unless it is modified or set aside in accordance with the law.

(2) A judgment or order relating to a sum of money may be for the total sum payable, or require payment in instalments, and may require the payment to be made immediately, or at any other time that the Court determines.

(3) Unless an order is made under subsection (2) for payment to be made on specific terms, a judgment or order for the payment of a sum of money is deemed to be an order for the immediate payment of the whole amount payable under the judgment or order.

46. Enforcement of judgments - (1) A judgment or order of a Judge or Fa'amasino Fesoasoani for the payment of a sum of money may be enforced by any 1 or more of the following types of proceedings:

- (a) execution against the goods and chattels of the judgment debtor under a writ of sale;
- (b) garnishee proceedings for the attachment of money due to the judgment debtor;
- (c) proceedings under the Judgment Summonses Act 1965, or any other applicable law; or
- (d) any other type of proceedings prescribed by Regulations or the Rules of Court.

(2) If any judgment or order of a Judge or Fa'amasino Fesoasoani requires a party to do or refrain from doing any act (other than the payment of a sum of money, or relating to the recovery of land or for the delivery of specific chattels), the judgment or order may be enforced by a warrant of commitment to prison signed by a Judge for a term not exceeding 3 months.

(3) A judgment or order for the recovery of land may be enforced under a writ for the recovery of the land.

(4) A judgment or order for the delivery of specific chattels may be enforced, by order of a Judge, either under a warrant for the recovery of the chattels or by a warrant of commitment to prison signed by a Judge for a term not exceeding 3 months.

(5) Except by leave of a Judge, no proceedings for the enforcement of a judgment or order are to be commenced in any Court until after the expiry of 48 hours from the time of the giving of the judgment or the making of the order.

(6) If the judgment or order is one which may be appealed against without the leave of the Court, a Judge or Fa'amasino Fesoasoani has authority to order a stay of any enforcement proceedings until the time allowed for giving a notice of appeal has expired.

(7) Two or more proceedings for the enforcement of a judgment or order may be taken concurrently, but the judgment creditor is not entitled to recover a greater sum than the amount owing under the

judgment or order, and the costs and fees of any proceedings for enforcement.

(8) If a Judge is satisfied that any person committed to prison pursuant to this section ought to be discharged for any reason, the Judge has authority to order the person's discharge upon such terms (including liability to re-arrest if the terms are not complied with) as the Judge determines.

(9) Regulations or Rules of Court may make provision in relation to any power or process relevant to the enforcement of judgments and orders, including any matter related to any of the following:

- (a) any procedure, process or requirement related to a writ of sale;
- (b) the powers of a bailiff in relation to bills of exchange and other financial securities;
- (c) the recovery of money secured by bills of exchange and other financial securities, or of goods secured under a bill of sale;
- (d) penalty for any unlawful interference or dealing with goods seized under a writ of sale;
- (e) any procedure, power or requirement relating to the sale of goods seized in execution of a judgment or order;
- (f) any legal protection or immunity for bailiff's and other persons lawfully acting in relation to the execution of a judgment or order;
- (g) the priority of execution procedures applied under Supreme Court and District Court judgements and orders;
- (h) procedures where competing claims are made to seized goods, including interpleader proceedings;
- (i) any procedure, process or requirement related to garnishee proceedings;
- (j) any procedure, process or requirement related to proceedings for the recovery of land;
- (k) issues relevant to irregularities in the execution of writs for the recovery of land, and liability arising from any illegal use of such a writ;

- (l) any procedure, process or requirement related to the recovery of chattels, and the right to take further proceedings if chattels are not recovered under a writ;
- (m) dealing with absconding defendants whether or not judgment or order has been made; or
- (n) entitlements to compensation arising from execution process.

47. Time limit for enforcement of judgments - (1) No proceedings for the enforcement of a judgment or order of the Court which is more than 6 years old can be issued, except with the leave of the Court, or unless some payment has been made by or on behalf of the party liable to make payment, within the 12 months immediately before the issue of the proceedings for enforcement.

(2) The Court has authority to give leave under subsection (1) on an *ex parte* application.

48. Enforcement of order for payment by instalments - (1) If the Court has made an order for the payment of any sum of money by instalments, proceedings for the enforcement of the order must not be taken or issued until after default in the payment of an instalment due under the order.

(2) On any such default, proceedings or successive proceedings may be taken or issued for the whole of the said sum of money and costs then remaining unpaid, unless the Court on the application of the party liable orders otherwise.

49. Proceedings on cross-judgments - (1) If there are cross-judgments between the parties, proceedings for enforcement may be taken out only by that party who has obtained judgment for the larger sum, and only for so much as remains after deducting the smaller sum.

(2) Satisfaction for the remainder must be entered as well as satisfaction on the judgment for the smaller sum, and if both sums are equal, satisfaction must be entered upon both.

50. Power to stay proceedings for enforcement - (1) If it appears to a Judge or Fa'amasino Fesoasoani that a party is unable to pay a sum recoverable against him or her (whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise), or any instalment which has been ordered to be paid, the Judge or Fa'amasino Fesoasoani has authority to do either of the following:

- (a) to vary the judgment or order so as to provide for payment by instalments; or
- (b) to suspend or stay the proceedings for such time and on such terms as the Court determines.

(2) The powers under subsection (1) can be exercised from time to time until it appears that the party is able to make payment.

Division 4 - Appeals

51. Right to appeal - (1) A party to any civil proceedings may appeal to the Supreme Court against any non-suit or final determination or direction of the District Court:

- (a) without the leave of the District Court if the amount of the claim or the value of the property or relief claimed or in issue exceeds \$2,000, or if the title to any freehold land has come in question; and
- (b) with the leave of the District Court if the amount of the claim or the value of the property or relief claimed or in issue does not exceed \$2,000.

(2) No right of appeal will apply under this section if the parties agreed in writing, before the determination or direction, that the judgment of the Court would be final and conclusive.

52. Notice of appeal - (1) Every appeal to the Supreme Court must be brought by notice of appeal lodged with the Registrar of the Supreme Court.

(2) The notice of appeal may specify that the appeal relates to the whole or any specified part of the non-suit or final determination or direction.

(3) A copy of the notice of appeal must be served on all parties directly affected by the appeal, either before or immediately after

the notice of motion is lodged in the Supreme Court, and it is not necessary to serve a party who is not affected by the appeal.

(4) The Supreme Court has authority to direct that the notice of appeal be served on all or any parties to the proceedings, or upon any person who is not a party, and may adjourn the hearing of the appeal on such terms as the Court determines for service to be effected.

(5) A person who is served with a notice of appeal less than 14 clear days before the date of the hearing of the appeal has a right to apply for an adjournment on that ground.

(6) A copy of the notice of appeal must be lodged with the Registrar of the District Court either before or immediately after the notice of motion is lodged in the Supreme Court.

53. Time for appeal - An appeal must commence within 21 days from the day on which the non-suit or final determination or direction was given or made, or within such further time as the Supreme Court allows, on application made not later than 1 month after the expiration of the said 21 days.

54. Security for appeals - (1) An appellant must lodge security with the Registrar of the District Court.

(2) The amount of security is to be set under the Rules of Court, which may exempt appellants who are on legal aid, or on any other grounds, from the payment of the security.

(3) If the required security is not lodged within 7 days of the service of the notice of appeal, or within such further time as in special cases the Registrar of the District Court may permit, that Registrar must notify the Registrar of the Supreme Court of the failure, and the notice of appeal is then deemed to be abandoned.

(4) As soon as security is lodged, the Registrar of the District Court must forward to the Registrar of the Supreme Court all of the following:

- (a) a copy of the pleadings;
- (b) a copy, signed by the District Court Judge, of the Judge's Notes; and
- (c) any affidavits and exhibits in the Registrar's custody.

55. Cross-appeals - (1) It is not necessary for a respondent to give notice of cross-appeal, but if a respondent intends to contend that the decision of the Court below should be varied, the respondent must give notice of his or her intention to all parties to the appeal.

(2) The omission to give notice within a reasonable time does not affect the authority of the Supreme Court, but the Court may adjourn the appeal for the notice of cross-appeal to be served, and may make an order as to costs.

56. Procedure where appeal not prosecuted - (1) If the appellant does not prosecute the appeal with due diligence, the respondent has the right to apply to the Supreme Court to dismiss the appeal.

(2) If the appellant does not appear at the time appointed for hearing the appeal the Supreme Court has authority to dismiss the appeal.

(3) In any case to which this section applies, the Supreme Court has authority to order that costs determined by the Court be paid by the appellant to the respondent.

57. Procedure on hearing of appeal - (1) All appeals are to proceed by way of a rehearing.

(2) If any question of fact is involved in an appeal, the evidence taken in the District Court bearing on the question must, subject to any special order, be brought before the Supreme Court as follows:

- (a) as to any evidence given orally - by the production of a copy of the District Court Judge's notes, or such other materials as the Supreme Court requires; and
- (b) as to any evidence taken by affidavit and as to any exhibits - by the production of the affidavits and exhibits.

(3) Despite subsection (2), the Supreme Court may in its discretion rehear the whole or any part of the evidence.

(4) The Supreme Court has full discretionary power to receive further evidence upon questions of fact, either by oral evidence or by affidavit, or by evidence taken in accordance with the rules of the Supreme Court.

58. Further powers of Supreme Court on hearing of appeal - (1) On the hearing of an appeal the Supreme Court has authority in relation to all of the following:

- (a) to order a rehearing of the case in the District Court upon such terms as it thinks fit;
- (b) to order that judgment be entered in the District Court for either party;
- (c) to make a final or other order on such terms as it thinks proper, to ensure the determination on the merits of the real questions in dispute between the parties; and
- (d) to make such order as to costs as it thinks proper.

(2) The Supreme Court has authority to make the orders under subsection (1) even if the notice of appeal specifies that part only of the determination or direction be reversed or varied, and such powers may be exercised in favour of all or any of the respondents or parties, although those respondents or parties may not have appealed from or complained of the determination or direction.

59. Court appealed from to be advised of determination - (1) The Registrar of the Supreme Court must transmit to the Registrar of the District Court a memorandum of the determination of the Supreme Court, and the determination is to be regarded for the purposes of this Act as if it had been given by the District Court.

(2) The Registrar of the Supreme Court must also return to the Registrar of the District Court all affidavits and exhibits provided for the purposes of the appeal.

60. Stay of proceedings on appeal - A notice of appeal does not operate as a stay of proceedings under the judgment or order appealed from unless any of the following apply:

- (a) a District Court Judge orders a stay of proceedings;
- (b) the amount of the judgment or order appealed from and its costs is deposited with the Registrar of the District Court; or
- (c) security is given to the satisfaction of Registrar of the District Court for that amount.

PART 6
EXERCISE OF THE JUDICIAL POWERS

61. Trials by Judges or Fa’amasino Fesoasoani - (1) A Judge or Fa’amasino Fesoasoani acts as the sole arbiters in any proceedings brought in a District Court, and have all necessary authority to determine any questions of fact or law.

(2) Nothing in this section affects the power to make Rules authorising the Registrar or other officer of the court to exercise jurisdiction and powers conferred on the Court by this or any other Act.

62. Fa’amasino Fesoasoani may sit with a Judge - (1) Without limiting the effect of section 61, a Judge has authority to elect to preside over any proceeding with 1 or more Fa’amasino Fesoasoani.

(2) Any Fa’amasino Fesoasoani who sits with a Judge under subsection (1) only has authority to advise on any matter involving Samoan custom, or to advise as to penalty.

63. Judge and Fa’amasino Fesoasoani to take notes - (1) In any proceedings in relation to which there is a right of appeal without leave, the presiding Judge or Fa’amasino Fesoasoani must, unless the parties have agreed not to appeal, make or cause to be made, notes relating to all of the following matters:

- (a) the facts in evidence;
- (b) any question of law or equity raised at the hearing; and
- (c) of the decision and any other order or determination in relation to the proceedings.

(2) A party is entitled to a copy of the notes taken under subsection (1) (whether notice of appeal has been served or not) if the prescribed fee is paid.

64. No action lies unless act is in excess of or without jurisdiction - (1) No party or person is entitled to take action against any Judge or Fa’amasino Fesoasoani in relation to any judicial act, unless the Judge or Fa’amasino Fesoasoani has exceeded his or her jurisdiction, or has acted without jurisdiction.

(2) If a conviction, judgment or order is entered or made by a Judge or a Fa'amasino Fesoasoani, and a warrant of any kind is granted in relation to the conviction, judgement or order by another Judge or Fa'amasino Fesoasoani, no action lies against the Judge or Fa'amasino Fesoasoani who granted the warrant by reason of any defect in the conviction, judgment or order, or of any want of jurisdiction in the Judge or Fa'amasino Fesoasoani who entered or made it.

(3) A person claiming to have been injured by an act done by a Judge or Fa'amasino Fesoasoani in excess of jurisdiction or without jurisdiction, is not entitled to take action in that regard in the District Court.

(4) In any action brought against a Judge or Fa'amasino Fesoasoani by a person claiming to have been injured by an act done in excess of jurisdiction or without jurisdiction, the onus of proving the excess or want of jurisdiction lies upon the person alleging it.

65. Indemnity to Judges and Fa'amasino Fesoasoani - (1) A Judge or Fa'amasino Fesoasoani against whom a judgment has been entered to pay damages or costs to any person injured as a result of any act done in excess of jurisdiction or without jurisdiction, is to be indemnified by the State to the full amount of the judgment, if the Supreme Court certifies both of the following:

- (a) that the Judge or Fa'amasino Fesoasoani acted in good faith and with the belief that the matter was within the applicable jurisdiction; and
- (b) that the circumstances were such that the Judge or Fa'amasino Fesoasoani ought fairly and reasonably to be excused.

(2) The provisions of subsection (1) apply if a claim against a Judge or Fa'amasino Fesoasoani is settled at any stage of the proceedings, but in such a case the Supreme Court has authority to certify that the indemnity should be for a lesser sum than the amount of the settlement.

(3) Application for a certificate under this section may be made by a Judge or Fa'amasino Fesoasoani at any time to the Supreme Court in Chambers.

(4) A copy of the application must be served by the Judge or Fa'amasino Fesoasoani on the Attorney-General, who is entitled to appear and oppose it.

66. Proceedings not to be questioned for want of form - No statement of claim, information, summons, judgment, conviction, sentence, order, bond, warrant or other document, and no process or proceedings in a Court, is to be quashed, set aside or held invalid by any Court on the grounds of any defect, irregularity, omission or want of form, unless the Court considering the question is satisfied that there has been a miscarriage of justice.

PART 7 OFFICERS OF THE COURT

67. Resisting or obstructing a court officer - (1) A person who wilfully resists or obstructs, or aids, abets, counsels, procures or incites any other person to resist or obstruct, any officer of the Court in serving any process of a Court or in executing any warrant or any judgment or order of the Court, or acting otherwise in the execution of his or her duty, commits an offence, and is liable on an order made by a Judge or Fa'amasino Fesoasoani in that regard, to a fine not exceeding 100 penalty units, or imprisonment for a term of up to 3 months, or both.

(2) A bailiff or police officer may take a person who is in breach of this section into custody, with or without warrant, and bring that person before a Judge or Fa'amasino Fesoasoani.

(3) Nothing in this section prevents proceedings in respect of an assault being taken against a person in breach of this section.

68. Misconduct of officers - (1) A Judge has authority to conduct a summary inquiry if an officer of the Court is charged in relation to either of the following:

- (a) extortion or misconduct while acting in relation to any process of a Court; or
- (b) with not duly paying or accounting for any money levied or received by him or her under the authority of this Act.

(2) In an inquiry made under this section, the Judge has authority to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses before the Court.

(3) In any such inquiry the Judge has authority to make such order as the Judge thinks just, for the repayment of any money extorted or the due payment of any money levied, and for the payment of damages and costs.

(4) In addition to any order made under subsection (3), the Judge has authority to impose a fine upon the officer, not exceeding 100 penalty units for each offence.

69. Officers of Court not to act as solicitors - (1) Except as provided by this Act or any other law, or by the Rules of Court, no officer of the Court is to be directly or indirectly engaged as solicitor or agent for any party in any proceedings in any Court.

(2) A person who contravenes this section commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

70. Neglect by bailiffs - (1) If a bailiff of any Court, or any person acting under his or her authority, being employed to levy any execution against goods and chattels, loses the opportunity of levying the execution by reason of neglect, connivance or omission, any party aggrieved by that act or omission is entitled to complain to a Judge.

(2) On any complaint made under this section, the Judge, has authority to order the bailiff to pay damages (not exceeding the sum for which the execution was issued), if the neglect, connivance or omission is proved to the Judge's satisfaction.

71. Irregularity in executing warrants or writs - (1) No officer of the Court in executing any warrant or writ, and no person at whose instance any such warrant or writ is executed, is to be regarded a trespasser by reason of any irregularity or informality in relation to either of the following:

- (a) any proceeding on the validity of which the warrant or writ depends; or

(b) the form of the warrant or writ or in the mode of executing it.

(2) An action may be taken under section 73 for any irregularity referred to in subsection (1)(b).

72. Actions against bailiffs acting under warrants or writs -

(1) No action shall be commenced against a bailiff for anything done pursuant to a warrant or writ issued under this Act, unless any or both of the following apply:

(a) a written demand for inspection of the warrant or writ and for a copy of it, signed by the person making the demand, is made or left at the office of the Court by the party intending to bring the action, or his or her solicitor or agent;

(b) the bailiff refuses or neglects to comply with the demand within 6 days after it is made.

(2) If any action is commenced against a bailiff in a case where such a demand has been made and not complied with, judgment must be given for the bailiff if the warrant or writ is produced or proved at the trial, despite any defect of jurisdiction or other irregularity in the warrant or writ.

(3) Despite subsection (2), the officer who issued the warrant or writ may be joined as a defendant in the action, and if the officer is so joined and judgment is given against him or her, the costs to be recovered by the plaintiff must include such costs as the plaintiff is liable to pay to the bailiff.

73. Production of warrant or writ sufficient proof of Court's authority - In any action commenced against a person for anything done under this Act, the production of the warrant or writ of the Court is sufficient proof of the authority of the Court up to the time of the issue of the warrant or writ.

PART 8

ADMINISTRATION OF THE COURTS

Division 1 - Sittings

74. Place of sittings - (1) Regular sittings of the Courts for the conduct of civil or criminal can be held at any place approved under section 5(1).

(2) A Judge or Fa'amasino Fesoasoani presiding over any proceedings of the Court has authority to determine that the sitting will be held at any other place.

75. Times of sittings - (1) Sittings of the Court are to be held on such days as a Judge or Fa'amasino Fesoasoani determines.

(2) The days appointed for regular sittings are subject to the approval of the Senior District Court Judge.

(3) Subject to any decision made by a Judge or Fa'amasino Fesoasoani under this section, the Registrar has authority to appoint the days and the times for the Court's sittings.

76. Adjourned sittings - (1) A Judge or Fa'amasino Fesoasoani has authority to grant or order an adjournment of any proceeding or sitting.

(2) If a sitting of the Court cannot be held on an appointed day by reason of the absence of the Judge or Fa'amasino Fesoasoani or otherwise, the Registrar has authority to adjourn the Court to a nominated date.

Division 2 - Financial Provisions

77. Payment and recovery of fees in civil proceedings - (1) All fees in any civil proceedings (other than those payable for keeping possession, or for storing, removing, or selling goods seized under a warrant) must be paid in the first instance by the party on whose behalf any proceedings are taken.

(2) No Judge, Fa'amasino Fesoasoani or officer of the Court is to do any act for which a fee is payable unless the fee is first paid; but no such act, if done, is deemed to be invalid by reason only of the non-payment of the fee.

(3) In any proceedings in which the Government is a party, no fee needs to be prepaid by the Government, but the relevant fee

maybe recoverable from another party with costs, if judgment is given against that party.

(4) In default of the payment of any fees, payment can be enforced by order of the Court, in the like manner as payment of any debt determined by the Court to be paid.

(5) A table of fees payable must be kept in the office of every Court, and must be made available for inspection by any person on request.

78. Fees to be paid to Public Account - (1) Subject to subsection (2), all fees payable in respect of civil proceedings in District Courts are payable in the first instance to the Registrar of the Court, or any other authorised officer of the Court, and must be paid into the Public Account as soon as is practicable.

(2) Fees relating to keeping possession, or for storing, removing or selling goods seized under a warrant or writ, must be paid to the bailiff or person charged with the execution of the warrant or writ, and must then be given to the Registrar for payment to the person entitled to such sums.

79. Payment and recovery of fees in criminal proceedings - (1) The provisions of section 78 apply to fees in criminal proceedings.

(2) In criminal proceedings the provisions of section 78(2) apply to any police officer or other representative of the Government in any criminal proceedings undertaken on behalf of the State.

80. Money to be payable in first instance to Registrar - (1) All fees, fines, costs, and other money payable in criminal proceedings in District Courts is payable in the first instance to the Registrar, or any other authorised officer of the Court.

(2) The sums received under this section must be paid as soon as practicable to either of the following:

- (a) in any case where they are payable to any person in accordance with any law or by an order of the Court - to that person; or
- (b) in any other case - into the Public Account.

PART 9
MISCELLANEOUS

81. Summonses and other documents to be under Seal - (1)

All summonses issued out of the District Court must be sealed with the Seal of the Court.

(2) All summonses and other documents purporting to be sealed by the Court must be received in evidence without further proof.

82. Proof of service of documents - (1) The service of any document can be proved by any of the following means:

- (a) by affidavit made by the person who served the document, showing the fact and the time and mode of service;
- (b) by the person who served the document on oath at the hearing; or
- (c) subject to subsection (3), if service is effected by an officer of the Court or a police officer - by an endorsement on the copy of the document showing the fact and the time and mode of service.

(2) Any endorsement made in accordance with subsection (1)(c) must be signed by the person who served the document or, if the service was effected by registered letter, by any officer of the Court who knows of the service.

(3) A person who wilfully endorses any false statement of the fact, time, or mode of service on a copy of any document commits an offence, and is liable upon conviction to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding 2 years, or both.

83. Language of court documents - If a document is served on any person who is known to the Registrar or person serving the document to be able to read and understand English, it must be written in English, but in every other case it must be written in Samoan, or accompanied by a translation into Samoan.

84. Actions on lost instruments - In any action founded on a promissory note, bill of exchange or other negotiable instrument

declared on the affidavit of the plaintiff to be lost, the Court has authority to give judgment as if the document were produced, if an indemnity is given by the plaintiff to the satisfaction of the Court against the claims of any other person upon the instrument.

85. No privilege to barristers or solicitors - No privilege extends to any barrister or solicitor to exempt him or her from the jurisdiction of the Court.

86. Police officers must assist Court - (1) All police officers must offer aid and assistance to any Court, or to a Judge, Fa'amasino Fesoasoani, Registrar or Assistant Registrar in the performance of any duty or function or power provided for by this or any other Act.

(2) It is the duty of the officer-in-charge of every prison or lock-up, on the request of the bailiff or police officer to whom a warrant of arrest or commitment has been issued, to hold the prisoner or defendant in the custody of the bailiff or police officer until the prisoner or defendant is taken to the place of imprisonment or Court named in the warrant by the most convenient means of transport.

(3) A police officer neglects or refuses to provide aid or assistance in accordance with subsection (1), or an officer-in-charge of a prison or lock-up who breaches subsection (2), commits and is liable upon conviction to a fine not exceeding 50 penalty units, if no other penalty is provided for the breach under any law.

(4) Nothing in subsection (3) prevents a Judge or Fa'amasino Fesoasoani from taking action for contempt of court against a person who has breached this section.

87. District Court Rules - (1) The Head of State acting on the advice of the Rules Committee, may make, alter or revoke Rules regulating the practice and procedure of the District Court (or any Division of the Court), and which prescribe forms or fees relating to proceedings in the Court, or any of its Divisions.

(2) Rules made under this section may apply to the exercise of any jurisdiction conferred on District Courts, Judges or Fa'amasino Fesoasoani by any other Act.

(3) Rules of Court may relate to all matters of practice or procedure (including matters relating to or concerning the effect or

operation in law of any practice or procedure), and such Rules may prescribe matters relating to all or any of the following:

- (a) the Court in which proceedings are to be commenced, and the procedure to be adopted where proceedings are commenced in one Court which should, under this or any other Act or the rules, have been commenced in another Court;
- (b) the records of the Court, and the custody of the court records;
- (c) the receipt and accounting for any money paid into or out of Court;
- (d) authorising the Registrar to hear and determine any aspect proceedings (other than conducting the trial and entering judgment), and any actions in which the defendant fails to appear at the hearing or admits the claim;
- (e) the costs and charges to be paid by one party to any other party, in addition to the money paid out-of-pocket;
- (f) the forms to be used in respect of any proceedings to which this Act applies;
- (g) procedure for the taking of evidence of witnesses at a distance or about to leave the country or of witnesses overseas (including provisions for requiring the attendance of witnesses, the answering of questions, and the production of documents); or
- (h) any other matters in respect of which Rules are contemplated or specifically authorised by this Act.

88. Regulations - (1) The Head of State, acting on the advice of Cabinet, may make regulations in relation to any matter for which regulations are contemplated under this Act, or which are necessary or expedient for giving full effect to the provisions of this Act, or for its due administration.

(2) Without limiting the generality of subsection (1), Regulations may be made under this Act in relation to any of the following matters:

- (a) the jurisdiction and procedures for any Division of the District Court, including the Youth Court, the Family

- Court and any other court or division of a court established under any enactment;
- (b) the grounds for removal from office of Judge, Fa'amasino Fesoasoani, Registrar or Assistant Registrar, and the procedures to be applied in such cases;
 - (c) the entitlements to be paid or withheld in the event of a removal from office; or
 - (d) any terms and conditions applicable to Judges and Fa'amasino Fesoasoani, including pension or other entitlements.
 - (e) the fees to be paid in respect of any proceedings taken or for service of any summons or other process under this Act; or
 - (f) fees, travelling allowances and expenses payable to persons giving evidence and to interpreters, referees, and arbitrators in any proceedings under this Act.
- (2A) Any fee prescribed under subsection (2)(e):
- (a) shall be proposed by the Ministry with the concurrence of the Rules Committee; and
 - (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.
- (3) Regulations may be made under this Act in relation to any matter for which Rules of the Court may be made, and in the event of any inconsistency between a provision of the Regulations or the Rules, the Regulations prevail.

89. Transitional and savings provisions - (1) Nothing in this Act affects any appointment made under the repealed Act, and all Judges, Fa'amasino Fesoasoani, Registrar, Assistant Registrar and other court officers holding office under the repealed Act are deemed to hold an equivalent office under this Act.

(2) Nothing in this Act affects any proceeding, judgment or order issued, taken or made under the repealed Act, and any such proceedings, judgments and orders which are still current at the time of commencement of this Act are deemed to have been taken under the authority of this Act.

(3) The District Court Rules made under the repealed Act are deemed to have been made under the authority of this Act, and are valid and of full effect until they are repealed or modified by Rules made under this Act.

90. Application of this Act in relation to other laws - (1) The provisions of this Act prevail over any provision of another law which is inconsistent with this Act.

(2) Without limiting the generality of subsection (1), any law which relates to general matters of civil or criminal procedure must be read and applied so as to be consistent with the provisions of this Act, regardless of when the other law was made or takes effect.

REVISION NOTES 2016 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2016 – 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of assented date;
- (b) Numbers in words deleted;
- (c) Roman numerals changed to decimal numbers.

The following amendments have been made to this Act since its enactment:

By the *Fees and Charges (Miscellaneous Amendments) Act 2017* No. 13:

Section 88 - new subsection (2A) inserted after subsection (2).



Savalenoa Mareva Betham- Annandale
Attorney General of Samoa

*This Act is administered by the
Ministry of Justice and Courts Administration.*

