



Consolidated Acts of Samoa 2010

You are here: [PacLII](#) >> [Databases](#) >> [Consolidated Acts of Samoa 2010](#) >> [District Courts Act 1969](#)
[Database Search](#) | [Name Search](#) | [Noteup](#) | [Download](#) | [Help](#)

District Courts Act 1969

CONSOLIDATED ACTS OF SAMOA 2010

[DISTRICT COURTS ACT 1969](#)

Arrangement of Provisions

[PART I](#)

PRELIMINARY

1. Short title and commencement
2. Interpretation

[PART II](#)

CONSTITUTION

District Courts

3. Courts constituted
4. Exercise of civil or criminal jurisdiction in Courts appointed

District Court Judges and Fa'amasino Fesoasoani

5. Appointment and qualifications of Magistrates
6. Appointment of Fa'amasino Fesoasoani
7. Salaries and allowances
8. Tenure of office
9. Magistrates to be Coroners
10. Acting Magistrates and Fa'amasino Fesoasoani
- 10A. Oath of Office

Registrars

11. Appointment of Registrar
12. Record of proceedings to be kept by Registrar
13. Deputy Registrars

Bailiffs and Others

14. Appointment of bailiffs
15. Powers and duties of bailiffs
16. Court administrative officers

PART III **JURISDICTION**

General

17. Jurisdiction of Magistrate
18. Jurisdiction of Faamasino Fesoasoani
19. Persons who may exercise jurisdiction of Court
20. General ancillary jurisdiction
21. Ancillary powers of Magistrate and Fa'amasino Fesoasoani
22. Application of this Act

Civil Jurisdiction of Magistrate

23. General jurisdiction in actions on contract and tort
24. Money recoverable by statute
25. Jurisdiction in actions for recovery of freehold land
26. No jurisdiction in relation to customary land
27. Jurisdiction to divide chattels
28. Equity jurisdiction
29. Abandonment of part of claim to give Court jurisdiction
30. Extension of jurisdiction by agreement between the parties
31. Division of cause of action not allowed
32. Administration in simple form

Civil Jurisdiction of Fa'amasino Fesoasoani

33. Civil jurisdiction
34. Extended jurisdiction
35. Jurisdiction by abandonment of part of claim or by agreement

Criminal and Other Jurisdiction of District Court Judge

- 36. General criminal jurisdiction
- 37. Jurisdiction in proceedings under the [Customs Act 1977](#)

Criminal Jurisdiction of Fa'amasino Fesoasoani

- 38. Criminal jurisdiction of all Fa'amasino Fesoasoani
- 39. Matters covered by that criminal jurisdiction
- 40. Extended jurisdiction

PART IV CIVIL PROCEDURE

Parties

- 41. Trustees, executors, and administrators
- 42. Court may join beneficiaries
- 43. Infants
- 44. Mentally defective persons
- 45. Persons jointly liable
- 46. Proceedings against absent defendant
- 47. Bankruptcy of plaintiff

Transfer of Proceedings

- 48. Transfer to Supreme Court of proceedings within jurisdiction
- 49. Transfer of proceedings beyond jurisdiction
- 50. Transfer of proceedings where there is a counter-claim
- 51. Transfer of proceedings from Supreme Court by agreement between parties
- 52. Procedure and effect of transfer of proceedings from Supreme Court to District Court
- 53. Costs in cases transferred or removed

Interpleader

- 54. Interpleader

Hearing

- 55. Right of audience
- 56. Equity and good conscience

Witnesses and Evidence

- 57. Witness entitled to expenses
- 58. Penalty for failing to comply with witness summons
- 59. Persons who may take an affidavit or affirmation
- 60. Evidence of witness out of Court

Reference to Arbitrator or Referee

- 61. Power to refer to arbitration
- 62. Power to refer to the Registrar or a referee for inquiry
- 63. Power to refer mere matter of account to the Registrar for inquiry

Judgments and Orders

- 64. Finality of judgments and orders
- 65. Payment of judgments and orders

Removal of Judgments

- 66. Removal of judgment of District Court into Supreme Court
- 67. Action in Supreme Court on judgment or order of District Court
- 68. Removal of judgment or order of Supreme Court into District Court
- 69. Removal of judgment from one District Court to another

Appeals

- 70. Right to appeal
- 71. Notice of appeal
- 72. Time for appeal: security for appeal
- 73. Cross-appeals
- 74. Procedure where appeal not prosecuted
- 75. Procedure on hearing of appeal
- 76. Further powers of Supreme Court on hearing of appeal
- 77. Court appealed from to be advised of determination
- 78. Stay of proceedings on appeal

Rehearing and Power to Set Aside

- 79. Rehearing
- 80. District Court Judge may set aside proceedings of Fa'amasino Fesoasoani
- 81. District Court Judge may set aside judgment or order of Registrar

Enforcement of Judgments Generally

- 82. Proceedings for enforcement of judgment
- 83. Enforcement of judgments more than 6 years old
- 84. Enforcement of order for payment by instalments
- 85. Proceedings on cross-judgments
- 86. Power to stay proceedings for enforcement

Warrant of Distress

- 87. Warrant of distress
- 88. Disposal by bailiff of bills of exchange, etc., seized
- 89. Recovery of money secured by bills of exchange, etc.
- 90. Penalty for rescue of goods seized

Sale of Goods Seized

- 91. Period to elapse before sale
- 92. Sale of goods by public auction unless otherwise ordered
- 93. Protection of bailiff selling goods under execution without notice of claim by third party
- 94. Procedure when goods seized are secured under bill of sale
- 95. Priority of Supreme Court and District Court executions
- 96. Sale of goods where claim made thereto
- 97. Bailiff's interpleader

Garnishee proceedings

- 98. Garnishee proceedings

Recovery of Land

- 99. Warrant for recovery of land
- 100. Irregularity in execution of warrant can only be sued for as special damage
- 101. Person illegally obtaining warrant liable for trespass

Recovery of Chattels

- 102. Warrant for recovery of chattels
- 103. Further proceedings if chattels not recovered

Absconding Defendant

- 104. Absconding defendant may be arrested
- 105. Successful plaintiff entitled to execution, successful defendant entitled to compensation

PART V **GENERAL**

Trial

- 106. Trial by District Court Judge or Fa'amasino Fesoasoani
- 107. Fa'amasino Fesoasoani may sit with the District Court Judge
- 108. District Court Judge or Fa'amasino Fesoasoani to take notes

Protection of District Court Judge and Fa'amasino Fesoasoani

- 109. No action against District Court Judge or Fa'amasino Fesoasoani unless act in excess of or without jurisdiction
- 110. No action against District Court Judge or Fa'amasino Fesoasoani to be brought in District Court
- 111. Onus of proof
- 112. Plaintiff may be ordered to give security for costs
- 113. Indemnity to District Court Judge or Fa'amasino Fesoasoani
- 114. Proceedings not to be questioned for want of form

Officers of the Court

- 115. Penalty for resisting or obstructing officer
- 116. Misconduct of officers
- 117. Officers of Court not to act as solicitors therein
- 118. Neglect by bailiffs
- 119. Irregularity in executing warrants
- 120. Actions against bailiffs acting under warrants
- 121. Production of warrant sufficient proof of Court's authority

Contempt of Court

122. (Repealed)

PART VI
ADMINISTRATION

Sittings

- 123. Place of sittings
- 124. Times of sittings
- 125. Adjourned sittings

Financial Provisions

- 126. Payment and recovery of fees in civil proceedings
- 127. Fees to be paid to Public Account
- 128. Payment and recovery of fees in criminal proceedings
- 129. Money to be payable in first instance to Registrar

PART VII
MISCELLANEOUS

- 130. Summonses and other documents to be under seal
- 131. Proof of service of documents
- 132. Language of documents
- 133. Actions on lost instruments
- 134. No privilege to barristers or solicitors
- 135. Constables to assist Court
- 136. District Court Rules
- 137. Regulations
- 138. Repeals and savings
- 139. Amendments of enactments
- 140. Amendments of regulations

Schedules

THE DISTRICT COURTS ACT 1969

1969 No. 2

AN ACT to consolidate, amend and extend the law providing for District Courts and for the exercise of civil and criminal jurisdiction by District Court Judges and Fa'amasino Fesoasoani in District Courts.

(21 March 1969)
(Commencement date: 1 April 1969)

PART I
PRELIMINARY

1. Short title and commencement - (1) This Act may be cited as the District Courts Act 1969.

(2) This Act or any section thereof shall come into force on the 1st day of April 1969.

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

"Act" includes Ordinance;

"Action" means any civil proceedings in a Court which may be commenced as prescribed by statement of claim;

"Bailiff" means a bailiff of a Court and includes any deputy bailiff and any person acting as bailiff pursuant to section 14 of this Act;

"Constable" includes every corporal and constable of the Police Service;

"Constitution" means the Constitution of the State;

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

"Defendant", in civil proceedings, means any person against whom an action has been commenced or an application for relief has been made and includes every party served with notice of or entitled to attend the proceedings otherwise than as plaintiff; and in any other proceedings, means any person charged with an offence or against whom an application has been made for an order binding him or her over to keep the peace or for an affiliation or maintenance order or for any other order which the Court has jurisdiction to make;

"Fa'amasino Fesoasoani" means a Fa'amasino Fesoasoani appointed under this Act or under any corresponding former Act;

"Gazette" means the *Samoa Gazette*;

"Infant" means any person under the age of 21 years;

"Judge" means a District Court Judge appointed under this Act;

"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 of Justice;

"**Officer**", in relation to a Court, includes any Registrar of that Court, and any clerk, bailiff, usher or messenger in the service of that Court;

"**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 asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of civil proceedings;

"**Prescribed**" means prescribed by this Act or by the rules for the time being in force;

"**Proceedings**" with reference to civil proceedings, includes both actions and matters;

"**Registrar**" means the Registrar of the Court and includes any Deputy Registrar;

"**Rules**" means District Court Rules made under section 136 of this Act;

"**Rules Committee**" means the Rules Committee constituted by and under section 40 of the [Judicature Ordinance 1961](#);

"**Secretary**" means the Secretary for Justice;

"**State**" means the Independent State of Samoa.

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

PART II **CONSTITUTION**

District Courts

3. Courts constituted - (1) There shall continue to be within Samoa subordinate Courts of record, possessing civil and criminal jurisdiction, henceforth to be called District Courts of Samoa.

(2) The Head of State, acting on the advice of Cabinet, may at any time by Order subdivide any District Court and create separate District Courts.

(3) Each Court shall have a seal, which shall be kept by the Registrar.

4. Exercise of civil or criminal jurisdiction in Courts appointed - (1) The Minister may from time to time appoint places in Samoa in which Courts may be held for the exercise of civil and criminal jurisdiction.

(2) The Minister may at any time amend or revoke any appointment made under the provisions of subsection (1).

(3) Notwithstanding anything in the foregoing provisions of this section, a District Court Judge may hold or direct the holding of a particular sitting of a Court at any place the District Court Judge deems convenient.

District Court Judges and Faamasino Fesoasoani

5. Appointment and qualifications of District Court Judges - (1) For the purposes of this section, the Head of State, acting on the advice of the Judicial Service Commission, may from time to time by Order published in the *Gazette* and the *Savali* designate as an approved country any country which, in the opinion of the Commission, has a legal system similar to that existing in Samoa.

(2) The Head of State, acting on the advice of the Judicial Service Commission, may from time to time by warrant published in the *Gazette* and the *Savali* appoint fit and proper persons to be District Court Judges to exercise criminal and civil jurisdiction within Samoa.

(3) A person shall not be appointed a District Court Judge unless he or she has been in practice as a barrister or solicitor in Samoa or in an approved country, or partly in one and partly in another or others, for a period of, or for periods amounting in the aggregate to, not less than 5 years.

(3A) Notwithstanding subsection (3), a person may be appointed a District Court Judge if he or she holds the office of Registrar of the Supreme Court, and has held that office for a period of, or for any periods amounting in the aggregate to, not less than 15 years.

(4) The office of a District Court Judge may be held in conjunction with any other office which the Head of State, acting on the advice of the Judicial Service Commission, shall deem not incompatible with the office of Magistrate.

6. Appointment of Fa'amasino Fesoasoani - The Head of State, acting on the advice of the Judicial Service Commission, may from time to time by warrant published in the *Gazette* and the *Savali* appoint fit and proper persons to be Fa'amasino Fesoasoani.

7. Salaries and allowances - Every District Court Judge and Fa'amasino Fesoasoani (including any appointed temporarily under section 10 of this Act) shall be paid such salary or allowance and such travelling expenses and allowances and other allowances as may be fixed by the Head of State, acting on the advice of Cabinet after receiving the advice of the Judicial Service Commission, and as may be appropriated from time to time by the Legislative Assembly for those purposes.

8. Tenure of office - (1) The Head of State, acting on the advice of the Judicial Service Commission, may at any time by order published in the *Gazette* and the *Savali* remove a District Court Judge or Fa'amasino Fesoasoani for inability or misbehaviour.

(2) Every District Court Judge or Fa'amasino Fesoasoani shall retire from office on reaching the age of 62 years:

PROVIDED THAT the Head of State, acting on the advice of the Judicial Service Commission, may by Order published in the *Gazette* and the *Savali* extend the period of office of a District Court Judge or Fa'amasino Fesoasoani who has reached the age of 62 years.

(3) Any person of any age who is not a citizen of Samoa and who is qualified for appointment under the provisions of this Act may be appointed to hold the office of a District Court Judge for a term of years.

(4) Nothing done by a District Court Judge or a Fa'amasino Fesoasoani in the performance of his or her duties shall be deemed to be invalid by reason only that he or she has reached the age at which he or she is required by this section to retire or that his or her term of office has expired.

(5) A District Court Judge or Fa'amasino Fesoasoani may resign his or her office by writing under his or her hand addressed to the Secretary, which shall take effect:

(a) In the case of a District Court Judge appointed pursuant to subsection (3), on the expiration of 3 months from the receipt of such resignation by the Secretary, or as agreed;

(b) In any other case, on the receipt of such resignation by the Secretary, or as agreed.

9. District Court Judges to be Coroners - Every District Court Judge shall, by virtue of his or her office, be deemed to have been appointed a Coroner.

10. Acting District Court Judges and Fa'amasino Fesoasoani - (1) The Head of State, acting on the advice of the Judicial Service Commission, may at any time, after the removal, retirement or resignation or during the illness or absence of any District Court Judge or Fa'amasino Fesoasoani, or for any other temporary purpose, by warrant published in the *Gazette* and the *Savali* appoint a District Court Judge or Fa'amasino Fesoasoani to hold office until a permanent appointment is made or for such other time as is specified in such warrant.

(2) No person shall be appointed a District Court Judge under this section unless:

(a) He or she possesses the qualifications specified in subsection (3) of section 5 of this Act for appointment as a District Court Judge under that section; or

(b) He or she holds the office of Registrar of the Supreme Court, and has held that office for a period of, or for any periods amounting in the aggregate to, not less than 10 years.

(3) No person shall be precluded from appointment as a District Court Judge under this section by reason only of the fact that he or she has attained the age of 62 years.

10A. Oath of Office - (1) An oath in the form appearing in subsection (3) shall be taken by every District Court Judge and Fa'amasino Fesoasoani, or acting District Court Judge or

Fa'amasino Fesoasoani, as soon as may be after his or her acceptance of office, or as the case may be after the commencement of this section and no District Court Judge and Fa'amasino Fesoasoani, or acting District Court Judge or Fa'amasino Fesoasoani, shall enter on his or her office or as the case may be continue in his or her office until he or she has taken the same.

(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 Judge of the Supreme Court.

(3) The oath referred to in subsection (1) shall 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.

11. Appointment of Registrar - (1) The Public Service Commission shall from time to time appoint a Registrar for each Court.

(2) The Registrar shall be responsible to the Secretary for Justice and the Minister for the administration and control of the Court offices.

(3) One person may be appointed Registrar for 2 or more Courts and one such Court may be the Supreme Court.

12. Record of proceedings to be kept by Registrar - (1) The Registrar of each Court shall keep or cause to be kept such records of and in relation to proceedings in the Court as may be prescribed by the rules.

(2) Any entry in a book or other document required by the rules to be kept by the Registrar, or a copy thereof or extract therefrom sealed with the seal of the Court and purporting to be signed and certified as a true copy or correct extract by the Registrar, shall at all times without further proof be admitted in all Courts and places whatsoever as evidence of the entry and of the proceeding referred to thereby and of the regularity of that proceeding.

(3) If the existence of a record of the Court is in dispute the existence of that record shall be determined by the Court.

13. Deputy Registrars - (1) The Public Service Commission may from time to time appoint one or more Deputy Registrars for any District Court as may be necessary.

(2) Each Deputy Registrar shall, subject to the control of the Registrar, have the same powers and privileges, perform the same duties, and be subject to the same provisions and penalties as if he or she were the Registrar for the time being, whether those powers, privileges, duties, provisions or penalties are conferred, imposed or enacted under this Act or any other Act, or otherwise.

Bailiffs and Others

14. Appointment of bailiffs - (1) The Public Service Commission may from time to time appoint a chief bailiff and may from time to time appoint such other bailiffs for each Court as may be necessary.

(2) A District Court Judge may appoint a constable or other person to act for a particular occasion as bailiff at any Court or place.

(3) Whenever any summons, warrant, or other process issued under the authority of this Act is received by any constable for service or execution, the constable in the service or execution of the process shall for all the purposes of this Act be deemed to be bailiff duly appointed under the provisions of this section.

15. Powers and duties of bailiffs - Every bailiff shall:

(a) Have the powers of a constable under this Act, and shall, in the manner set out in section 14 of the Police Service Act 1977, take and subscribe the oath set out therein, or to the like effect;

(b) Attend each sitting of the Court to which he or she is appointed for such time as is required, unless his or her presence is excused by the Court;

(c) Serve all summonses and orders and execute all warrants issued out of any Court and coming to his or her hands for the purpose of service or execution;

(d) Conform to all rules and regulations affecting the execution of his or her office, and in other respects be subject to the lawful directions of the District Court Judge or Fa'amasino Fesoasoani or Registrar.

16. Court administrative officers - The Public Service Commission shall from time to time appoint such interpreters, clerks and other administrative officers as may be necessary, who shall perform such duties relating to the administration of the Court as may be assigned to them by the Registrar, with the approval of the Secretary.

PART III **JURISDICTION**

General

17. Jurisdiction of District Court - A District Court Judge and a Court presided over by a District Court Judge shall have the jurisdiction prescribed in this Act.

18. Jurisdiction of Fa'amasino Fesoasoani - A Fa'amasino Fesoasoani and a Court presided over by a Fa'amasino Fesoasoani shall have the jurisdiction prescribed in this Act:

PROVIDED THAT the jurisdiction hereby conferred shall be exercised by the Fa'amasino Fesoasoani pursuant to such written instructions as may from time to time be given by the Chief Justice through the Registrar of the Supreme Court or as to any point not covered thereby by any District Court Judge through the Registrar of the District Court:

AND PROVIDED FURTHER THAT the Chief Justice may by certificate published in the *Gazette* and in the *Savali* confer extended jurisdiction on any Fa'amasino Fesoasoani.

19. Persons who may exercise jurisdiction of Court - Any jurisdiction and powers conferred on District Courts by this or any other Act may be exercised by any District Court Judge or, to the extent authorised by this or any other Act or by the rules, by any Fa'amasino Fesoasoani or the Registrar or any person authorised to discharge the functions of the Registrar.

20. General ancillary jurisdiction - Every District Courts, as regards any cause of action for the time being within its jurisdiction, shall (subject to the provisions of section 56 of this Act) in any proceedings before it:

(a) Grant such relief, redress, or remedy, or combination of remedies, either absolute or conditional; and

(b) Give such and the like effect to every ground of defence or counterclaim equitable or legal; as ought to be granted or given in the like case by the Supreme Court and in as full and as ample a manner.

21. Ancillary powers of District Court Judges and Fa'amasino Fesoasoani - A District Court Judge or a Fa'amasino Fesoasoani may, in any proceedings pending within his or her jurisdiction, make any order or exercise any authority or jurisdiction which, if it relates to an action or proceeding pending in the Supreme Court, might be made or exercised by a Judge of the Supreme Court in Chambers.

22. Application of this Act - Where under any other Act, any power, authority or jurisdiction is given to a District Court Judge or Fa'amasino Fesoasoani, the proceedings shall be had and determined in a District Court in accordance with this Act and the rules, unless some other procedure is specially provided or required, and a District Court Judge or Fa'amasino Fesoasoani in the exercise of that power, authority or jurisdiction shall have all the powers given under this Act to District Court Judges or Fa'amasino Fesoasoani, as the case may be, but except as aforesaid or as expressly provided in this Act or the rules, nothing in this Act or the rules shall derogate from or affect the provisions of any other Act conferring any power, authority or jurisdiction on District Court Judges or Fa'amasino Fesoasoani or on District Courts.

Civil Jurisdiction of District Court Judge

23. General jurisdiction in actions on contract and tort - A Court presided over by a District Court Judge shall have jurisdiction to hear and determine any action founded on contract or on tort:

(a) Where the debt, demand or damage, or the value of the chattels, claimed is not more than \$10,000; and

(b) Where the debt or demand claimed consists of a balance not exceeding \$10,000, 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.

24. Money recoverable by statute - A Court presided over by a District Court Judge shall have 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 enactment for the time being in force, if:

(a) It is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other Court; and

(b) The amount claimed in the action does not exceed the sum of \$10,000.

25. Jurisdiction in actions for recovery of freehold land - A Court presided over by a District Court Judge shall have jurisdiction to hear and determine any action for the recovery of freehold land, or any interest therein, PROVIDED THAT the capital value of that land or interest, as the case may be, does not exceed \$100,000 or the annual rental does not exceed \$10,000.

26. No jurisdiction in relation to customary land - The Court shall not have jurisdiction to hear or determine any action which in any way affects or is in relation to customary land.

27. Jurisdiction to divide chattels - Where any chattels not exceeding \$10,000 in value belong to persons in undivided shares, the persons having a half interest or more than a half interest may apply to a Court presided over by a District Court Judge for an order for division of the chattels or any of them according to a valuation or otherwise, or for sale of the chattels and division of the proceeds, and that Court shall have jurisdiction to hear and determine the application and to make such order and give such consequential directions as it thinks fit.

28. Equity jurisdiction - (1) A Court presided over by a District Court Judge shall have jurisdiction to hear and determine any of the following proceedings, that is to say:

(a) Proceedings for enforcing any charge or lien, where the amount owing in respect of the charge or lien does not exceed the sum of \$10,000;

(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, where 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 \$10,000;

(c) Proceedings for the dissolution or winding up of any partnership (whether or not the existence of the partnership is in dispute), where the whole assets of the partnership do not exceed in amount or value the sum of \$10,000;

- (d) Proceedings for relief against fraud or mistake, where neither the damage sustained nor the estate or fund in respect of which relief is sought exceeds in amount or value the sum of \$10,000;
- (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 \$10,000.

(2) No proceeding for the dissolution or winding up of a partnership or order thereon shall prevent any creditor from petitioning for an adjudication of bankruptcy against the partnership firm or any member or members thereof.

29. Abandonment of part of claim to give Court jurisdiction - (1) Where a plaintiff has a cause of action for more than \$10,000 in respect of which a Court would have had jurisdiction had the amount been not more than \$10,000, the plaintiff may abandon the excess and thereupon the Court shall have jurisdiction to hear and determine the action.

(2) Where any action, in which the plaintiff has abandoned part of his or her claim under this section, is heard in the Court, the plaintiff shall not recover an amount exceeding \$10,000 together with costs thereon, and the judgment of the Court in the action shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment shall be made accordingly.

30. Extension of jurisdiction by agreement between the parties - If but for the amount or value of the subject-matter claimed or in issue, a Court presided over by a District Court Judge would have had jurisdiction under sections 23 to 28 or section 54 of this Act and the parties, by memorandum signed by them or by their respective solicitors or agents, agree that a Court presided over by a District Court Judge shall have jurisdiction to hear and determine the proceedings, that Court shall, notwithstanding anything in this or any other enactment, have jurisdiction to hear and determine the proceedings.

31. Division of cause of action not allowed - A cause of action may not be divided for the purpose of bringing 2 or more actions or any counterclaim.

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

Civil Jurisdiction of Fa'amasino Fesoasoani

33. Civil jurisdiction - A Court presided over by a Fa'amasino Fesoasoani shall have civil jurisdiction:

- (a) To hear and determine any action founded on contract or in tort where the debt, demand or damage, or the value of the chattels, claimed does not exceed the sum of \$1,000;

(b) To hear and determine any action for the recovery of any penalty, expense, contribution or other like demand which is recoverable by virtue of any enactment for the time being in force in Samoa, if:

(i) It is expressly provided by that or any other enactment that the action may be heard and determined by a District Court Judge; and

(ii) The amount claimed in the action does not exceed the sum of \$1,000:

PROVIDED THAT for the purposes of paragraph (b) the expression "**penalty**" shall not include a fine to which any person is liable on conviction.

34. Extended jurisdiction - Any Fa'amasino Fesoasoani who has been granted extended jurisdiction in accordance with section 18 of this Act shall, in addition to the jurisdiction hereinbefore conferred, have power:

(a) To deal with matters up to a limit of \$200 where by section 33 hereof a limit of \$2,000 is prescribed;

(b) To make orders on judgment summonses in cases where the original judgment was for a sum of \$200 or less.

35. Jurisdiction by abandonment of part of claim or by agreement - Where a plaintiff has a cause of action for a sum in respect of which a Fa'amasino Fesoasoani would have had jurisdiction had it been within the limit imposed by section 33 or 34 of this Act, or where, but for the amount or value of the subject-matter claimed or in issue, a Fa'amasino Fesoasoani would have had jurisdiction pursuant to the said sections, the provisions of sections 29, 30 and 31 of this Act shall apply with the necessary modifications.

Criminal and Other Jurisdiction of District Court Judge

36. General criminal jurisdiction - A Court presided over by a District Court Judge shall have jurisdiction to hear, determine and pronounce sentence in respect of any information relating to any offence which is punishable by a fine, penalty or forfeiture of any amount or by a term of imprisonment or by both, except any offence which is punishable by a term of imprisonment exceeding 5 years, whether or not also punishable by a fine, penalty or forfeiture.

37. Jurisdiction in proceedings under the [Customs Act 1977](#) - A Court presided over by a District Court Judge shall have jurisdiction to hear and determine any proceedings commenced under the [Customs Act 1977](#):

PROVIDED THAT the amount claimed or the value of the goods does not exceed \$10,000 and that in any criminal proceedings the maximum penalty does not exceed 3 years imprisonment.

38. Criminal Jurisdiction of all Fa'amasino Fesoasoani - Every Fa'amasino Fesoasoani is

hereby empowered to exercise the jurisdiction conferred on District Court or any District Court Judge thereof in relation to any of the matters set out in section 39 of this Act:

PROVIDED THAT the jurisdiction conferred by this section shall not extend to authority to impose a fine exceeding 10 penalty units or to impose a sentence of imprisonment in lieu of or in addition to a fine.

39. Matters covered by that criminal jurisdiction - Subject to section 38 of this Act, any Fa'amasino Fesoasoani may hear, determine and impose sentence in respect of any information which charges the accused with:

- (a) Any offence the maximum penalty for which does not exceed one year's imprisonment or a fine of 10 penalty units or both;
- (b) The crime of theft, provided the value of the property stolen does not exceed the sum of \$1,000.

40. Extended jurisdiction - Any Fa'amasino Fesoasoani who has been granted extended jurisdiction in accordance with section 18 of this Act shall, in addition to the jurisdiction hereinbefore conferred, have power:

- (a) To impose terms of imprisonment not exceeding 6 months on any one charge in addition to or in lieu of any fine, or in default of payment of any fine, where such imprisonment is authorised by the enactment under which the information is laid or the charge is brought;
- (b) To impose a fine not exceeding 10 penalty units.

PART IV **CIVIL PROCEDURE**

Parties

41. Trustees, executors and administrators - Any trustee, executor or administrator may sue and be sued in the Court in like manner as if he or she were a party in his or her own right, without joining any of the beneficiaries of his or her trust or estate, and shall be considered as representing such beneficiaries in the action.

42. Court may join beneficiaries - The Court may, at any stage of an action in which any trustee, executor or administrator is a party, order any beneficiary appearing to be interested in the action to be made a party to the action, either in addition to or in lieu of the previously existing parties thereto or any of them.

43. Infants - (1) An infant may sue in a District Court for money which may be due to him or her for wages or piecework, or for work as a servant, in the same manner as if he or her were of full age.

(2) An infant of or above the age of 18 years may sue or be sued without a next friend or guardian *ad litem* upon any cause of action arising out of contract or tort in respect of which he or she might sue or be sued by a next friend or guardian; and judgment may be given in the action, and such proceedings may be had and taken to enforce the judgment as if the infant were of full age.

(3) Subject to the foregoing provisions of this section, an infant may sue by his or her next friend and may defend by his or her guardian *ad litem* in accordance with the rules.

44. Mentally defective persons - (1) The expression "**mentally defective person**" where used in this section and the rules shall have the same meaning as that ascribed to it in the Mental Health Ordinance 1961.

(2) A mentally defective person may sue and defend by the committee or other person authorised to administer his or her estate under the Mental Health Ordinance 1961.

(3) Any mentally defective person in respect of whom there is no such committee or other person authorised as aforesaid may sue by his or her next friend and defend by his or her guardian *ad litem*.

45. Persons jointly liable - (1) Where a plaintiff has a claim recoverable under this Act against 2 or more persons jointly liable, it shall be sufficient to serve any of those persons with the proceedings, and judgment may be obtained and execution issued against any person so served, notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the Court.

(2) Where judgment is obtained against any person as aforesaid and is satisfied either in part or for the whole amount by that person, he or she shall be entitled to recover in a District Court contribution from any other person jointly liable with him or her.

46. Proceedings against absent defendant - The Court shall not determine any civil proceedings against a defendant absent from Samoa unless it is satisfied either:

- (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.

47. Bankruptcy of plaintiff - (1) The bankruptcy of the plaintiff in any action in a District Court which the Official Assignee might maintain for the benefit of the creditors shall not cause the action to abate if, within such reasonable time as the Court orders, the Official Assignee elects to continue the action.

(2) The hearing of the action may be adjourned until such an election is made.

(3) Where the Official Assignee does not elect to continue the action within the time limited by the order, the defendant may avail himself or herself of the bankruptcy as a defence to the action.

Transfer of Proceedings

48. Transfer to Supreme Court of proceedings within jurisdiction - (1) Where there is commenced in a District Court any action in which the amount of the claim or the value of the property or relief claimed or in issue exceeds \$5,000, the defendant in the action may, as of right within such time as may be prescribed or at any time thereafter by leave of the District Court Judge, give notice that he or she objects to the action being tried in the District Court, and, where notice is so given, the District Court Judge shall order that the action be transferred to the Supreme Court.

(2) Where there is commenced in a District Court any action in which the amount of the claim or the value of the property or relief claimed or in issue does not exceed \$5,000, the defendant may, as of right within such time as may be prescribed or at any time thereafter by leave of the District Court Judge, give notice that he or she objects to the action being tried in the District Court, and, where notice is so given, the District Court Judge may order that the action be transferred to the Supreme Court if, in the District Court Judge's opinion, some important question of law or fact is likely to arise.

(3) Any order for the transfer of an action to the Supreme Court made pursuant to subsection (2) may be made subject to such conditions as the District Court Judge thinks fit requiring that the defendant give security for the costs of the proceedings in the Supreme Court.

(4) The foregoing provisions of this section shall, with the necessary modifications, apply to a counterclaim as if it were an action and as if the defendant in the counterclaim were the defendant in the action. On the transfer of a claim where there is a counterclaim, or on the transfer of a counterclaim, all proceedings in the action, including both the claim and the counterclaim, shall be transferred.

(5) Notwithstanding the foregoing provisions of this section the Supreme Court or a Judge thereof on the application of any party to the proceedings may order the removal into the Supreme Court, by writ of certiorari or otherwise, of any proceedings commenced in a District Court, if the Supreme Court or Judge thereof thinks it desirable that the proceedings should be heard and determined in the Supreme Court. Any such removal shall be on such terms as to payment of costs, giving security or otherwise as the Supreme Court or a Judge thereof thinks fit to impose.

49. Transfer of proceedings beyond jurisdiction - Where any civil proceedings are commenced in a District Court in which the Court has no jurisdiction the Court may, unless it is given jurisdiction by abandonment or agreement under the provisions of sections 29, 30 or 35 of this Act, order that the proceedings be transferred to the Supreme Court or to such other Court or such District Court Judge as appears to the District Court to have jurisdiction:

PROVIDED THAT where it appears to the Court that the plaintiff or one of the plaintiffs knew or ought to have known that the Court had no jurisdiction in the proceedings, the Court may if it thinks fit, instead of ordering that the proceedings be transferred as aforesaid, order that they be struck out, and in such event may 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.

50. Transfer of proceedings where there is a counterclaim - (1) Where, in any action commenced in a District Court, any counterclaim or set-off and counterclaim which involves matter beyond the jurisdiction of a District Court has been filed by any defendant, any party to the action may, within such time as may be prescribed by rules of the Supreme Court, apply to the Supreme Court or a Judge thereof for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the Supreme Court.

(2) On any such application the Supreme Court or Judge may, as he or she thinks fit, order either:

- (a) That the whole proceedings be transferred to the Supreme Court; or
- (b) That the whole proceedings be heard and determined in the District Court; or
- (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 and the defence thereto other than the set-off (if any) be heard and determined in the District Court:

PROVIDED THAT, where an order is made under paragraph (c), and judgment on the claim is given for the plaintiff, execution thereon shall, unless the Supreme Court or a Judge thereof at any time otherwise orders, be stayed until the proceedings transferred to the Supreme Court have been determined.

(3) If no application is made under this section within the time prescribed as aforesaid, or if on such an application it is ordered that the whole proceedings be heard and determined in the District Court, the District Court shall have jurisdiction to hear and determine the whole proceedings, notwithstanding any enactment to the contrary.

(4) Where the Supreme Court makes any order under the provisions of this section, the Registrar of the Supreme Court shall send to the Registrar of the District Court a copy of the order so made.

51. Transfer of proceedings from Supreme Court to District Court - If, where civil proceedings have been commenced in the Supreme Court:

- (a) An agreement is made under the provisions of section 35 of this Act that a District Court shall have jurisdiction; or
- (b) The subject-matter of the proceedings is within the jurisdiction of District Courts.

The Supreme Court or a Judge of that Court may, on the application of any party to the

proceedings, order that the proceedings be transferred to a District Court.

52. Procedure and effect of transfer of proceedings from Supreme Court to District Court -

(1) Where any proceedings are ordered to be transferred under the provisions of section 51 of this Act from the Supreme Court to a District Court the proper officer of the Supreme Court shall, on the sealing of the order, send to the Registrar of the District Court a copy of the order, the statement of claim or a copy thereof, all pleadings, affidavits, and other documents filed in the Supreme Court relating to the proceedings and such other documents (if any) as the Supreme Court or a Judge may direct.

(2) On the documents aforesaid being so sent, the proceedings shall be transferred to the said District Court, and, subject to the District Court rules, all further proceedings therein shall be heard as if the proceedings had been originally commenced in that District Court, and that District Court shall have jurisdiction to deal therewith, notwithstanding any enactment to the contrary:

PROVIDED THAT the transfer shall not affect any right of appeal in the Supreme Court or to the Court of Appeal from the order directing the transfer, or the right to enforce in the Supreme Court any judgment signed, or order made, in that Court before the transfer.

53. Costs in cases transferred or removed - Where an action, counterclaim or matter is ordered to be transferred or removed:

- (a) From the Supreme Court to a District Court; or
- (b) From a District Court to the Supreme Court; or
- (c) From one District Court to another District Court;

The costs of the whole proceedings both before and after the transfer shall, subject to any order made by the Court which ordered the transfer, be in the discretion of the Court to which the proceedings are transferred and that Court shall have power to make orders with respect thereto:

PROVIDED THAT, as regards so much of the proceedings in any action transferred from the Supreme Court to a District Court as shall have taken place in the Supreme Court before the transfer;

- (d) The costs thereof shall be subject to the provisions of the rules of the Supreme Court; and
- (e) The powers of a Judge to make an order allowing costs on the Supreme Court scale shall, subject to any order of the Supreme Court or of the Judge by whom the transfer was ordered, be exercisable by the District Court Judge.

Interpleader

54. Interpleader - Where a person is under a liability for any debt or other cause of action, money, or chattels for or in respect of which he or she is or expects to be sued by 2 or more

persons making adverse claims thereto, he or she may, if the subject-matter does not exceed in value the sum of \$10,000, apply to a Court presided over by a District Court Judge in manner prescribed for relief by way of interpleader in accordance with the rules.

Hearing

55. Right of audience - (1) Except as otherwise provided by any other enactment, a party to any civil proceedings may appear and act personally or by a barrister or solicitor of the Supreme Court of Samoa or by any person entitled by law to practice as a barrister or solicitor in Samoa and not otherwise:

PROVIDED THAT under special circumstances the Court may permit any party to appear by an agent authorised in writing by the party himself or herself, if in Samoa, or, if absent therefrom, 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; but any agent, unless he or she is a barrister or solicitor, shall not be entitled to receive any preparation or appearance fee or reward for so appearing or acting.

(2) A corporation may appear by any officer, attorney or agent of the corporation.

56. Equity and good conscience - In any civil proceedings in a Court presided over by a District Court Judge, where the amount claimed or the value of the property claimed or in issue does not exceed \$1,000, and in any civil proceedings in a Court presided over by a Fa'amasino Fesoasoani where the amount claimed or the value of the property claimed or in issue does not exceed \$1,000, the Court may receive such evidence as it thinks fit, whether the same be legal evidence or not, and may give such judgment between the parties as it finds to stand with equity and good conscience.

Witnesses and evidence

57. Witness entitled to expenses - In any civil proceedings, every witness attending a Court upon a witness summons, and every other person giving evidence in the course of such proceedings, shall when his or her attendance is no longer required, be entitled as against the party calling him or her to a sum for his or her expenses and loss of time according to the prescribed scale:

PROVIDED THAT the Court may disallow the whole or any part of such sum.

58. Penalty for failing to comply with witness summons - (1) Every person summoned in pursuance of the rules as a witness in a Court in any civil proceedings who:

(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 10 penalty units:

PROVIDED THAT any person so summoned who refuses or neglects to appear shall be deemed to have done so with sufficient cause if he or she establishes to the satisfaction of the Court:

(a) That there was not paid or tendered to him or her at the time of the service of the summons or at some other reasonable time before the hearing such sum (if any) in respect of his or her expenses as may be prescribed; and either

(b) That he or she was without the means to meet the cost of travel to the hearing; or

(c) That he or she had reasonable grounds for believing that, if he or she incurred the said cost, he or she would not recover it on the day of the hearing from the party summoning him or her.

(2) Any 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 10 penalty units.

(3) The payment of such fine or the undergoing of a term of imprisonment for non-payment of such fine shall not exempt any person from any action for disobeying a summons or refusing to be sworn or give evidence.

59. Persons who may take an affidavit or affirmation - 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 under the [Oaths, Affidavits and Declarations Act 1963](#) not being a solicitor engaged in the proceedings:

PROVIDED THAT the rules may provide for the admission of an affidavit or affirmation sworn or made out of Samoa before any person authorised in the rules.

60. Evidence of witness out of Court - The Court may, on the application of a party, in any civil proceeding where it appears necessary in the interests of justice, 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, and may order any deposition so taken to be filed in the Court, and may empower any party to the proceeding to give such deposition in evidence therein, on such terms as the Court may direct.

Reference to Arbitrator or Referee

61. Power to refer to arbitration - (1) In any civil proceedings, a District Court Judge may, with the consent of the parties thereto, order the proceedings to be referred to arbitration (whether with or without other matters within the jurisdiction of the Court in dispute between the parties) to such person or persons and in such manner and on such terms and subject to such

costs as he or she thinks just and reasonable.

(2) No such reference shall be revocable by any party except with the consent of a District Court Judge.

(3) If the award of the arbitrator, arbitrators or their umpire is not given within one month of the date of the order of reference, either party may apply to the Court to revoke the order of reference.

(4) On any such reference, the award of the arbitrator, arbitrators or their umpire shall be entered as the judgment in the proceedings and shall be as binding and effectual to all intents as if given by a District Court Judge:

PROVIDED THAT the Court may, if it thinks fit, on application made at the first sitting of the Court held after the expiration of 10 days after the entry of the award, set aside the award, or may, with the consent of the parties, revoke the reference or order another reference to be made in the manner aforesaid.

(5) Execution of a judgment so entered shall not issue until after such first sitting has been held.

(6) On the hearing of an application to set aside or vary an award and judgment entered thereupon the Court shall take evidence if offered, or may of its own accord call for evidence; and the decision of the Court given after hearing the application shall be entered as a judgement of the Court.

62. Power to refer to the Registrar or a referee for inquiry - (1) In any civil proceedings, a District Court Judge or Fa'amasino Fesoasoani may refer to the Registrar or a referee for inquiry and report:

(a) Any proceedings which require any prolonged examination of documents, land or chattels or any scientific or local investigation which cannot, in the opinion of the District Court Judge or Fa'amasino Fesoasoani, conveniently be made before him or her;

(b) Any proceedings where the question in dispute consists wholly or in part of matters of account;

(c) With the consent of the parties, any other proceedings;

(d) Any question arising in any proceedings.

(2) Where any proceedings or questions are referred as aforesaid a District Court Judge or Fa'amasino Fesoasoani may direct how the reference shall be conducted, and may remit any report for further inquiry and report, and on consideration of any report or further report, may give such judgment or make such order in the proceedings as may be just.

63. Power to refer mere matter of account to the Registrar for inquiry - A District Court Judge or Fa'amasino Fesoasoani may, after deciding or reserving any question of liability, refer

to the Registrar, or to the Registrar and an accountant, any mere matter of account which is in dispute between the parties, and after deciding the question of liability, may give judgment on the Registrar's report.

Judgments and Orders

64. Finality of judgments and orders - Every judgment and order of a District Court shall, except as provided by this or any other Act or by the rules, be final and conclusive between the parties.

65. Payment of judgments and orders - (1) Where a judgment is given or an order is made by a Court in civil proceedings under which a sum of money of any amount is payable (whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise) the Court may, as it thinks fit, order the money to be paid either:

- (a) In one sum, whether forthwith or within such period as the Court may fix; or
- (b) By instalments pursuant to section 11 of the Judgment Summonses Act 1965.

(2) Except where an express order for payment is made under subsection (1), every judgment or order for the payment of a sum of money shall be deemed to include an order for the payment forthwith of the whole amount payable thereunder.

Removal of Judgments

66. Removal of judgment of District Court into Supreme Court - (1) Where any final judgment or order for the payment of any sum of money is obtained in any one civil proceeding in a District Court, that judgment or order may be removed into the Supreme Court, and for that purpose the Registrar, upon the application of the judgment creditor or of any person on his or her behalf, shall issue a certificate thereof in the prescribed form. Every such certificate shall bear on the face thereof a statement to the effect that it has been issued for the purpose of this section, and it shall not be available for any other purpose.

(2) No such certificate shall be issued before the expiration of the time allowed for giving notice of appeal or of application for rehearing or before the time at which execution could be issued out of the District Court, and if any proceedings for enforcement of the judgment or order have been issued out of that Court no such certificate shall be issued until after the withdrawal or completion of those proceedings.

(3) After the certificate has been filed in the Supreme Court pursuant to subsection (4), no further proceedings shall be had or taken on the judgment or order in the District Court.

(4) The person obtaining the certificate may file the same in the Supreme Court by delivering it for that purpose at the office of the Registrar of the Supreme Court and thereupon, without any

previous process, may sign final judgment in the Supreme Court in the prescribed form or to the effect thereof (against which judgment no appeal shall lie) for the sum mentioned in the certificate to be unpaid, together with such fees and costs as may be paid or allowed in connection with such removal and entry of judgment.

(5) Upon such final judgment as aforesaid execution may be forthwith issued, and all other remedies had thereon in the same manner as on any other judgment of the Supreme Court.

(6) Notwithstanding anything in this section, any certificate or final judgment signed under the provisions of this section may be set aside or amended by a Judge of the Supreme Court upon such terms as to costs or otherwise as the Judge deems just.

67. Action in Supreme Court on judgment or order of District Court - An action may be brought in the Supreme Court on a judgment or order of a District Court, but no costs shall be allowed to the plaintiff in such action unless a Judge of the Supreme Court certifies that the action was necessary and proper for the enforcement of the judgment of the District Court against the person or property of the defendant.

68. Removal of judgment or order of Supreme Court into District Court - (1) In any action or civil proceedings in the Supreme Court in which execution may be issued upon a judgment, order or decree of the Supreme Court for the payment of a sum of money, a certificate under the seal of the Supreme Court setting forth the particulars of the judgment, order or decree may be obtained from the Supreme Court and filed in a District Court having jurisdiction to the amount of that sum of money and of any interest thereon; and upon the filing of the certificate all proceedings may be taken and enforced in and by that District Court for the amount recoverable under the judgment, order or decree, and any fees and costs paid or allowed in connection with the obtaining and filing of the certificate, as fully and effectually as if the judgment, order or decree had been a judgment of the District Court signed and entered up at the time of filing the certificate.

(2) After the issue of the certificate no further proceedings shall be had in the Supreme Court upon such judgment, order or decree.

69. Removal of judgment from one District Court to another - (1) Where any final judgment or order for the payment of any sum of money is obtained in any one civil proceeding in a District Court, the judgment or order may be removed into any other District Court, and for that purpose the Registrar, upon the application of the judgment creditor or of any person on his or her behalf, shall issue a certificate thereof in the prescribed form. Every such certificate shall bear on the face thereof a statement that it has been issued for the purpose of this section, and it shall not be available for any other purpose.

(2) No such certificate shall be issued before the expiration of the time allowed for giving notice of appeal or of application for rehearing or before the time at which execution could be issued out of the Court first aforesaid, and if proceedings for enforcement of the judgment or order have been issued out of that Court no such certificate shall be issued until after the withdrawal or completion of those proceedings.

(3) The person obtaining the certificate may file the same in any other District Court by delivering it at the office of the Registrar; and thereupon all proceedings may be taken and enforced in and by that other District Court for the amount recoverable under the judgment or order, and any fees and costs paid or payable in connection with the obtaining and filing of the certificate, as fully and effectually as if the judgment or order had been a judgment of that other District Court signed and entered up at the time of filing the certificate, and no further proceedings shall be had or taken in the District Court from which the judgment or order has been removed as aforesaid.

Appeals

70. Right to appeal - Any party to any civil proceedings in a District Court may appeal as hereinafter provided 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 where the amount of the claim or the value of the property or relief claimed or in issue exceeds \$1,000 or where the title to any freehold land has come in question; and

(b) With the leave of the District Court where the amount of the claim or the value of the property or relief claimed or in issue does not exceed \$1,000:

PROVIDED THAT the parties did not before the determination or direction agree in writing in manner prescribed that the judgment of the Court should be final and conclusive.

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

(2) The appellant may by the notice of motion appeal from the whole or any part of the non-suit or final determination or direction. The notice of motion shall state whether the whole or part of the non-suit or final determination or direction is complained of, and in the latter case shall specify which part.

(3) A duplicate of the notice of motion shall 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 shall not be necessary to serve parties not so affected.

(4) The Supreme Court may direct the notice of motion to be served on all or any parties to the proceedings or upon any person not a party, and may adjourn the hearing of the appeal on such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with the notice of motion had originally been parties.

(5) Any person who is served with a notice of motion less than 14 clear days before the date of the hearing of the appeal may apply for and shall be entitled to an adjournment on that ground.

(6) A duplicate of the notice of motion shall be lodged with the Registrar of the Court appealed from either before or immediately after the notice of motion is lodged in the Supreme Court.

72. Time for appeal - Security for appeal - (1) No appeal shall be brought after the expiration of 21 days from the day on which the non-suit or final determination or direction was given or made or after the expiration of such further time as may be allowed by the Supreme Court or a Judge thereof on application made not later than one month after the expiration of the said 21 days.

(2) Except where the appellant is a poor person within the meaning of any Act providing for legal aid, the appellant shall give security to the satisfaction of the Registrar of the Court appealed from to abide the event of the appeal. The security shall be for such amount (not exceeding \$200) as may be estimated by that Court or a District Court Judge to be the amount of the costs likely to be awarded in respect of the appeal in the event of its being dismissed.

(3) If no such security as is required under subsection (2) is given within 7 days of the service of the notice of motion of appeal, or within such further time as in special cases the Registrar of the Court appealed from may permit, that Registrar shall notify the Registrar of the Supreme Court of the failure, and the notice of motion of appeal shall be deemed to be abandoned.

(4) As soon as security is given as provided in the foregoing provisions of this section, the Registrar of the Court appealed from shall forward to the Registrar of the Supreme Court:

(a) A copy of the pleadings;

(b) A copy, signed by the District Court Judge, of the District Court Judge's Note made pursuant to section 108 of this Act; and

(c) Any affidavits and exhibits in his or her custody.

73. Cross-appeals - (1) It shall not be necessary for a respondent to give notice of motion of cross-appeal, but if a respondent intends upon the hearing of the appeal to contend that the decision of the Court below should be varied, the respondent shall give notice of his or her intention to any parties who may be affected by such contention.

(2) The omission to give such notice within a reasonable time shall not diminish the powers conferred on the Supreme Court, but may at the discretion of that Court be ground for an adjournment of the appeal or for a special order as to costs.

74. Procedure where appeal not prosecuted - (1) If the appellant does not prosecute his or her appeal with due diligence the respondent may by appropriate proceedings apply to the Supreme Court to dismiss the notice of motion of appeal, and the Supreme Court may dismiss the notice of motion accordingly.

(2) If the appellant does not appear at the time appointed for hearing his or her appeal the Supreme Court may dismiss the appellants notice of motion of appeal.

(3) In any case to which this section applies the Supreme Court may order the payment by the appellant to the respondent of such amount for costs as it thinks proper.

75. Procedure on hearing of appeal - (1) All appeals shall be by way of rehearing.

(2) Where any question of fact is involved in any appeal the evidence taken in the District Court bearing on the question shall, 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 note or such other materials as the Supreme Court may deem expedient;

(b) As to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and such of the exhibits as may have been forwarded by the Registrar of the Court appealed from and by the production by the parties to the appeal of such exhibits as are in their custody:

PROVIDED THAT the Supreme Court may in its discretion rehear the whole or any part of the evidence.

(3) The Supreme Court shall have all the powers and duties as to amendment and otherwise of the District Court, and shall have 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.

76. Further powers of Supreme Court on hearing of appeal - (1) On the hearing of an appeal the Supreme Court may:

(a) Order a rehearing of the case in the District Court upon such terms as it thinks fit; or

(b) Order judgment to be entered in the District Court for either party; or

(c) 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) Make such order as to costs as it thinks proper.

(2) The powers aforesaid may be exercised by the Supreme Court notwithstanding that the notice of motion of appeal may be 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.

77. Court appealed from to be advised of determination - (1) The Registrar of the Supreme Court shall transmit to the Registrar of the Court from which the appeal was brought a memorandum of the determination of the Supreme Court, and such proceedings shall be had

thereon as if the determination had been given by the District Court.

(2) The Registrar of the Supreme Court shall also return to the Registrar of the Court from which the appeal was brought all affidavits and exhibits forwarded by that Registrar to the Registrar of the Supreme Court pursuant to section 72 of this Act.

78. Stay of proceedings on appeal - Notice of motion of appeal shall not operate as a stay of proceedings under the judgment or order appealed from unless:

- (a) A District Court Judge so orders; or
- (b) The amount of the judgment or order appealed from and its costs is deposited with the Registrar of the Court which gave or made the same to abide the event of the appeal; or
- (c) Security is given to the satisfaction of that Registrar for that amount.

Rehearing and Power to Set Aside

79. Rehearing - (1) Any party to any civil proceedings in which a District Court Judge, Fa'amasino Fesoasoani or Registrar has given judgment or made an order may apply for a rehearing of the proceedings by written notice given by that party to a District Court Judge, Fa'amasino Fesoasoani or Registrar.

(2) The application shall be made not more than 14 days after the judgment or order was given or made unless the person hearing the application is satisfied that the application could not reasonably be made sooner.

(3) The application shall be served on the opposite party not less than 3 clear days before the day fixed for hearing, and shall state the grounds thereof, which shall, in the case of an application for the rehearing of proceedings before a District Court Judge, be verified by affidavit.

(4) The application shall not operate as a stay of proceedings unless the Court so orders.

(5) On receipt of the application, the Registrar shall, unless otherwise ordered, retain any money in Court until the application has been heard.

(6) The rehearing shall take place before a District Court Judge who may be the person before whom the proceedings were originally heard:

PROVIDED THAT, with the consent of the parties affected, the rehearing may take place before a Fa'amasino Fesoasoani or Registrar who may be the person before whom the proceedings were originally heard.

80. District Court Judge may set aside proceedings of Fa'amasino Fesoasoani - (1) On the application of a party, or of his or her own motion, a District Court Judge may order any civil proceedings (whether completed or not) before a Fa'amasino Fesoasoani to be set aside, and, unless ordered by the District Court Judge to remain valid, every step taken, document filed or

direction or determination given in the proceedings save the motion or statement of claim by which the proceedings were initiated, shall thereupon become void.

(2) Such proceedings shall thereupon proceed before a District Court Judge as if no steps, except those saved in accordance with subsection (1), had been taken in the proceedings.

81. District Court Judge may set aside judgment or order of Registrar - (1) Except where all parties have consented to the judgment or order of a Registrar, any such judgment or order and any execution thereon may on application of a party be set aside by a District Court Judge who may give such judgment or make such order in substitution therefore as the District Court Judge thinks fit, or may grant a rehearing.

(2) If all parties affected are present on the day on which the judgment was given or the order made, the application may be made, heard and disposed of on that day, and, in any other case, the application shall be made on 3 days' notice to the other parties affected.

(3) The application shall not operate as a stay of proceedings unless the Court so orders.

Enforcement of Judgments Generally

82. Proceedings for enforcement of judgment - (1) Any judgment or order of a Court or of a District Court Judge or Fa'amasino Fesoasoani for the payment of a sum of money may be enforced in any Court by any one or more of the proceedings following, that is to say:

- (a) Execution against the goods and chattels of the judgment debtor under a warrant of distress;
- (b) Garnishee proceedings for the attachment of money due to the judgment debtor;
- (c) Proceedings under the Judgment Summonses Act 1965.

(2) Where by any judgment or order of a Court or of a District Court Judge or Fa'amasino Fesoasoani a party is ordered to do or abstain from doing any act, not being the payment of a sum of money recovered in an action by any judgment of the Court and not being an order for the recovery of land or for the delivery of specific chattels, and fails to obey such judgment or order, such judgment or order may be enforced by a warrant of commitment to prison signed by a District Court Judge for a term not exceeding 3 months.

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

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

(5) Except by leave of a District Court Judge, no proceedings for the enforcement of a judgment or order shall 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:

PROVIDED THAT if the judgment order is one which may be appealed against without the leave of the Court, a District Court Judge or Fa'amasino Fesoasoani may order a stay of any proceedings for the enforcement of the judgment or order until the time allowed for giving notice of motion of appeal has expired.

(6) Two or more proceedings for the enforcement of a judgment or order may be taken concurrently but the judgment creditor shall not be 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.

(7) If at any time it appears to the satisfaction of a District Court Judge that any person committed to prison pursuant to this section ought for any reason to be discharged, the District Court Judge may order that person's discharge upon such terms (including liability to rearrest if the terms are not complied with) as the District Court Judge thinks fit.

83. Enforcement of judgments more than 6 years old - (1) No proceedings for the enforcement of a judgment or order of the Court more than 6 years old shall be issued unless the Court gives leave or unless some payment has been made by or on behalf of the party liable therefor within the 12 months immediately before the issue of the proceedings for enforcement.

(2) The Court may, if it thinks fit, give such leave on an *ex parte* application.

84. Enforcement of order for payment by instalments - (1) Where the Court has made an order for the payment of any sum of money by instalments, proceedings for the enforcement of the order shall not be taken or issued until after default in the payment of some instalment according to 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 otherwise orders.

85. Proceedings on cross-judgments - 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 then only for so much as remains after deducting the smaller sum. Satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum, and if both sums are equal satisfaction shall be entered upon both.

86. Power to stay proceedings for enforcement - If at any time it appears to the satisfaction of a District Court Judge or Fa'amasino Fesoasoani exercising jurisdiction in the Court in which proceedings have been taken or issued for the enforcement of any judgment or order that any party to the proceedings is unable from any cause to pay any 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 thereof, the District Court Judge or Fa'amasino Fesoasoani may, in the District Court Judge's discretion, vary the judgment or order to provide for payment

by instalments pursuant to section 12 of the [Judgment Summonses Act 1965](#), or suspend or stay the proceedings for such time and on such terms as the District Court Judge may think fit, and so from time to time until it appears that the cause of inability has ceased.

Warrant of Distress

87. Warrant of distress - (1) A warrant of distress shall require the bailiff or constable to whom it is directed to levy or cause to be levied such sum of money as is adjudged or ordered to be paid, or so much thereof as then remains unpaid, and also the costs of the execution, and of previous proceedings (if any) for the enforcement of the judgment or order, by seizure and sale of:

(a) Any of the goods and chattels of the person liable under the judgment or order, except personal and family clothing, furniture and household effects and tools or implements of trade, not exceeding a total of \$1,000 in value; and

(b) Any money, bank notes, bills of exchange, promissory notes, bonds, or other securities for money belonging to that person.

(2) Reference in this and succeeding sections of this Act and in the rules to the bailiff shall, in any case where a warrant of distress is addressed to a constable, include the constable.

88. Disposal by bailiff of bills of exchange, etc., seized - The bailiff shall deliver all bills of exchange, promissory notes, bonds, or other securities for money which have been seized or taken to the Registrar, for the benefit of the party upon whose application execution has issued, as security or securities for the amount directed to be levied by the execution, or so much thereof as has not been otherwise levied or raised.

89. Recovery of money secured by bills of exchange, etc. - The party upon whose application execution has issued may sue in the name of the person against whom execution has issued, or in the name of any person in whose name the person against whom execution has issued might have sued, for the recovery of the sum or sums secured or made payable by any such bill of exchange, promissory note, bond or other security when the time of payment thereof arrives.

90. Penalty for rescue of goods seized - If any person rescues or attempts to rescue any goods seized in execution under a warrant of distress, that person shall be guilty of an offence and shall be liable to a fine not exceeding 5 penalty units, and any bailiff of the Court or constable may take him or her into custody with or without a warrant, and bring him or her before the Court.

Sale of Goods Seized

91. Period to elapse before sale - No goods seized in execution under a warrant of distress shall be sold for the purpose of satisfying the warrant until the expiration of a period of at least 14 days next following the day on which the goods have been seized unless:

- (a) The goods are of a perishable nature; or
- (b) The person whose goods have been seized so requests in writing.

92. Sale of goods by public auction unless otherwise ordered - (1) Goods seized in execution under a warrant of distress shall be sold by public auction unless a Court or Registrar otherwise orders.

(2) Any bailiff authorised to execute a warrant of distress may, with the prior written authority of the Registrar, sell by auction the goods and chattels seized thereunder without having taken out an auctioneer's or other business licence, or paid a business licence fee, anything in any other enactment or rule of law to the contrary notwithstanding.

93. Protection of bailiff selling goods under execution without notice of claim by third party - (1) Where any goods in the possession of an execution debtor at the time of seizure by a bailiff charged with the enforcement of a warrant of distress issued from a Court are sold by the bailiff without any claim having been made to them by any person other than the judgment creditor and the judgment debtor:

- (a) The purchaser of the goods so sold shall acquire a good title to those goods; and
- (b) No person shall be entitled to recover against the bailiff, or any one lawfully acting under his or her authority, for any sale of the goods, or for paying over the proceeds thereof prior to receipt of a claim to the goods, unless it is proved that the person from whom recovery is sought had notice, or might by making reasonable inquiry have ascertained, that the goods were not the property of the execution debtor.

(2) Nothing in this section shall affect the right of any claimant, who may prove that at the time of sale he or she had a title to any goods so seized, to any remedy to which he or she may be entitled against any person other than the bailiff and any one lawfully acting under his or her authority.

(3) The provisions of this section shall have effect subject to the provisions of sections 80 and 81 of the Bankruptcy Act 1908 (N.Z.) and sections 314 and 315 of the Companies Act 1955 (N.Z.).

94. Procedure when goods seized are secured under bill of sale -Where goods have been seized under a warrant of distress, and some third person claims under a bill of sale or otherwise to be entitled to the goods by way of security for a debt, a District Court Judge may order a sale of the whole or part of the goods upon such terms as to payment of the whole or part of the secured debt or otherwise as the District Court Judge thinks fit, and may direct the application of the proceeds of the sale in such manner and upon such terms as the District Courts Judge deems just.

95. Priority of Supreme Court and District Court executions -(1) Where a writ or warrant against the goods of a party has issued from the Supreme Court, and a warrant of distress against

the goods of the same party has issued under the provisions of this Act, the right to the goods seized shall be determined, as the case may be, by the priority of the time of the delivery of the writ or warrant to the Supreme Court officer to be executed or of the application to the Registrar for the warrant of distress.

(2) The Supreme Court officer on demand shall, by writing signed by him or her, inform the bailiff to whom the warrant of distress is directed of the precise time of the delivery of the writ or warrant, and the bailiff of the District Court to whom the warrant of distress is directed shall on demand show the warrant to the Supreme Court officer; and such writing purporting to be so signed, and any endorsement on the warrant concerning the time of application to the Registrar for the warrant, shall respectively be sufficient justification to any Supreme Court officer or bailiff acting thereon.

96. Sale of goods where claim made thereto - (1) Where a claim is made to the bailiff to or in respect of any goods seized in execution under a warrant of distress issued out of a District Court by any person other than the judgment creditor and the judgment debtor, the claimant may:

(a) Deposit with the bailiff either:

(i) The amount of the value of the goods claimed; or

(ii) The sum which the bailiff is allowed to charge as costs for keeping possession of the goods until the decision of a District Court Judge can be obtained on the claim; or

(b) Give the bailiff in the prescribed manner security for the value of the goods claimed.

(2) For the purposes of this section, the amount of the value of the goods claimed shall, in case of dispute, be fixed by appraisal in the prescribed manner, and where the amount is deposited as aforesaid it shall be paid by the bailiff into Court to abide the decision of a District Court Judge upon the claim.

(3) If the claimant does not exercise any of the options conferred on him or her by subsection (1), the bailiff shall sell the goods as if no such claim had been made, and shall pay into Court the proceeds of the sale to abide the decision of the District Court Judge.

(4) If the claimant does exercise one of such options, the bailiff shall not sell the goods without the prior written authority of a District Court Judge.

97. Bailiff's interpleader - (1) If a claim is made to or in respect of any goods or chattels seized in execution under a warrant of distress issued out of a District Court, or in respect of the proceeds or value thereof, the bailiff may, before or after the return of the warrant, and whether an action has been commenced against him or her for such seizure or not, obtain from the Registrar summonses calling before the Court the party at whose instance the process issued and the party making the claim.

(2) Upon the issue of the summonses any action brought in any District Court or other Court in respect of the claim or of any damage arising out of the execution of the warrant shall be stayed.

(3) On the hearing of the summonses, the District Court Judge shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the bailiff upon any claim to damages arising or capable of arising out of the execution of the warrant by the bailiff, and shall make such order in respect of any such claim and the costs of the proceedings as the Judge thinks fit.

Garnishee Proceedings

98. Garnishee proceedings - Any person who has obtained a judgment or order for the payment of money may take proceedings in accordance with the rules to obtain payment to him or her of the amount of any debt owing or accruing to the judgment debtor from any other person or so much thereof as may be sufficient to satisfy the judgment or order and the costs of the garnishee proceedings.

Recovery of Land

99. Warrant for recovery of land - (1) A warrant for the recovery of land shall authorise the bailiff or constable to whom it is directed to give possession of the land referred to therein to the person named in the warrant and shall justify him or her in entering, by force if necessary, upon the land, with such assistants as he or she deems necessary, and in giving possession accordingly; but no entry under any such warrant shall be made except between the hours of 8 o'clock in the morning and 5 o'clock in the afternoon. The person to whom possession is given in accordance with the warrant shall hold the land discharged of the tenancy (if any) and the defendant, and all persons claiming by, through, or under him or her shall, so long as the judgment or order pursuant to which the warrant was issued remains unreversed, be barred from all relief in equity or otherwise.

(2) For the purpose of executing any warrant to give possession of any premises, it shall not be necessary to remove any goods or chattels from those premises.

100. Irregularity in execution of warrant can only be sued for as special damage - (1) Where a person by whom a warrant for the recovery of any land is sued out had, at the time of suing out the same, lawful right to the possession of the land, neither he or she nor his or her agent, nor any other person acting on his or her behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act; but the party aggrieved may if he or she thinks fit bring an action in any Court of competent jurisdiction and recover for special damage.

(2) If special damage is not proved the defendant in the action for special damage shall be entitled to a verdict; and if proved, but assessed by the last-mentioned Court at any sum not exceeding 50 sene, the plaintiff shall recover no more costs than damages unless the Court before whom the trial is held certifies that in its opinion full costs ought to be allowed.

101. Person illegally obtaining warrant liable for trespass - (1) If any person by whom a warrant for the recovery of any land is sued out in a Court had not, at the time of suing out the same, lawful right to the possession of the land, the suing out of the warrant shall be deemed a trespass by him or her against the tenant or occupier of the land, although no entry is made by virtue of the warrant.

(2) Nothing herein contained shall be deemed to protect any person on whose application and to whom any such warrant as aforesaid is granted from any action against that person by any such tenant or occupier as aforesaid for or in respect of any entry and taking possession, where that person had not when the warrant was issued lawful right to the possession of the said land; and nothing herein contained shall affect any rights to which any person may be entitled as outgoing tenant by the customs of the country or otherwise.

(3) No action or prosecution shall be brought against any District Court Judge who has made any order for the issue of, or any Registrar who has issued, any warrant for the recovery of any land, or against any bailiff or constable who has executed any such warrant as aforesaid for ordering, issuing, or executing the warrant, by reason only that the person on whose application the warrant was issued had not lawful right to the possession of the land.

Recovery of Chattels

102. Warrant for recovery of chattels - (1) A warrant for the recovery of chattels may be issued at the request of any person who has obtained a judgment or order for the recovery of specific chattels.

(2) The warrant shall require the bailiff or constable to whom it is directed to demand and seize the specific chattels referred to therein, if they can be found by him or her, and to deliver them to the person named in the warrant.

103. Further proceedings if chattels not recovered - If possession of the chattels is not recovered under the warrant referred to in section 102 of this Act, the person entitled to the recovery of the chattels may:

(a) Apply to a District Court Judge for a warrant of commitment, which shall direct the commitment to prison of the judgment debtor for such term as the District Court Judge thinks fit not exceeding 3 months; and

(b) Whether or not a warrant of commitment is issued, obtain the issue of a warrant of distress for the value of the chattels, such value to be assessed in such manner as a District Court Judge may direct.

Absconding Defendant

104. Absconding defendant may be arrested - (1) Where it appears to the satisfaction of a District Court Judge by affidavit of the plaintiff or the plaintiff's authorised agent that the

plaintiff has a good cause of action against a defendant for a sum within the jurisdiction of a District Court for which action has been commenced under this Act but in respect of which final judgment has not been obtained, and that there is probable cause (the grounds of which shall be stated in the affidavit) for believing that the defendant is about to leave Samoa and to evade the payment of the said sum, the District Court Judge may issue a warrant of arrest under the District Court Judge's hand, returnable immediately:

PROVIDED THAT if the claim is for a debt or amount long overdue the District Court Judge, may, before issuing the warrant, require the person asking for the issue thereof to lodge in the Court any amount not exceeding \$500, or to give security therefor to the satisfaction of the District Court Judge, to abide the decision of the Court under section 105 of this Act.

(2) A defendant against whom a warrant has issued for any sum may either give to the Registrar security for the payment of the said sum and the costs shown on the warrant or deposit the said sum and the said costs with the officer executing the warrant, or with the Registrar; whereupon the said sum and costs so deposited shall be paid, applied, and disposed of according to the final judgment of the Court.

(3) In default of security being given, or the said sum and costs being deposited with the officer executing the warrant or the Registrar as aforesaid, the District Court Judge may order the defendant to be detained in prison, or lock-up, and to be brought from there to a District Court at a time to be stated in the order, being not more than 7 clear days from the date of the order, unless the defendant sooner gives the prescribed security or makes the said deposit.

(4) A District Court Judge before whom a defendant is brought under the authority of any warrant issued as aforesaid may, with the consent of the defendant, thereupon hear and finally adjudicate upon the claim of the plaintiff, or fix the time for hearing the claim, or may, without such consent fix the time mentioned in the summons issued in the action as the time for hearing the claim by the Court.

(5) If after the prescribed security has been given or the said deposit has been made the defendant leaves Samoa without the leave of the Court, all money so deposited or recovered pursuant to the security given shall become available as the Court directs for the satisfaction of any sum recovered in the action.

(6) In the absence of the District Court Judge from the place where the Court is situated at which the application for the warrant was filed, all the powers conferred upon a District Court Judge by subsections (1) and (3) may be exercised by a Fa'amasino Fesoasoani or by a Registrar.

(As to recovery of tax if defendant is absent, see section 86 of the Income Tax [Administration Act 1975.](#))

105. Successful plaintiff entitled to execution, successful defendant entitled to compensation
- Where a District Court Judge hears and finally adjudicates upon the claim of a plaintiff against a defendant who has been arrested under the power contained in section 104 of this Act the following provisions shall apply:

- (a) If judgment is given for the plaintiff, the District Court Judge may make an order for the immediate payment of the amount of the judgment, with costs, and execution may at once be issued and such other proceedings may be had thereon as if the judgment were a judgment obtained in the ordinary course of procedure;
- (b) If judgment is given for the defendant, the District Court Judge may, in the Judges discretion, award to the defendant by way of compensation any sum not exceeding \$500, and such award shall be deemed to be a judgment of the Court and execution may issue thereon;
- (c) Once judgment is given, the defendant, if in custody, is entitled to be discharged.

PART V
GENERAL

Trial

106. Trial by District Court Judge or Fa'amasino Fesoasoani - The District Court Judge or Fa'amasino Fesoasoani, as the case may be, shall be the sole judge in all proceedings brought in a Court before the Judge and shall determine all questions of fact as well as of law:

PROVIDED THAT nothing in this section shall affect the power to make rules authorising the Registrar to exercise jurisdiction and powers conferred on the Court by this or any other Act.

107. Fa'amasino Fesoasoani may sit with the District Court Judge - Without in any way limiting the effect of section 106 of this Act, a District Court Judge may have one or more Fa'amasino Fesoasoani sitting with him or her in any proceeding for the sole purposes of giving such advice as may be sought by the District Court Judge on any matter of, or involving, Samoan custom, or penalty, and in order to obtain such advice the District Court Judge may confer with any Fa'amasino Fesoasoani who is sitting with him or her at any time either in open Court or in private.

108. District Court Judge or Fa'amasino Fesoasoani to take notes - (1) At the hearing of any proceedings in a Court from the judgment of which there is a right of appeal without leave, the presiding District Court Judge or Fa'amasino Fesoasoani shall, unless the parties have agreed not to appeal, make or cause to be made a note:

- (a) Of the facts in evidence; and
- (b) Of any question of law or equity raised at the hearing; and
- (c) Of the District Court Judges decision thereon and of the Judges determination of the proceedings.

(2) Where such a note has been taken, the District Court Judge or Fa'amasino Fesoasoani (whether notice of appeal has been served or not) shall, on the application of any party to the proceedings, and on payment by that party of such fee as may be prescribed, cause him or her to be furnished with a copy of the note.

Protection of District Court Judge and Fa'amasino Fesoasoani

109. No action against District Court Judge or Fa'amasino Fesoasoani unless act in excess of or without jurisdiction - (1) No action shall be brought against any District Court Judge or Fa'amasino Fesoasoani for any judicial act done by the District Court Judge or Fa'amasino Fesoasoani, unless he or she has exceeded his or her jurisdiction or has acted without jurisdiction.

(2) Where a conviction or judgment or order is entered or made by a District Court Judge or by a Fa'amasino Fesoasoani and a warrant of distress or of commitment or a warrant for the recovery of a sum to be paid on a conviction is granted thereon bona fide by some other District Court Judge or Fa'amasino Fesoasoani, no action shall be brought against the District Court Judge or Fa'amasino Fesoasoani who granted the warrant by reason of any defect in the conviction or judgment or order or of any want of jurisdiction in the District Court Judge or Fa'amasino Fesoasoani who entered or made it.

110. No action against District Court Judge or Fa'amasino Fesoasoani to be brought in District Court - No action against any District Court Judge or Fa'amasino Fesoasoani by any person claiming to have been injured by an act done by the District Court Judge or Fa'amasino Fesoasoani in excess of jurisdiction or without jurisdiction shall be brought in a District Court.

111. Onus of proof - In any action brought against a District Court Judge or Fa'amasino Fesoasoani by a person claiming to have been injured by an act done by the District Court or Fa'amasino Fesoasoani in excess of jurisdiction or without jurisdiction, the onus of proving the excess or want of jurisdiction shall lie upon the person alleging it.

112. Plaintiff may be ordered to give security for costs - (1) In any action brought against a District Court Judge or Fa'amasino Fesoasoani by a person claiming to have been injured by an act done by the District Court Judge or Fa'amasino Fesoasoani in excess of jurisdiction or without jurisdiction, the Supreme Court or any Judge of that Court, upon application by the District Court Judge or Fa'amasino Fesoasoani at any time before the day fixed for the trial of the action, may, at the discretion of the Court or Judge, order the plaintiff to give security for the costs of the action to the satisfaction of the Registrar of the Supreme Court in a sum not exceeding \$500.

(2) If security is ordered to be given, the Court or Judge may direct that in the meantime all proceedings shall be stayed.

113. Indemnity to District Court Judge or Fa'amasino Fesoasoani - (1) Any District Court 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 by the District Court Judge or Fa'amasino Fesoasoani in excess of jurisdiction or without jurisdiction shall be indemnified by the State to the full amount of the judgment on production by him or her of a certificate signed by a Judge of the Supreme Court stating that in the Judge of the Supreme Courts opinion the District Court Judge or Fa'amasino Fesoasoani acted in good faith under the belief that the District Court Judge

had in fact jurisdiction, and further that in the opinion of the Judge in all the circumstances the District Court Judge ought fairly and reasonably to be excused.

(2) Where a claim against a District Court Judge or Fa'amasino Fesoasoani is settled by the payment by the District Court Judge of, or an agreement by the District Court Judge to pay, an agreed amount for damages or costs before action is commenced against the District Court Judge or before or during trial of the action, the District Court Judge shall be indemnified by the State to the full amount paid or agreed to be paid by the District Court Judge, on production of a certificate signed by a Judge of the Supreme Court stating as aforesaid and also that in the opinion of the Judge the amount paid or agreed to be paid was fair and reasonable:

PROVIDED THAT, if the District Court Judge is not so satisfied, the Judge may issue the certificate in respect of such less sum as in the Judges opinion would have been or would be adequate to settle the plaintiff's claim, and in that case the District Court Judge or Fa'amasino Fesoasoani shall be indemnified by the State to the amount specified in the certificate.

(3) Application for such a certificate may be made by the District Court Judge or Fa'amasino Fesoasoani at any time to a Judge in Chambers, and the Judge shall have power to grant the certificate after considering such evidence as may be given before the Judge either orally or in the form of affidavits.

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

114. 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, shall be quashed, set aside or held invalid by any District Court or by any other Court by reason only 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.

Officers of the Court

115. Penalty for resisting or obstructing officer - If any person wilfully resists or obstructs, or aids, abets, counsels, procures or incites any other person to resist or obstruct, any officer of a Court in serving any process of a Court or in executing any warrant or any judgment or order of a Court or District Court Judge or Fa'amasino Fesoasoani or Registrar or acting otherwise in the execution of his or her duty, that person shall be guilty of an offence and shall be liable on an order made by a District Court Judge or Fa'amasino Fesoasoani in that behalf to a fine not exceeding 5 penalty units, and any bailiff or constable may take him or her into custody, with or without warrant, and bring him or her before a District Court Judge or Fa'amasino Fesoasoani:

PROVIDED THAT nothing in this section shall be deemed to prevent proceedings in respect of that assault being taken against that person under some other enactment instead of under this section.

116. Misconduct of officers - (1) If any officer of a Court is charged:

(a) With extortion or misconduct while acting under colour or pretence of the 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;

It shall be lawful for a District Court Judge to inquire into the matter in a summary way.

(2) For the purpose of any such enquiry, the District Court Judge may summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any action may be enforced.

(3) On the inquiry the District Court Judge may make such order as the District Court 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, and also, if the District Court Judge thinks fit, may impose such fine upon the officer, not exceeding 10 penalty units for each offence, as appears to the District Court Judge to be adequate.

117. Officers of Court not to act as solicitors therein - (1) Except as provided by this Act or the rules or by any other enactment, no officer of a Court shall be directly or indirectly engaged as solicitor or agent for any party in any proceedings in any Court.

(2) Every person who contravenes the provisions of this section shall, for each offence, be liable to a fine not exceeding 10 penalty units.

118. Neglect by bailiffs - (1) Where 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 thereby may complain to the District Court Judge of that Court.

(2) On any such complaint the District Court Judge, if the neglect, connivance or omission is proved to the District Court Judges satisfaction, shall order the bailiff to pay such damages as it appears that the complainant has sustained by reason thereof, not exceeding in any case the sum for which the execution was issued.

119. Irregularity in executing warrants - No officer of a Court in executing any warrant of the Court, and no person at whose instance any such warrant is executed, shall be deemed a trespasser by reason of any irregularity or informality:

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

(b) In the form of the warrant or in the mode of executing it;

but any person aggrieved may bring an action for any special damage sustained by him or her by reason of the irregularity or informality against the person guilty thereof and in such case the provisions of subsection (2) of section 100 of this Act shall apply.

120. Actions against bailiffs acting under warrants - (1) No action shall be commenced against any bailiff for anything done pursuant to a warrant issued under this Act, unless:

(a) A written demand for inspection of the warrant and for a copy thereof, 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 solicitor or agent; and

(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 shall be given for the bailiff if the warrant is produced or proved at the trial, notwithstanding any defect of jurisdiction or other irregularity in the warrant; but the officer who issued the warrant 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 against him or her shall include such costs as the plaintiff is liable to pay to the bailiff.

121. Production of warrant sufficient proof of Court's authority - In any action commenced against a person for anything done in pursuance of this Act, the production of the warrant of the Court shall be deemed sufficient proof of the authority of the Court previous to the issue of the warrant.

Contempt of Court

122. *(Repealed by section 177 of the [Criminal Procedure Act 1972](#)).*

(As to contempt of Court, see now section 173 of the [Criminal Procedure Act 1972](#).)

PART VI ADMINISTRATION

Sittings

123. Place of sittings - (1) Regular sittings of the Courts for the dispatch of civil and criminal business may be held in the Courthouse in any place appointed under subsection (1) of section 4 of this Act.

(2) Special or adjourned sittings for the dispatch of any business may be held in any such Courthouse or in any other place wheresoever which the District Court Judge deems convenient.

124. Times of sittings - (1) Sittings for the dispatch of civil business and sittings for the dispatch of criminal business shall be held on such days and at such times as may be appointed by the District Court Judge exercising jurisdiction at the place in which the sittings are held:

PROVIDED THAT the days appointed for regular sittings shall be subject to the approval of the Minister.

(2) In the absence of the District Court Judge for any reason, the Registrar may appoint the days and the times referred to herein.

(3) Nothing in this section shall derogate from the power of any District Court Judge or any Fa'amasino Fesoasoani to hold sittings on any day or at any time for the disposal of criminal business.

125. Adjourned sittings - (1) A District Court Judge or Fa'amasino Fesoasoani may from time to time adjourn the sitting of any Court held by him or her.

(2) If a sitting of the Court in the exercise of its civil or criminal jurisdiction cannot be held upon a day appointed by reason of the absence of the District Court Judge or Fa'amasino Fesoasoani or otherwise, the Registrar, after exercising any powers which the Registrar is authorised to exercise by or under this Act or any other enactment or the rules, may adjourn the Court to such day as the Registrar thinks convenient.

Financial Provisions

126. Payment and recovery of fees in civil proceedings - (1) All fees in any civil proceedings, except such as may be payable in respect of keeping possession, or for storing, removing, or selling goods seized under a warrant, shall be paid in the first instance by the party on whose behalf any proceedings are taken.

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

PROVIDED THAT in any proceedings in which the State or any officer of the State on its behalf is a party, no fee need be prepaid by the State or its officer, but such fee may nevertheless be recoverable from the opposite party with costs, if judgment is given against that party.

(3) In default of the payment of any fees, payment thereof shall be enforced, by order of the Court, in like manner as payment of any debt adjudged by the Court to be paid.

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

127. Fees to be paid to Public Account - All fees payable in respect of civil proceedings in

District Courts shall be payable in the first instance to the Registrar of the Court where such proceedings are filed or determined, and shall forthwith be paid by the Registrar into the Public Account:

PROVIDED THAT fees in respect of keeping possession and of storing, removing, and selling goods seized under a warrant shall be paid to the bailiff or person charged with the execution of the warrant, and shall be paid by him or her to the Registrar for payment by the Registrar to the person entitled thereto.

128. Payment and recovery of fees in criminal proceedings - (1) The provisions of subsections (1) and (4) of section 126 shall apply to fees in criminal proceedings.

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

PROVIDED THAT no fee shall be received or demanded from any constable or from any duly appointed officer of the State or of any local authority or other statutory public body in respect of proceedings instituted by him or her in the execution of his or her duty.

(3) In default of the payment of any fees by the person by whom they are payable in the first instance the amount shall be recoverable in the same manner as a fine or as a debt due to the State.

129. Money to be payable in first instance to Registrar - (1) All fees, fines, costs, and other money payable in criminal proceedings in District Courts shall be payable in the first instance to the Registrar of the Court where such proceedings are filed or determined.

(2) The sums received by any Registrar under this section shall forthwith be paid by him or her:

(a) In any case where they are payable to any person in accordance with any enactment or by any order of the Court made pursuant to this Act or to any other enactment, to that person; and

(b) In any other case, into the Public Account.

PART VII **MISCELLANEOUS**

130. Summonses and other documents to be under seal - (1) All summonses issuing out of a District Court, and all such other documents so issuing as may be prescribed, shall be sealed with the seal of the Court.

(2) All such summonses and other documents purporting to be sealed as aforesaid shall, in Samoa, be received in evidence without further proof thereof.

131. Proof of service of documents - (1) The service of any document may be proved by

affidavit made by the person who served the document, showing the fact and the time and mode of service, or by that person on oath at the hearing or, where service is effected by an officer of the Court or a constable, by an endorsement on the copy of the document showing the fact and the time and mode of service. Any such endorsement shall 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.

(2) Every 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 to imprisonment for a term not exceeding 2 years or to a fine not exceeding 10 penalty units or to both.

132. Language of documents - Where 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 shall be written in English, but in every other case it shall be written in Samoan or to be accompanied by a translation into Samoan.

133. 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, if an indemnity is given by the plaintiff to the satisfaction of the Court against the claims of any other person upon the instrument, the Court may give judgment therefor as if the same were produced.

134. No privilege to barristers or solicitors - No privilege shall be allowed to any barrister or solicitor to exempt him or her from the jurisdiction of a Court.

135. Constables to assist Court - (1) All constables shall aid and assist any Court or District Court Judge or Fa'amasino Fesoasoani or Registrar in the execution of all and any of the judicial duties imposed upon the Court or District Court Judge or Fa'amasino Fesoasoani or Registrar by this or any other Act; and if any constable neglects or refuses so to do he or she shall be liable, where no other penalty is provided, to a fine not exceeding 5 penalty units.

(2) It shall be the duty of the keeper of every prison or lock-up on the request of the bailiff or constable to whom a warrant of arrest or commitment has been issued to hold the prisoner or defendant in the custody of the bailiff or constable until the prisoner or defendant may, by the most convenient means of transport, be conducted to the place of imprisonment or Court named in the warrant, as the case may be.

136. District Court Rules - (1) The Head of State may, from time to time, acting on the advice of the Prime Minister, and with the concurrence of the Rules Committee, make, alter or revoke rules regulating the practice and procedure of the Courts and forms of proceedings therein, both under this Act and in relation to the exercise of any jurisdiction conferred on District Courts, District Court Judges or Fa'amasino Fesoasoani by any other Act:

PROVIDED THAT no such rule shall be inconsistent with any provision of this or any other Act or any rule for the time being governing the practice and procedure of the Supreme Court or the forms of proceedings therein.

(2) The power of making rules shall extend to all matters of practice or procedure and matters relating to or concerning the effect or operation in law of any practice or procedure in any case within the cognisance of the Courts as to which rules of the Supreme Court may be or might lawfully be made for cases within the cognisance of the Supreme Court.

(3) Without prejudice to the generality of the foregoing provisions of this section, the power of making rules shall extend to:

(a) Prescribing 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) Prescribing the circumstances in which any proceeding may be transferred from one Court to another, and the procedure for or consequent on any such transfer;

(c) Prescribing the procedure in District Courts consequent on the transfer of any proceedings from the Supreme Court to a District Court, or from a District Court to the Supreme Court;

(d) Prescribing the procedure in District Courts consequent on the removal of a judgment of the Supreme Court into a District Court and on the removal of a judgment of a District Court into the Supreme Court;

(e) Prescribing the form of the records of the Court and providing for the custody of the said records, and for the receipt of and accounting for all money paid into or out of Court;

(f) Authorising the Registrar to hear and determine any proceedings other than actions, and any actions in which the defendant fails to appear at the hearing or admits the claim;

(g) Prescribing, according to the nature of the proceedings and the amount involved therein, the costs and charges to be paid by one party or the parties in the proceedings to the other party or parties, in addition to the money paid out-of-pocket;

(h) Prescribing the fees to be paid in respect of any proceedings taken or for service of any summons or other process under this Act;

(i) Prescribing fees, travelling allowances and expenses payable to persons giving evidence and to interpreters, referees, and arbitrators in any proceedings under this Act;

(j) Prescribing the forms to be used in respect of any proceedings to which this Act applies;

(k) Prescribing 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;

(l) Providing for any other matters in respect of which rules are contemplated or specially authorised by this Act.

137. Regulations - The Head of State may, from time to time, acting on the advice of Cabinet, make, alter, or revoke such regulations as may in the Head of States opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

138. Repeals and savings - (1) The enactments mentioned in the First Schedule to this Act are

hereby repealed.

(2) All Courts, jurisdictions, officers, appointments, orders, warrants, rules, regulations, seals, forms, books, records, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(3) All actions, matters and proceedings commenced under any of the said enactments and pending or in progress on the coming into operation of this Act may be continued, completed and enforced under this Act.

139. Amendments of enactments - The enactments cited in the first column of the Second Schedule to this Act are hereby amended as shown in the second column of that Schedule.

140. Amendments of regulations - The regulations cited in the first column of the Third Schedule to this Act are hereby amended as shown in the second column of that Schedule.

SCHEDULES

Section 138 (1)

FIRST SCHEDULE

Part I of the [Judicature Ordinance 1961](#), comprising sections 3 to 20 inclusive.

The Fa'amasino Fesoasoani Act 1964.

Section 139

SECOND SCHEDULE

The amendments specified in this Schedule have been incorporated in the enactments affected.

Section 140

THIRD SCHEDULE

The amendments specified in this Schedule have been incorporated in the enactments affected.

REVISION NOTES 1997

The [District Courts Act 1969](#) in this reprint comprises that Act as it appears in the 1977 reprint. The District Courts Amendment Act 1992/1993 makes changes to a considerable number of sections in the principal Act but as at 31 December 1996 that amending Act has not commenced. However the amendments contained in the 1992/1993 amending Act have been incorporated into the Act as it now appears in anticipation of the commencement of the amending Act. Those amendments are shown below:

Short title:	The word "District" replaces the word "Magistrates" in the principal Act and the two amending Acts of 1972 and 1976.
Section 2:	The terms "Court" and "Magistrate's Court" are repealed and definitions of "Court" or "District Court" substituted.
Section 3:	This section is repealed and replaced and the heading to Part II is replaced by section 4 of the 1992 Act.
Section 10A:	A new section inserted by section 5 of the 1992 Amendment Act.
Sections 23, 24, 25, 27, 28 and 29	Jurisdiction of the District Courts has been increased in each of these sections from \$1,000 to \$10,000 by section 6 of the 1992 Amendment Act.
Sections 33 and 34	Jurisdiction extended to \$1,000 and \$2,000 by section 7 of 1992 Amendment Act.
Section 37:	Repealed and replaced by section 8 of the 1992 Amendment Act.
Sections 38, 39, and 40	Jurisdiction in each of these sections has been extended to \$1,000 by section 9 of the 1992 Amendment Act.
Section 48:	Jurisdiction extended to \$5,000 by section 10 of the 1992 Amendment Act.
Section 51:	Repealed and replaced by section 11 of the 1992 Amendment Act.
Section 54:	Jurisdiction increased to \$10,000 by section

	12 of the 1992 Amendment Act.
Section 56:	Jurisdiction extended to \$1,000 by section 13 of the 1992 Amendment Act.
Section 58:	Penalty increased to \$500 by section 14 of the 1992 Amendment Act.
Section 70:	Jurisdiction extended to \$1,000 by section 15 of the 1992 Amendment Act.
Section 72:	Security for appeal increased to a maximum of \$200 by section 16 of the 1992 Amendment Act.
Section 87:	Jurisdiction is extended to \$1,000 by section 17 of the 1992 Amendment Act.
Section 90:	The penalty is increased to \$500 by section 18 of the 1992 Amendment Act.
Sections 104, 105, and 112:	Security is increased to \$500 by sections 19, 20 and 21 of the 1992 Amendment Act.
Sections 115, 116, and 117:	Penalties are increased to \$500 by sections 22, 23 and 24 of the 1992 Amendment Act.
Section 131 and 135	The penalty under section 131 is increased to \$1,000 and under section 135 increased to \$500 by sections 25 and 26 of the 1992 Amendment Act.

REVISION NOTES 2008

This law has been generally edited as provided for by section 5 of the [Revision and Publication of Laws Act 2008](#). The following general revisions have been made –

- (a) References to Western Samoa have been amended to Samoa in accordance with an amendment to the Constitution of Samoa in 1997.
- (b) The fines have been amended and are stated as penalty units as provided for by the [Fines \(Review and Amendment\) Act 1998](#).
- (c) All references to the male gender have been made gender neutral.
- (d) Amendments have been made to up-date references to offices, officers and statutes.

(e) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

The following amendments have been made to specific sections of the Act to incorporate amendments made by Act of Parliament passed since the publication of the *Western Samoa Statutes Reprint 1978-1996* –

By the Fines (Review and Amendment) Act 1998 (No. 24) -

Section 58 "\$500" in subsection (1) was replaced by "10 penalty units" & "500" in subsection (2) is replaced by "10 penalty units".

Section 116 "\$500" in subsection (3) is replaced by "10 penalty units".

Section 117 "\$500" in subsection (2) is replaced by "10 penalty units".

This law has been consolidated and revised by the Attorney General under the authority of the [Revision and Publication of Laws Act 2008](#) and is an official version of this Act as at 31 December 2007. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Revised and consolidated by Leilani Pereira-Moeono
Under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

REVISION NOTES 2008 No. 2

This law has been generally edited as provided for by section 5 of the [Revision and Publication of Laws Act 2008](#). The commencement date has been inserted. Section 4 (general powers of the Attorney General) of the [Revision and Publication of Laws Act 2008](#) is used to insert the commencement date.

No amendment has been made to this law since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

This law has been consolidated and revised by the Attorney General under the authority of the [Revision and Publication of Laws Act 2008](#) and is an official version of this Act as at 31 December 2008. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Revised and consolidated and revised by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

REVISION NOTES 2009

There were no amendments made to this law since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

This law has been consolidated and revised by the Attorney General under the authority of the [Revision and Publication of Laws Act 2008](#) and is an official version of this Act as at 31 December 2009. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Revised and consolidated by the Legislative Drafting Division under the supervision of Papalii Malietau Malietoa (Parliamentary Counsel).

REVISION NOTES 2010

There were no amendments made to this law since the publication of the Consolidated and Revised Statutes of Samoa 2007.

This law has been revised by the Attorney General under the authority of the [Revision and Publication of Laws Act 2008](#) and is an official version of this Act as at 31 December 2010. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Revised by the Legislative Drafting Division under the supervision of Papalii Malietau Malietoa (Parliamentary Counsel).

The [District Courts Act 1969](#) is administered in the Ministry of Justice and Courts Administration.

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