



## SAMOA

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**JUDICATURE ORDINANCE 1961**

1961

No. 26

**AN ORDINANCE** to consolidate and amend the law relating to the Courts of Samoa.

*[Assent date: 29 December 1961]*

*[Commencement date: 1 January 1962]*

**PART 1  
PRELIMINARY**

**1. Short title and commencement** – (1) This Ordinance may be cited as the Judicature Ordinance 1961.

(2) This Ordinance comes into force on 1 January 1962.

**2. Interpretation** – In this Ordinance, unless the context otherwise requires:

“action” means a civil proceeding commenced by writ or plaint or in such manner as may be prescribed by rules of Court;

“Constitution” means the Constitution of the Independent State of Samoa;

“enactment” includes the Constitution, or any Act, Ordinance, Regulation, Rule or Order;

“judgment” includes any judicial decree, order, or determination, whether in an action or in any other judicial proceeding, whether civil or criminal;

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

“Rules of Court” means rules or regulations made under this Ordinance.

**3. Concurrent administration of law and equity** – All Courts in Samoa shall within the limits of their jurisdiction administer common law and equity concurrently, and in all cases in which there is any conflict between common law and equity with reference to the same matter the rules of equity shall prevail.

*PART 1A*

*THE DISTRICT COURT - Repealed*

*4-20. Repealed by section 138(1) of the District Courts Act 1969.*

**PART 2**

**SUPREME COURT**

**21. Constitution of the Supreme Court** – There is hereby constituted a superior Court of Record for the administration of justice throughout Samoa to be called the Supreme Court of Samoa.

**22. Judges of the Supreme Court** – The Supreme Court shall consist of 1 Judge, to be called the Chief Justice of the Supreme Court of Samoa who shall be appointed by the Head of State acting on the advice of the Prime Minister and such other Judges as may be appointed by the Head of State acting on the advice of the Judicial Service Commission in accordance with Article 65 of the Constitution.

**23. Qualifications of Judges** – (1) A person shall not be qualified for appointment as a Judge of the Supreme Court unless:

- (a) that person possesses such qualifications as the Head of State, acting on the advice of the Judicial Service Commission, may prescribe; and
- (b) that person has been in practice as a barrister in Samoa, or in an approved country, or partly in the one and partly in the other, for a period of, or for

periods amounting in the aggregate to, not less than 8 years.

(2) In computing, for the purposes of subsection (1)(b), the period or periods during which any person has been in practice as a barrister, any period or periods during which the person has held judicial office in a Court of superior or subordinate jurisdiction in Samoa or an approved country shall be included.

(3) For the purposes of this section, the Head of State, acting on the advice of the Judicial Service Commission, may designate as an approved country any country which, in the opinion of the Commission, has a legal system similar to that existing in Samoa.

**24. Tenure of office** – (1) Except in the case of an appointment made under subsection (2), a Judge of the Supreme Court holds office until the Judge reaches the age of 68 years: **PROVIDED THAT** the Head of State, acting in the case of the Chief Justice on the advice of the Prime Minister or in the case of any other Judge of the Supreme Court on the advice of the Judicial Service Commission, may extend the period of office of a Judge who has reached the age of 68 years.

(2) A person of any age who is not a citizen of Samoa and who is qualified for appointment under section 23 may be appointed to hold office as a Judge of the Supreme Court for a term of years.

(3) Nothing done by a Judge of the Supreme Court in the performance of his or her functions is taken 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.

(4) A Judge of the Supreme Court may resign his or her office by writing under his or her hand addressed to the Head of State.

**25. Removal of Judges on address of Legislative Assembly** – A Judge of the Supreme Court shall not be removed from office, except by the Head of State on an address of the Legislative Assembly carried by not less than two-thirds of the total number of Members of Parliament including vacancies, praying for his or her removal from office on the ground of stated misbehaviour or of infirmity of body or mind.

**26. Suspension of Judges by Head of State** – The Head of State, acting in the case of the Chief Justice on the advice of the Prime Minister or in the case of any other Judge of the Supreme Court on the advice of the Judicial Service Commission, may at any time when the Legislative Assembly is not meeting suspend a Judge of the Supreme Court from his or her office in such suspension, unless previously revoked, shall continue in force until the end of the next ensuing session and no longer.

**27. Acting Chief Justice** – (1) While any vacancy exists in the office of Chief Justice or during any absence from Samoa of the Chief Justice, the senior Judge of the Supreme Court shall have authority to act as Chief Justice and to perform the functions of the office of Chief Justice.

(2) Whenever by reason of illness or any cause other than absence from Samoa the Chief Justice is unable to perform the functions of the office of Chief Justice, the Head of State, acting on the advice of the Prime Minister, may authorise the senior Judge of the Supreme Court to act as Chief Justice until the Chief Justice resumes those functions, and, during that period, to perform those functions.

(3) The authority conferred on the Acting Chief Justice under this section does not include power to preside over the Court of Appeal unless he or she is qualified by virtue of his or her seniority over the other Judges present at the appeal to preside there over.

(4) If no Judge of the Supreme Court is available for appointment under this section, the Head of State, acting on the advice of the Prime Minister, may appoint a person qualified under section 23 to act as Chief Justice and to perform the functions of the office of Chief Justice until the Chief Justice shall have resumed the functions of his or her office.

**28. Appointment of temporary Judges** – (1) If the office of any Judge of the Supreme Court other than the Chief Justice is vacant or if any such Judge is unable to perform the functions of his or her office, the Head of State, acting on the advice of the Judicial Service Commission, may appoint a person qualified under section 23 to be temporarily a Judge of the Supreme Court: **PROVIDED THAT** a person may be so appointed notwithstanding that he or she has attained the age of 62 years.

(2) A person appointed under subsection (1) to be temporarily a Judge of the Supreme Court shall hold office for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Head of State, acting on the advice of the Judicial Service Commission:

**PROVIDED THAT** he or she may at any time resign his or her office by writing under his or her hand addressed to the Head of State.

**29. Salaries of Judges** – There shall be charged on the Treasury Fund and paid as statutory expenditure salaries at the following rates.

- (a) to the Chief Justice, with effect from 1 January 2001, at the rate of \$90,405 a year;
- (b) to each other Judge of the Supreme Court, at the rate of \$15,750 a year and benefits under the terms of engagement.

**30. Allowances** – (1) There shall be paid to the Chief Justice, and to the other Judges of the Supreme Court, from money appropriated for the purpose by the Legislative Assembly, such additional amounts by way of travelling allowances and expenses and other allowances as may be fixed by the Head of State, acting on the advice of the Judicial Service Commission.

(2) For the purposes of this section, there shall be charged on and payable out of the Treasury Fund as statutory expenditure, an allowance of \$15,000 a year to the Chief Justice, with effect from 1 July 1988, together with the benefits under the terms of engagement.

(3) Payments made under this section and the value of benefits shall unless the Head of State by Order otherwise directs be exempt from taxation and the Income Tax Act 2012 applies accordingly.

**31. Jurisdiction of the Supreme Court** – The Supreme Court shall possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws of Samoa.

**32. Powers of the Court may be exercised by 1 or more Judges** – Each Judge of the Supreme Court or any 2 or more

Judges may in any part of Samoa and at any time or place exercise all the powers and functions of the Supreme Court.

**33. Interpretation of provisions of the Constitution – (1)**

The Head of State, acting on the advice of the Prime Minister, may refer to the Supreme Court for its opinion any question as to the interpretation or effect of any provision of the Constitution which has arisen or appears likely to arise, and the Court shall pronounce its opinion on any question so referred to it.

(2) Without prejudice to any appellate or revisional jurisdiction of the Supreme Court, where in any proceedings before another Court except the Court of Appeal a question arises as to the interpretation or effect of any provision of the Constitution, the Supreme Court may, on the application of any party to the proceedings, determine that question and either dispose of the case or remit it to that other Court to be disposed of in accordance with the determination.

**34. Oath of office** – A Judge of the Supreme Court shall, before assuming the functions of his or her office, take and subscribe before the Head of State an oath in the form set out in the Second Schedule.

**35. Registrar – (1)** There shall be appointed by the Public Service Commission a Registrar of the Supreme Court.

(2) The Registrar shall be responsible to the Minister responsible for Justice for the administration and control of the Court offices and he or she shall keep or cause to be kept such records of the proceedings of the Court and matters pertaining thereto as the Minister of Justice may direct and shall perform such other duties in relation to the administration of the Court as the Chief Justice may require.

**36. Deputy Registrars – (1)** There shall be appointed by the Public Service Commission of Samoa such Deputy Registrars of the Supreme Court as the Minister of Justice may direct.

(2) A Deputy Registrar appointed under this section shall, subject to the control of the Registrar, possess, exercise and perform the same powers, functions and duties as the Registrar; every reference in this Ordinance to the Registrar of the Supreme

Court shall so far as applicable extend and apply to a Deputy Registrar.

**37. Court administrative offices** – There shall be appointed by the Public Service Commission of Samoa such interpreters, bailiffs, clerks and administrative officers as the Minister of Justice may require who shall perform such duties in relation to the administration of the Court as may be assigned to them by the Registrar.

**38. Seal of the Court** – The Supreme Court shall have in the custody of each Judge, Registrar and Deputy Registrar a seal of the Court in such form as the Chief Justice may approve, for the sealing of all judgments, orders, decrees, warrants, records and other instruments that require to be sealed by the Court.

**39. Practice and procedure** – Subject to this Ordinance, the Code of Civil Procedure, and the Rules of Court, the practice and procedure of the Supreme Court in the exercise of its civil and criminal jurisdiction shall be such as the Court thinks in each case to be most consistent with natural justice and convenience.

**40. Rules of Court** – (1) The Head of State may, acting on the advice of the Prime Minister and with the concurrence of the Rules Committee, make, alter, or revoke, such rules as are consistent with this Ordinance and with any other enactment giving jurisdiction to or relating to procedure in the Supreme Court and the Court of Appeal for the purpose of regulating the practice and procedure of both Courts in all matters within their jurisdiction, fixing scales of costs payable in respect of and prescribing forms to be used in connection with the proceedings of both Courts.

(2) The Rules Committee referred to in this Ordinance consists of the following members:

- (a) the Chief Justice;
- (b) the Attorney-General;
- (c) at least 1 qualified practising member of the legal profession in Samoa appointed by the Chief Justice for a term not exceeding 3 years.

(3) The Chief Justice, or in his or her absence the Attorney-General, shall be the convener and chairperson of the Committee.



**PART 3  
COURT OF APPEAL**

**41. Constitution of the Court of Appeal** – (1) There shall be a Court of Appeal of Samoa, which shall be a superior Court of record.

(2) Subject to the provisions of this Part, the Judges of the Court of Appeal shall be:

(a) the Chief Justice and the other Judges of the Supreme Court; and

(b) such persons, possessing the qualifications prescribed under section 23, as may be appointed by the Head of State, acting on the advice of the Judicial Service Commission.

(3) The Chief Justice shall be President of the Court of Appeal, but, in his or her absence, the senior Judge of the Court present at the appeal or, if the Judges so present are of the same seniority, a Judge designated by the Chief Justice shall preside.

(4) An appointment under subsection (2)(b) shall be for a period of time or for the trial or hearing of particular causes or matters, as may be specified in the instrument of appointment.

**42. Remuneration of Judges on Appeal** – Each Judge of the Court of Appeal appointed under section 41(2)(b) shall receive such remuneration for his or her services as may be fixed by the Head of State, acting on the advice of the Judicial Service Commission, and appropriated by the Legislative Assembly for the purpose.

**43. Number of Judges** – Any 3 Judges of the Court of Appeal may exercise all the powers of the Court:

**PROVIDED THAT:**

(a) any 2 Judges of the Court may act as the Court of Appeal for the purpose of delivering any judgment of the Court; and

(b) any 2 Judges of the Court may exercise all the powers of the Court of Appeal on the certificate of the President of the Court that it is in the interests of justice that they should do so.

**44. Precedence of Judges** – Judges of the Court of Appeal shall take seniority according to the respective dates of their first appointment as Judges of a superior Court in Samoa or in any approved country.

**45. Jurisdiction** – (1) The Court of Appeal shall have power and jurisdiction to hear and determine all appeals from any judgment, decree, or order of the Supreme Court whether in its civil or criminal jurisdiction, subject to the provisions of this Ordinance and of the Criminal Procedure Act 1972, and to such rules and orders for regulating the terms and conditions on which such appeals shall be allowed as may be made pursuant to this Ordinance or pursuant to the Criminal Procedure Act 1972.

(2A) An appeal shall lie to the Court of Appeal from any decision of the Supreme Court in any proceeding, if the Supreme Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of the Constitution.

(2B) Where the Supreme Court has refused to give such a certificate in subsection (2A), the Court of Appeal may, if it is satisfied that the case involves a substantial question of law as to the interpretation or effect of any provision of the Constitution, grant special leave to appeal from that decision;

(2C) Where such a certificate is given or such leave is granted in subsection (2A) or (2B), any party in the case may appeal to the Court of Appeal on the ground that any such question as aforesaid has been wrongly decided and, with the leave of that Court, on any other ground.

(3) An appeal shall lie to the Court of Appeal from any decision of the Supreme Court in any proceedings under Article 4 of the Constitution.

**46. Judges not to sit on appeal from their own decisions** – A Judge of the Court of Appeal shall not sit on the hearing of an appeal from any decision made by him or her or by a Court on which he or she sat as a member.

**47. Judgment to be that of the majority** – (1) The judgment of the Court of Appeal shall be in accordance with the opinion of the majority of the Judges present.

(2) If on the hearing on appeal or application the Court of Appeal is equally divided, the appeal or application, as the case may be, shall be dismissed.

**48. Decision of the Court of Appeal to be final** – The decision of the Court of Appeal on any appeal from the Supreme Court shall be final.

**49. Oath of office** – A person appointed under section 41(2)(b) to be a Judge of the Court of Appeal shall, on first appointment, take and subscribe before the Head of State an oath in the form set out in the Second Schedule.

**50. Officers** – The Registrar, Deputy Registrars and other officers of the Supreme Court shall, without further appointment, act in the like capacity in the Court of Appeal.

**51. Appeals in civil cases** – An appeal shall lie in any action, cause or matter, not being a criminal proceeding, to the Court of Appeal from the Supreme Court:

- (a) as of right when the matter in dispute amounts to or is of the value of \$400 or upwards; and
- (b) with leave of the Court of Appeal or of the Supreme Court if in the opinion of either Court the question involved in the appeal is one which by reason of its general or public importance or the magnitude of the interests affected, or for any other reason, ought to be submitted to the Court of Appeal for decision.

**52. Questions of law may be reserved for decision of Court of Appeal** – In any matter not being a criminal proceeding the Supreme Court may reserve for consideration by the Court of Appeal, on a case stated, any question of law which may arise on the trial of any action, cause or matter, and may give any judgment or decision, subject to the opinion of the Court of Appeal, and the Court of Appeal shall have power to hear and determine and read such question.

*53. Repealed by s5 of Act 1992/1993, No.29.*

**54. Order granting leave for appeal – (1)** No such appeal, whether as of right or not, shall be brought except in pursuance of an order of the Supreme Court granting leave to appeal:

**PROVIDED THAT**, subject to subsections (3) and (4), the Supreme Court shall grant such leave in every case where the appellant is entitled to appeal as of right.

*(2) Repealed by s5 of Act 1992/1993 No.29.*

**(3)** Leave to appeal shall be granted only on condition that the appellant within a period to be fixed by the Court, not exceeding 2 months from the date of the hearing of the application, gives security to the satisfaction of the Court or the Registrar thereof in a sum to be fixed by the Court, not exceeding \$200, for the payment of the costs of the appeal.

**(4)** Where the Court grants leave to appeal on condition that the appellant gives security for costs, the order granting leave to appeal shall not be sealed until that security has been duly given.

**55. Proceedings in the Supreme Court may be removed into the Court of Appeal – (1)** In any matter not being a criminal proceeding, the Supreme Court may order the removal into the Court of Appeal of any of the following proceedings:

- (a) a notice of motion;
- (b) a petition presented;
- (c) a special case stated;
- (d) a question of law ordered to be argued.

**(2)** On removal, the Court of Appeal has the same power to adjudicate on the proceedings as the Supreme Court had.

**56. Powers of the Court of Appeal – (1)** On any appeal from the Supreme Court, the Court of Appeal may:

- (a) affirm, reverse, or vary the judgment appealed from;  
or
- (b) order a new trial; or
- (c) make any such order with respect to the appeal as the Court thinks fit; and
- (d) award such costs as it thinks fit to or against any party to the appeal.

*(2) Repealed by s8, of Act 1992/1993 No.29.*

**57. Evidence on appeal –** Any such appeal shall, so far as it relates to any question of fact, be determined by the Court of

Appeal by reference to the evidence heard at the trial as certified under the seal of the Supreme Court, and no further evidence shall, without the leave of the Court of Appeal, be heard or admitted.

**58. Stay of execution** – An appeal to the Court of Appeal shall not operate as a stay of execution unless the Supreme Court or the Court of Appeal otherwise orders.

*59. Repealed by s9 of Act 1992/1993 No.29.*

**60. Execution of order** – The determination of the Court of Appeal on an appeal from the Supreme Court shall be transmitted to the Registrar of the Supreme Court under the seal of the Court of Appeal, and judgment shall thereupon be entered in the Supreme Court in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the Supreme Court as are required by such determination.

**61. Non-prosecution of appeal** – If the appellant does not prosecute his or her appeal with due diligence, the respondent may apply either to the Supreme Court or to the Court of Appeal for an order dismissing the appeal for non-prosecution, and if such order is made the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as that Court may direct.

**62. Court seal** – The Court of Appeal shall have in the custody of the Registrar a seal of that Court, in such form as the Chief Justice approves, for the sealing of all documents which require to be sealed.

**63. No appeal on appeals from District Court without leave** – The determination of the Supreme Court sitting on appeal from the District Court shall be final unless leave to appeal to the Court of Appeal is given:

**PROVIDED THAT** no such leave shall be given with respect to a criminal proceeding.

**64. Special leave to appeal may be granted by the Court of Appeal** – (1) Subject to rules of Court, the Court of Appeal may, in any civil case in which it thinks fit and at any time, grant special leave to appeal to that Court from any final judgment of the Supreme Court.

(2) Such leave may be granted subject to such conditions as to security for costs and otherwise as the Court of Appeal thinks fit.

(3) This Part, so far as applicable, applies to appeals in pursuance of such special leave.

**65. Rules of practice** – Subject to the provisions of this Ordinance, the practice and procedure of the Court of Appeal shall be regulated by the rules contained in the First Schedule.

#### **PART 4 SAVINGS, ETC.**

**66. Repeal of Parts III and IV of the Samoa Act 1921 (N.Z.)** – (1) This Ordinance is declared to be enacted in substitution for Parts III and IV of the Samoa Act 1921 (N.Z.), as amended by subsequent Acts of the New Zealand Legislature and Parts III and IV shall, from the date this Ordinance comes into force, no longer form part of the law of Samoa.

(2) The enactment of this Ordinance does not affect any document made, proceedings commenced, or anything whatsoever done under Parts III and IV of the Samoa Act 1921 (N.Z.), or under any corresponding former provisions, and every such document, proceeding, or thing, so far as it is subsisting or in force at the date this enactment comes into force and could have been made, commenced, or done under this Ordinance, shall continue and have effect as if it had been made, commenced or done under the corresponding provision of this Ordinance, and as if that provision had been in force when the document was made or the proceedings were commenced or the thing was done.

**67. Regulations** – (1) The Head of State may, acting on the advice of Cabinet and with the concurrence of the Rules Committee, make regulations setting out the fees payable for proceedings in the Supreme Court and Court of Appeal.

(2) The amount of any fee prescribed under subsection (1):

- (a) shall be proposed by the Ministry with the concurrence of the Rules Committee; and
- (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

**SCHEDULES**

**FIRST SCHEDULE  
(Section 65)**

**THE COURT OF APPEAL RULES**

**ANALYSIS**

**PART 1  
PRELIMINARY**

- 1. Title
- 2. Interpretation

**PART 2  
GENERAL**

- 3. Sittings of Court as directed by President
- 4. Commencement of appeals
- 5. Procedure regarding grounds of appeal
- 6. Court may adjourn appeal
- 7. Court may enlarge time for obeying Rules
- 8. Preparation of record
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**PART 3  
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- 10. Appeals to be by notice stating grounds
- 11. Respondent may file notice of cross-appeal
- 12. Appeal deemed to be abandoned if appellant fails to give security for costs
- 13. Appellant to prepare record

- 14. Documents to be lodged with Registrar
- 15. Documents to be served on respondent
- 16. Registrar to set down appeal
- 17. No stay of execution unless Court so orders
- 18. Time limit for appeal
- 19. Court may extend time limit
- 20. Notice of hearing to be served on parties
- 21. Procedure if appellant fails to appear
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- 23. Production of new evidence
- 24. Power of Court regarding judgment
- 25. Court may order new trial
- 26. Costs in accordance with Second Schedule but Court has discretion

**PART 4  
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- 27. Commencement of appeals
- 28. Time limit for appeals
- 29. Extension of time
- 30. Documents to be procured from Supreme Court by Registrar

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| 31. Copies of documents to be supplied to appellant on request | 36. Supreme Court to be notified of decision           |
| 32. Documents to be lodged with Registrar by appellant         | 37. Appeal where sentence of death involved            |
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| 34. Registrar to set down appeal for hearing                   | 39. Forms for documents as in Third Schedule Schedules |
| 35. When appeal deemed to be abandoned                         |  |

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**PART 1  
PRELIMINARY**

**1. Title** – These Rules may be cited as the Court of Appeal Rules 1961.

**2. Interpretation** – In these Rules, unless the context otherwise requires:

- “Appellant” includes a person who has been convicted and desires to appeal under these Rules;
- “Court of Appeal” means the Court of Appeal of Samoa;
- “Decision” includes any judgment or order;
- “Record” means the aggregate of papers relating to an appeal (including the pleading, proceedings, evidence and judgments) proper to be laid before the Court of Appeal on the hearing of the appeal;
- “Registrar” means the Registrar of the Court of Appeal;
- “Respondent” includes any person who has been served with notice of appeal or who is entitled to be so served;
- “Sentence” includes any order of the Court made on conviction with reference to the person convicted.

**PART 2  
GENERAL**

**3. Sittings of Court as directed by President** – Sittings of the Court of Appeal shall be convened and constituted from time to time, and the time and place for the hearing of all criminal and civil appeals shall be settled in accordance with directions to be given by the President of the Court.



**4. Commencement of appeals** – All appeals to the Court of Appeal shall be commenced by filing with the Registrar a notice of appeal, or an order granting leave to appeal, as the case may be.

**5. Procedure regarding grounds of appeal** – The appellant shall not, without the leave of the Court of Appeal, urge or be heard in support of any ground of objection not stated in his or her notice of appeal; but the Court of Appeal in deciding the appeal shall not be confined to the grounds so stated:

**PROVIDED THAT** the Court of Appeal shall not rest its decision on any ground not stated in the notice of appeal, unless the respondent has had sufficient opportunity of contesting the case on that ground.

**6. Court may adjourn appeal** – If for any reason it appears right to adjourn an appeal, the Court of Appeal shall have full power to do so upon such terms and for such time as seems fit.

**7. Court may enlarge time for obeying Rules** – The Court of Appeal may enlarge the time prescribed by the Rules for the doing of anything to which these rules apply.

**8. Preparation of record** – The record shall be prepared on paper of foolscap size and may be printed, typed or cyclostyled. If typed or cyclostyled the spacing known as double spacing will be used and the margin will be  $\frac{1}{4}$  of the width of the paper.

**9. Fees payable** – The fees set forth in the First Schedule hereto shall be the fees payable in respect of proceedings in the Court of Appeal.

**PART 3  
CIVIL APPEALS**

**10. Appeals to be by notice stating grounds** – (1) All appeals to the Court of Appeal shall be by notice of motion stating the grounds of the appeal and whether the whole or part only of the decision is complained of.

(2) The notice of motion shall be filed with the Registrar and shall be served on every party directly affected by the appeal.

**11. Respondent may file notice of cross-appeal** – (1) If the respondent wishes to appeal to the Court of Appeal for a variation of the decision appealed against then he or she shall within 10 days of the date of service on him or her of the Notice of Appeal file a notice of cross-appeal.

(2) The respondent shall deliver such notice together with 4 copies thereof to the Registrar and shall on the same day serve a copy thereof on the appellant.

(3) In such notice the respondent shall state fully the particulars in respect of which he or she seeks a variation of the decision.

**12. Appeal deemed to be abandoned if appellant fails to give security for costs** – If the appellant shall fail to give security for costs within the time specified in the order granting leave to appeal or any extended time fixed by the Court (but not in any event exceeding 2 months from the date of the order) the appeal shall be deemed to be abandoned.

**13. Appellant to prepare record** – The appellant shall be responsible for the preparation of the record which shall include copies of the following documents:

- (a) the pleadings;
- (b) any interlocutory orders with all motions, affidavits and other documents filed in connection therewith;
- (c) notes of evidence taken at the trial;
- (d) all exhibits to which it is considered necessary to make reference at the hearing of the appeal;
- (e) a list of all exhibits not forming part of the record;
- (f) the judgment appealed from;
- (g) notice of cross-appeal, if any;
- (h) order granting leave to appeal, if any.

**14. Documents to be lodged with Registrar** – When the appellant is ready to proceed with the hearing of the appeal but not in any event later than 3 months after the filing of the notice

of appeal or of the order granting leave to appeal, as the case may be, the appellant shall lodge with the Registrar:

- (a) *praecipe* to set appeal down for hearing;
- (b) the record;
- (c) six copies of the record for the use of the Judges of the Court of Appeal.

**15. Documents to be served on respondent** – On the same day or as soon as practicable thereafter the appellant shall serve or cause to be served upon the respondent a copy of the *praecipe* to set the appeal down for hearing together with a copy of the record.

**16. Registrar to set down appeal** – Upon the lodging of the documents in accordance with Rule 14, the Registrar will thereupon set down the appeal by entering the same in the list of appeals and it shall come on for hearing according to its order in such list unless the Court of Appeal or the President thereof shall otherwise direct.

**17. No stay of execution unless Court orders** – The appeal shall not operate as a stay of execution or of proceedings under the decision appealed from except in so far as the Supreme Court or the Court of Appeal may order, and no intermediate act or proceedings shall be invalidated except so far as the Supreme Court may direct.

**18. Time limit for appeal** – No appeal to the Court of Appeal from any decision of the Court shall be brought after the expiration of 30 days from the time when the appellant first had notice thereof unless the Supreme Court or the Court of Appeal shall enlarge the time for giving notice of appeal.

**19. Court may extend time limit** – The Court of Appeal shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order on such terms as the Court shall think fit to ensure the determination on the merits of the real question in controversy between the parties.

**20. Notice of hearing to be served on parties** – The Registrar shall cause notice of the date of hearing to be served

upon the appellant and the respondent not less than 10 days before such date.

**21. Procedure if appellant fails to appear** – If the appellant fails to appear in person or by counsel when his or her appeal is called on for hearing, the appeal shall, on proof of service upon him or her of notice of the hearing, stand dismissed with costs: **PROVIDED THAT** when an appeal has been dismissed owing to the non-appearance of the appellant or his or her counsel the Court of Appeal may, if it thinks fit, and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

**22. Procedure if respondent fails to appear** – If the respondent fails to appear, in person or by counsel when the appeal is called for hearing, the Court of Appeal shall, on proof of service of notice of hearing, proceed to hear the appeal ex parte.

**23. Production of new evidence** – (1) It shall not be open, as of right, to any party to an appeal to adduce new evidence in support of his or her original case, but a party may allege any facts essential to the issue which have come to his or her knowledge after the date of the decision from which the appeal is brought, and may adduce evidence in support of his or her allegations.

(2) The Court of Appeal may in any case, if it thinks fit, allow or require new evidence to be adduced, either by oral examination in Court, by affidavit, or by depositions taken before an examiner or commissioner.

**24. Power of Court regarding judgment** – The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which the Court considers ought to have been made, and to make such further or other order as the case may require.

**25. Court may order new trial** – If on the hearing of an appeal it shall appear to the Court that a new trial ought to be had, it shall be lawful for the Court, if it shall think fit, to order that

the decision appealed from, be set aside, and that a new trial shall be had.

**26. Costs in accordance with Second Schedule but Court has discretion** – The costs of proceedings in the Court of Appeal shall be in accordance with the Second Schedule to these Rules; but costs shall in every case be in the discretion of the Court of Appeal which may make such order as in the circumstances may appear to the Court to be just.

#### **PART 4 CRIMINAL APPEALS**

**27. Commencement of appeals** – (1) All appeals to the Court of Appeal in its criminal jurisdiction shall be commenced by a notice of appeal or a motion for leave to appeal as the circumstances may require.

(2) The notice or motion shall be signed by the appellant personally or by a solicitor or counsel acting on the appellant's behalf.

**28. Time limit for appeals** – No appeal against conviction and sentence, or against sentence alone, shall be brought after the expiration of 21 days from the date of passing sentence unless the Supreme Court or the Court of Appeal shall enlarge the time for filing the notice or motion.

**29. Extension of time** – Application to the Court of Appeal for an extension of time within which to file the notice of appeal or the motion for leave to appeal shall be made by motion with or without supporting affidavit.

**30. Documents to be procured from Supreme Court by Registrar** – Upon receipt of a notice of appeal or order granting leave to appeal the Registrar shall procure from the Supreme Court the following documents:

- (a) the information;
- (b) a copy of the Judge's notes of evidence or the stenographic record;
- (c) all exhibits which may be practicable to transmit;
- (d) a list of the remaining exhibits;

- (e) a copy of the reasons for judgment, if given;
- (f) a copy of the formal conviction and sentence, and of any ancillary order made by the Supreme Court in connection therewith;
- (g) a list of previous convictions, if any, in the case of an appeal against sentence.

**31. Copies of documents to be supplied to appellant on request** – The Registrar will upon request supply to the appellant a copy of the above documents to enable the appellant to prepare the record:

**PROVIDED THAT** the appellant shall unless the Supreme Court orders otherwise pay a fee of 5 sene per folio of 72 words for notes of evidence, copies of exhibits and notes of reasons for judgment.

**32. Documents to be lodged with Registrar by appellant** – The appellant will within a period of 6 weeks following the filing of the notice of appeal or of the order granting leave to appeal, as the case may be, lodge the following with the Registrar:

- (a) the record;
- (b) six copies of the record for the use of the Judges of the Court of Appeal;
- (c) two copies of the record for service on the Attorney-General and the Prosecuting Officer.

**33. Registrar to prepare record if appellant not represented** – If the appellant shall not be represented by a solicitor then it shall be the duty of the Registrar to prepare the record and the copies for the use of the Judges of the Court of Appeal and to have service of 2 copies effected on the Attorney-General and the Prosecuting Officer.

**34. Registrar to set down appeal for hearing** – Upon the lodgement by the appellant or the preparation and service by the Registrar of the copies of the record, as the case may be, the Registrar will thereupon set down the appeal for hearing by entering the same in the list of appeals and it shall come on for hearing according to its order in such list unless the Court of Appeal or the President thereof shall otherwise direct.

**35. When appeal deemed to be abandoned** – If upon the expiration of 6 weeks from the date of filing notice of appeal or of the order granting leave to appeal, as the case may be, the appellant shall have failed to prepare and lodge the record as provided in Rule 32 then the appeal shall be determined to have been abandoned.

**36. Supreme Court to be notified of decision** – On the final determination of an appeal the Registrar shall in such manner as he or she thinks most convenient, notify the Registrar of the Supreme Court of the decision of the Court of Appeal and of any orders or directions made or given by the Court of Appeal in respect of such appeal or any matter connected therewith.

**37. Appeal where sentence of death involved** – In the case of an appeal relating to a conviction involving sentence of death the Registrar shall upon receiving notice of appeal send a copy thereof, together with a copy of the conviction appealed from, to the Head of State; and on the final determination of any such appeal by the Court of Appeal shall forthwith notify the Head of State, the Commissioner of the Police Service and Prisons and the appellant of the decision of the Court upon such appeal.

**38. Non-compliance with rules may be waived** – (1) Non-compliance on the part of an appellant with these rules or with any rule of practice for the time being in force under the Ordinance shall not prevent the further prosecution of his or her appeal if the Court of Appeal or the President thereof considers that such non-compliance was not wilful and that it may be waived or remedied by amendment or otherwise.

(2) The Court of Appeal or the President thereof may in such manner as is thought proper direct the appellant to remedy such non-compliance and upon the proper action being taken by the appellant the appeal shall proceed.

**39. Forms for documents as in Third Schedule** – The forms set out in the Third Schedule to these Rules shall as far as practicable be used for all documents filed in the Court of Appeal. Where no express form is given the document will, as closely as may be, follow the practice of the Supreme Court.

**SECOND SCHEDULE  
(Section 34)**

**JUDICIAL OATH TO BE TAKEN BY JUDGES OF  
THE SUPREME COURT AND COURT OF APPEAL**

I,..... swear by Almighty God that I will well and truly serve the Independent State of Samoa 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.

So help me God.

**FIRST SCHEDULE  
(Rule 9)**

**Fees payable to the Registrar:**

Fees payable to the Registrar of the Court of Appeal, for proceedings in the Court of Appeal are to be prescribed under section 67 of the Ordinance.

**SECOND SCHEDULE  
(Rule 26)**

**SCALE OF COSTS**

	<b>Under \$400</b>	<b>\$400 - \$1,000</b>	<b>Over \$1,000</b>
1. Drawing and settling case.	10.50	21	31.50
2. Setting down a case and arguing to judgment	42.00	100	150
3. Cost of printing, typewriting or cyclostyling: Whatever the amount paid, or, if the typewriting or cyclostyling has been carried out in the office of the solicitor for the appellant, such sum as may be allowed by the Registrar in that behalf.			
4. For every day of hearing after the first: A sum to be fixed by the Court, not exceeding \$42.			



- 5. Extra counsel, if certified for: Not exceeding \$21 each per day.
- 6. If affidavits are allowed, or evidence is taken orally: Such costs in respect thereof as are fixed by the Court.
- 7. If money is not claimed, costs shall be on such of the above-mentioned scales as shall be determined by the Court, having regard to the importance of the case.
- 8. If different questions are involved, the costs may be apportioned by the Court.

**THIRD SCHEDULE**  
**(Rule 39)**

**FORM NO. 1**  
**NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL**

**Name of Appellant:**

Offence of which convicted:.....

Place of conviction:.....

Date of conviction:.....

Sentence

Name of prison (or, if not in prison, full postal address of appellant):  
.....

***To the Registrar of the Court of Appeal:***

**I**, the above-named appellant, give you notice that I desire to appeal to the Court of Appeal against my (conviction) (sentence) (conviction and sentence) on the grounds set forth below, and I give answers as follows to the following questions:

- 1. Did the Judge before whom you were tried grant you a certificate that it was a fit case for appeal?  
.....
- 2. (a) Is any solicitor now acting for you?

.....

(b) If so, give his or her name and address:  
.....

3. (a) Do you desire to apply for leave to call any witnesses on your appeal? .....

(b) If so then state:

(1) Name and address of witness:  
.....  
.....

(2) Whether the witness was examined at the trial:  
.....

(3) If not, reason why he or she was not so examined:  
.....

(4) On what matters you wish him or her to be examined: .....

(5) Shortly, what evidence you think he or she can give:  
.....

4. If your appeal or application is out of time, what do you submit as reasons why the Court should nevertheless entertain your appeal or application:  
.....

5. (a) If you are not on bail, do you desire to be admitted to bail? .....

(b) If so, what reasons do you submit for being admitted to bail? .....

6. What are the grounds of your appeal or application for leave to appeal? (You are referred to Rule 5 of the principal Rules. You are informed that you may present your case and argument in writing instead of by oral argument if you so desire, and any case or argument so presented will be considered by the Court. If you desire to present your case and argument in writing set out here as fully as you think right your case and argument in support of your appeal. Additional sheets may be attached to this form).

Dated at ..... this ..... day of ..... 2.....  
Signature of Appellant: .....

**FORM NO. 2**  
**JUDGE'S CERTIFICATE**

In the Supreme Court of Samoa Held at:

.....  
.....Informant.  
.....Defendant.

**WHEREAS** (Full name)

.....was on the ..... day of  
..... 2... convicted within the meaning of the Judicature  
Ordinance 1961 before me for the offence of (Insert name of  
offence), and was thereupon sentenced by me to  
.....

**I DO HEREBY CERTIFY**, under paragraph (b) of section 53 of  
the Ordinance that the case is a fit case for appeal upon the  
following grounds:

Dated at ..... this ..... day of .....  
2.....

Signature of Judge: .....

**FORM NO. 3**  
**NOTIFICATION TO APPELLANT OF RESULT OF APPEAL**

In the Court of Appeal of Samoa Held at:.....  
.....Appellant.  
.....Respondent.

**TO THE ABOVE-NAMED APPELLANT:**

**THIS** is to give you notice that the Court of Appeal has considered the  
matter of your appeal and has finally determined the same, and has this  
day given judgement to the effect following, namely – (that your appeal  
be dismissed), or (that the sentence imposed upon you be altered from  
..... to.....), (or as the case may be).

Dated at ..... this ..... day of .....2.....

.....  
**Registrar of the Court of Appeal**

**FORM No. 4**  
**NOTIFICATION TO APPELLANT OF RESULT OF APPLICATION**

In the Court of Appeal of Samoa Held at:

.....  
.....Appellant.  
.....Respondent.

**TO THE ABOVE-NAMED APPELLANT:**

THIS is to give you notice that the Court of Appeal has considered the matter of your application for:

Leave to appeal to the Court against (conviction) (sentence),

Leave to extend the time within which you may give (notice of appeal) or (Notice of application for leave to appeal),

Permission to be present during the proceedings in your (appeal) (application for leave to appeal), (or as the case may be) and has finally determined the same, and has this day given judgment to the effect following namely, (that you have .....days from the .....day of..... 19... within which you may give notice of appeal), (or as the case may be).

Dated at ..... this ..... day of ..... 2.....

.....  
**Registrar of the Court of Appeal.**

**FORM NO. 5**  
**WARRANT TO ARREST**

In the Court of Appeal of Samoa Held at:  
.....  
.....Appellant.  
.....Respondent.

**WHEREAS** A.B., an appellant under the Judicature Ordinance 1961, has been released by this Court on bail, and it has now been ordered by this Court that a warrant be issued for his or her apprehension and committal to prison:

**This** is to command you to whom this warrant is addressed to arrest A.B. and to lodge A.B. in the prison at ....., there to be imprisoned by the Gaoler of that prison until further order of this Court.

Dated at ..... this ..... day of ..... 2.....  
.....

**Judge**

To W.T., Constable (By his or her proper title), of ....., and to all other constables.

**FORM NO. 6  
NOTICE OF ABANDONMENT OF APPEAL**

.....Informant,  
.....Defendant.

**TO THE REGISTRAR OF THE COURT OF APPEAL**

I, (full name), having been convicted in the Supreme Court at ..... for the offence of ....., and having been desirous of appeal and having sent to the Court of Appeal notice to that effect, do hereby give you notice that I do not intend further to prosecute my appeal, and that I hereby abandon all further proceedings in regard thereto as from the date hereof.

Dated at ..... this ..... day of ..... 2 .....

Signature:.....

Witness to signature of (Full name)

Signature of Witness:.....

Address: .....

Description:.....

**FORM NO. 7  
BAIL BOND FOR THE ATTENDANCE OF THE APPELLANT**

**In the Court of Appeal of Samoa:**

*Between:* ..... APPELLANT  
(Full Name)

*and:* .....RESPONDENT  
(Full Name)

(Full Name), of (address, occupation) (hereinafter called the Appellant) has appealed against his conviction (or sentence or conviction and sentence) for ..... and (full name, address and occupation) has agreed to act as surety.

I, the Appellant, bind myself to perform the following obligations that is to say:

*Judicature Ordinance 1961*

(1) To attend personally before the Court of Appeal at the time fixed for the hearing of the appeal and on any day to which the hearing may be from time to time adjourned (and in the meantime to report at the Police Station at.....).

(2) To prosecute with due diligence an appeal against such conviction (or sentence or conviction and sentence).

And I, the Appellant, acknowledge myself bound to forfeit to the Government the sum of \$..... in the event that I fail to perform any of the above conditions; and I, the surety, acknowledge myself bound to forfeit to the Government the sum of \$.....in the event that the Appellant fails to attend.

.....APPELLANT.  
.....SURETY.

Taken before me at ..... this ..... day of .....2  
.....

**Judge or Registrar.**

**FORM NO. 8  
NOTICE OF BOND**

**In the Court of Appeal of Samoa**

**BETWEEN:** .....APPELLANT.  
(Full Name)

**AND:** .....RESPONDENT.  
(Full Name)

.....  
To (Full name) *Appellant*

TAKE notice that if you, the above-named appellant fail to perform the conditions following or any of them, namely (here set out conditions as in bond) then you will forfeit to the Government of Samoa the sum of \$.....

Dated at ..... this ..... day of ..... 2  
.....

**Judge or Registrar.**

**FORM NO. 9  
NOTICE OF BOND**

**In the Court of Appeal of Samoa**

**BETWEEN:** .....APPELLANT.

(Full Name)

**AND:** .....RESPONDENT.

(Full Name)

To (Full name), *Surety*.

**TAKE notice** that if the above-named appellant fails to attend personally before the Court of Appeal at the time fixed for the hearing of the Appeal or on any day to which the hearing may be from time to time adjourned then you will forfeit to the Government of Samoa the sum of \$.....

Dated at ..... this ..... day of ..... 2

.....

**Judge or Registrar.**

.....

**Secretary to Cabinet.**

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**REVISION NOTES 2008 – 2019**

This is the official version of this Ordinance as at 31 December 2019.

This Ordinance has been revised by the Legislative Drafting Division from 2008 – 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa;
- (b) Amendments have been made to up-date references to offices, officers and statutes;
- (c) Insertion of the commencement date;
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General:
  - (i) “Every” and “any” changed to “a”;
  - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”;
  - (iii) “shall have” changed to “has”;
  - (iv) “shall be guilty” changed to “commits”;
  - (v) “notwithstanding” changed to despite”;
  - (vi) “pursuant to” changed to “under”;
  - (vii) “it shall be lawful” changed to “may”;
  - (viii) “it shall be the duty” changed to shall”;
  - (ix) Numbers in words changed to figures;

***Judicature Ordinance 1961***

- (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed;
- (xi) “under the hand of” changed to “signed by”
- (xii) Section 30(3) revised;
- (xiii) Section 24 revised so that it is consistent with the terms of appointment under Article 68 of the Constitution.

This Ordinance has been amended by the *Fees and Charges (Miscellaneous Amendments) Act 2017*, No 13 by amending:

Section 40, inserting new section 67 and amending Rule 9 of the First Schedule.



Lemalu Hermann P. Retzlaff  
Attorney General of Samoa

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

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