

## **Title 43**

### **CIVIL REMEDIES AND PROCEDURE**

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#### **Chapter 01**

### **GENERAL PROVISIONS**

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**43.0101 Clerk to fix High Court costs and fees.**

(a) The clerk of the High Court of American Samoa shall, with the approval of the Chief Justice, fix all fees for services, filing fees and other court costs assessed by the judicial branch in connection with services rendered and not otherwise provided for in this code; provided, however, that such fees shall be set in an amount which is reasonable, fair and just compensation for the service rendered, at least in part defrays the costs of such service, and does not exceed the actual costs of providing the service.

(b) The cost of a transcript of proceedings of any court hearing or trial shall be fixed at no more than the rate charged for transcripts in the United States district courts.

(c) The per day cost of any High Court hearing or trial shall not exceed \$25 for a trial day of ordinary and usual length; an additional amount may be assessed for any time in excess thereof.

**History:** 1962, PL 7-36; 1966, PL 9-46

**43.0102 Fees and costs of Registrars of Vital Statistics and Titles.**

The Registrar of Vital Statistics and the Territorial Registrar shall fix all filing fees and costs, with the approval of the Governor, for services rendered the public through their respective offices; provided, however, that such fees shall be set in an amount which is reasonable, fair and just compensation for the service so rendered, at least in part defrays the costs of such service, and does not exceed the actual costs of providing the service.

**History:** 1962, PL 7-36. 1966, PL 9-46.

**43.0103 Failure to pay fees or costs.**

(a) Failure to pay court costs due the government pursuant to a decree, judgment, or court order shall constitute a contempt for which the body of the person in default may in the court's discretion be attached.

(b) No such attachment shall be ordered unless payment is more than 30 days overdue.

(c) Before ordering actual attachment of the body, the court may allow the delinquent such time as it may see fit within which to make payment.

(d) A person whose body has been attached, may be permitted to work out such costs by such labor as the Attorney General may assign him. The Attorney General shall make a return to the clerk of the High Court showing the number of days of labor performed, and the clerk of the High Court shall credit on the delinquent court costs \$1 for each day of labor performed.

(e) The period of attachment for contempt under this section shall not exceed in days the number of dollars of delinquent court costs.

(f) During such period as labor may be performed pursuant to this section, the attached person shall be released from confinement.

(g) Payment by a person whose body has been attached shall entitle the person to

release.

**History:**1962, PL 7-36.

**43.0110 Authority to administer oath.**

(a) The Governor, Secretary of American Samoa, Attorney General, Chief Justice, Associate Justice, clerk of the High Court and such other persons as shall be appointed by the Secretary of American Samoa shall have authority to administer all oaths and take acknowledgments for any purpose, and shall have, ex officio, the powers of a notary public. In addition, the following officials shall have authority to administer oaths and take acknowledgments to be used within the limits of American Samoa, to the extent specified:

(1) The associate judges of the High Court shall have authority to administer oaths and take acknowledgments in all cases within the jurisdiction of the High Court;

(2) The associate judges of the High Court and the clerks of the district courts shall have authority to administer oaths and take acknowledgments in all cases within the jurisdiction of the district courts;

(3) Members of the Legislature shall have the authority to administer oaths in accordance with the provisions of 2.1001.

(b) "Oath" as used in this section includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated.

**History:**1962, PL 7-28; 1998 PL 25-35.

**43.0115 Transfer of cases-Venue.**

Any case brought in the High Court or in a district court may, in the interest of justice and for the convenience of the parties and witnesses, be transferred by order of the Chief Justice or of the Associate Justice to any court in which it might have been brought originally.

**History:**1962, PL 7-36; 1966, PL 9-40.

**Case Notes:**

High Court is not empowered by this section to transfer a case to a United States district court. In the matter of Interocean Ships, Inc., C.A. No. 43-84 (4/21/86); Pacific Princess. 2 A.S.R. 2d 21 (1984).

**43.0120 Limitation periods.**

Actions may be brought within the following times after their causes accrue, and not afterward, except where otherwise especially declared:

(1) actions brought to set aside a will, within 6 months from the time the will is filed in the clerk's office for probate and notice thereof is given;

(2) actions founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statutory penalty, within 2 years;

(3) actions founded on unwritten contracts, or brought for injuries to property, within 3 years;

(4) actions to set aside a judgment or decree quieting title to real estate, within 5 years after the rendition of the judgment or decree;

(5) actions founded on written contracts, or a judgment of a court of record, within 10 years;

- (6) actions brought for the recovery of real property, within 20 years;
- (7) all actions for which no limitation period is provided, 3 years.

**History:**1962, PL 7-36.

**Case Notes:**

Action based on release of groceries to consignee without obtaining payment is not action based on injuries to person or reputation. *Micronesian-Hawaiian Trading Co. v. Young*, ASR (1979).

Neither paragraph (2) or (7) is applicable to a wrongful death action; Subsection (d) of 43.5001 applies. *Tauanuu v. Hartford Fire Ins. Co.*, ASR (1976).

Actions for recovery of real property must be brought within 20 years after cause of action accrues. RCAS 3.1101. *Fau v. Wilson*, 4 ASR 443 (1964).

Action to recover littoral rights taken by the government ninety years ago is barred by the doctrine of laches and by a statute which bars causes of action to recover real property if not brought within twenty years after they accrue. A.S.C.A. § 43.0120(6). *Vaivao v. Craddick*, 14 A.S.R.2d 108 (1990).

Persons who have been injured by private persons have two years after the cause of action accrues in which to file suit. A.S.C.A. § 43.0120(2). *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

Where the parties could be ascertained from the face of a note and security agreement executed by appellants in which terms, provisions, and conditions were fully set forth in writing, and the lender did not sign the agreement, but accepted or adopted it and relied on its validity as a promissory note, such note and security agreement was a written contract subject to a ten-year statute of limitations. A.S.C.A. § 43.0120. *Pene v. Bank of Hawaii*, 17 A.S.R.2d 168 (1990).

The statutes of limitations for filing suit are two years for actions on personal injury, three years for actions on unwritten contracts, ten years for actions on written contracts, and twenty years for actions to recover real property. A.S.C.A. § 43.0120. *Jennings v. Jennings*, 19 A.S.R.2d 34 (1991).

Limitation of actions and adverse possession, while facts giving rise to them are usually intertwined, are separate laws and may sometimes depend on different facts. A.S.C.A. §§ 37.0120, 43.0120(6). *Roberts v. Seseapasara*, 8 A.S.R.2d 43 (1988).

Purchaser's possession of land as lessee prior to her purchase might count toward thirty year period for adverse possession, but did not prevent the purchase from giving rise to a new cause of action for the purpose of twenty year statute of limitations. A.S.C.A. §§ 37.0120, 43.0120(6). *Roberts v. Seseapasara*, 8 A.S.R.2d 43 (1988).

If claimant of land was unaware of the identity of occupants of the land at the time suit was filed, naming the occupants as "Doe defendants" was sufficient to toll the statute of limitations. A.S.C.A. § 43.0120(6). *Roberts v. Seseapasara*, 8 A.S.R.2d 43 (1988).

A two-year statute of limitations applies to actions founded on personal injuries. A.S.C.A. § 43.0120(2). *Afatasi v. Ho Ching*, 17 A.S.R.2d 173 (1990).

Actions founded on personal injuries, whether based on contract or tort, must be brought within two years. A.S.C.A. § 43.0120(2). *Patau v. Rosendahl Corp.*, 19 A.S.R.2d 80 (1992).

If a case has not been brought within the time limits of A.S.C.A. § 43.0120, summary judgment may be properly entered against plaintiff(s). *Patau v. Rosendahl*, 20 A.S.R.2d 77 (1992).

Persons who have been injured by private persons have two years after the cause of action accrues in which to file suit. A.S.C.A. § 43.0120(2). *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

**43.0121 Cause of action for fraud, mistake or trespass.**

In actions for relief on the ground of fraud or mistake, and those for trespass to property, the cause of action shall not be deemed to have accrued until the fraud, mistake or trespass complained of shall have been discovered by the party aggrieved.

**History:**1962, PL 7-36.

**43.0122 Cause of action on open account.**

When there is a continuous, open, concurrent account, the cause of action shall be deemed to have accrued on the date of the last item therein, as proved at trial.

**History:**1962, PL 7-36.

### **43.0123 Limitation on executions.**

An execution may issue at any time before judgment is barred by the statute of limitations.

**History:**1962, PL 7-36.

### **43.0124 Death of party to be charged.**

In all cases where, due to death of the party to be charged, the bringing of an action against his estate has been delayed beyond the period provided for by statute, the time within which action may be brought against his estate shall be extended for 6 months from the date of the death of the decedent.

**History:**1962, PL 7-36.

#### **Case Notes:**

Specific provisions which toll a statute of limitations are provided by statute. A.S.C.A §§ 43.0124-43.0127. Patau v. Rosendahl Corp., 19 A.S.R.2d 80 (1992).

### **43.0125 Death of party having cause of action.**

If a person having a cause of action dies within 1 year next previous to the expiration of a limitation, such limitation does not apply until 1 year after such death.

**History:**1962, PL 7-36.

#### **Case Notes:**

Specific provisions which toll a statute of limitations are provided by statute. A.S.C.A §§ 43.0124-43.0127. Patau v. Rosendahl Corp., 19 A.S.R.2d 80 (1992).

### **43.0126 Commencement of action by minors and insane persons.**

Minors and insane persons shall have 1 year from after the termination of such disability within which to commence any action regardless of any otherwise applicable limitation period.

**History:**1962, PL 7-36.

#### **Case Notes:**

Where statute provides that minor has one year after termination of minority to commence any action regardless of any otherwise applicable limitation period, an action brought within this one year period is not barred by two year statute of limitations on tort actions against the government. A.S.C.A. §§ 43.0126, 43.1204. Lutu v. American Samoa Government, 7 A.S.R.2d 61 (1988).

Under statute providing that minors shall have one year after the termination of their disability to commence any action, a claim by a minor against the government is not barred so long as action is begun within one year after attainment of majority or appointment of a guardian ad litem, notwithstanding the two-year statute of limitations otherwise applicable to actions against the government. A.S.C.A. §§ 43.0126, 43.1204. Utu v. National Pacific Insurance Co., 9 A.S.R.2d 88 (1988).

"Minors and insane persons" have one year from the termination of such disability within which to commence an action, regardless of any otherwise-applicable statute of limitations. A.S.C.A. § 43.0126. Afatasi v. Ho Ching, 17 A.S.R.2d 173 (1990).

Specific provisions which toll a statute of limitations are provided by statute. A.S.C.A §§ 43.0124-43.0127. Patau v. Rosendahl Corp., 19 A.S.R.2d 80 (1992).

### **43.0127 Period of nonresidence not included in limitation period.**

The time during which a defendant is a nonresident of American Samoa shall not be included in the computation of any period of limitation.

**History:**1962, PL 7-36.

**Case Notes:**

Specific provisions which toll a statute of limitations are provided by statute. A.S.C.A §§ 43.0124-43.0127. Patau v. Rosendahl Corp., 19 A.S.R.2d 80 (1992).

**43.0128 Revival of cause of action in contract.**

Causes of action founded on contract are revived by an admission in writing, signed by the party to be charged, that the debt is unpaid, or by a like new promise to pay the same.

**History:** 1962, PL 7-36.

**43.0129 Use of barred counterclaim as defense.**

A counterclaim may be pleaded as a defense to any cause of action, notwithstanding it is barred by a statute of limitation, if it was the property of the party pleading it at the time it became barred, and was not barred at the time the claim sued on originated; but no judgment thereon, except for costs, can be rendered in favor of the party so pleading it.

**History:**1962, PL 7-36.

**43.0130 Effect of injunction.**

When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of such injunction or prohibition shall not be part of the time limited for the commencement of the action except as otherwise provided by law.

**History:**1962, PL 7-36.

## **Chapter 02**

### **PROCEDURE IN HIGH COURT**

**Sections:**

**43.0201 Civil procedure-Deficiencies in pleading.**

**43.0202 Adjournment to sit elsewhere.**

**43.0201 Civil procedure-Deficiencies in pleading.**

(a) In the High Court, the civil practice shall conform, as closely as practicable, to the practice provided for in the Federal Rules of Civil Procedure, Title 28, U.S.C.

(b) No objection may be made to formal deficiencies in pleading.

**History:**1962, PL 7-36, 1969, PL 11-54.

**Case Notes:**

Federal Rules of Civil Procedure referenced herein include supplemental rules for certain admiralty and maritime claims. Star-Kist Samoa, Inc., v. Poong No.5, ASR (1979).

Insofar as the "Federal Rules of Civil Procedure, supplemental Rules for Certain Admiralty and Maritime Claims" concern actions in rem, they are inapplicable in proceedings in the courts of American Samoa, for such courts do not have in rem admiralty or maritime jurisdiction Vessel Fijian Swift v. Trial Division, 4 ASR 983 (1975).

A petition for review of an Immigration Board's decision need not be dismissed or be refiled to correct the names of the appellees in the caption when the petition incorrectly included the American Samoa Government, the Attorney General, and the Chief Immigration Officer as appellees. A.S.C.A. §§ 41.0209, 43.0201(b); H.C.R. 3. Farapo v. American Samoa Government, 23 A.S.R.2d 51 (1992).

The High Court looks to the Federal Rules of Civil Procedure for guidance and must conform to them as closely as practicable. A.S.C.A. § 43.0201(a). *Crispin v. American Samoa Gov't*, 21 A.S.R.2d 60 (1992).

**43.0202 Adjourment to sit elsewhere.**

In any case where the interest of justice or the convenience of parties, witnesses or the court requires, the Chief Justice or the Associate Justice may order that a session of any division of the High Court adjourn from the courthouse to sit at any appropriate place in American Samoa.

**History:**1969, PL 11-54.

**Chapter 03**

**PROCEDURE IN LANDS AND TITLES DIVISION**

**Sections:**

- 43.0301 Presence of judges and assessors required for exercise of jurisdiction.**
- 43.0302 Certificate of irreconcilable dispute.**
- 43.0303 Orders prior to proceedings-Effect-Modification.**
- 43.0304 Interlocutory orders.**
- 43.0305 Status of orders.**

**43.0301 Presence of judges and assessors required for exercise of jurisdiction.**

Except as otherwise specifically provided by law, the Land and Titles Division shall not exercise any jurisdiction conferred upon it unless there is present the presiding judge, 2 associate judges and 2 assessors. Where, by reason of the absence of the minimum number of persons referred to above, it is necessary to adjourn the sitting of the Land and Titles Division or the hearing of any case, the presiding judge, or in his absence, the clerk of the High Court may adjourn or further adjourn such sitting or the hearing of such case to such future day as the presiding judge or the clerk shall think fit.

**History:**1969, PL 11-54.

**43.0302 Certificate of irreconcilable dispute.**

(a) Before any action relating to controversies over communal land or matai titles may be commenced in the Land and Titles Division, each party shall file with his complaint a certificate signed and attested by the Secretary of Samoan Affairs or his deputy, in which the Secretary or his deputy affirms and states:

(1) that on at least 2 occasions, the parties have appeared personally before him and 2 persons designated by him, without an attorney or counsel, and that an attempt was made to resolve the controversy;

(2) that all parties to the controversy received at least 20 days notice for each of the 2 required appearances;

(3) the date and hour of the beginning and conclusion of each appearance;

(4) the findings and conclusions of the Secretary or his deputy and the 2 designees with respect to the controversy heard before them, including a statement of the reason why the controversy could not be resolved.

(b) The certification mentioned in subsection (a) may not be required prior to the issuance of a temporary restraining order issued by the Chief Justice or an Associate

Justice to prevent the occurring of irreparable damage.

**History:** 1972, PL 12-59 § 1; and 1973, PL 13-39.

**Amendments:** 1973 Designated original section subsection (a) and added subsection (b).

**Case Notes:**

No certificate of irreconcilable dispute filed; letter, while deficient in form, constitutes sufficient substance. *Maria v. Tuli*, ASR (1978).

Claim lodged in Territorial Registrar's Office at time of trial could not be heard by court; no certificate of irreconcilable conflict. *Fanene v. Talio*, ASR (1977).

To permit a temporary restraining order to be effective for an extended period without benefit of a hearing deprives a person of his liberty and property without due process of law. Such order is not effective soon after it is issued if there is no hearing on issue of irreparable damage occurring if the order is not issued. *Faalafu v. Sala*, ASR (1977).

The requirement that controversies be presented to the office of Samoan Affairs prior to the filing of a claim for relief with the High Court, is procedural and not jurisdictional. *Tavai P. Kaleopa v. Nia-Marie & Company, Inc.*, ASR (1980).

When petitioner in land dispute has failed to seek relief from the Department of Samoan Affairs as required by statute prior to seeking judicial remedy, but respondent has answered and appeared before High Court, court would observe considerations of equity and convenience by staying the action pending compliance with the administrative relief requirements rather than dismissing the action altogether. A.S.C.A. §§ 3.0242, 43.0302(a). *Moeisogi v. Faleafine*, 5 A.S.R.2d 131 (1987).

Statutory requirement that parties submit a land dispute to the Office of Samoan Affairs before applying to the court for relief applies only to communal lands, and therefore did not deprive the court of jurisdiction over a dispute concerning individually owned lands. A.S.C.A. § 43.0302. *Sese v. Leota*, 9 A.S.R.2d 136 (1988).

Jurisdictional requirement that plaintiff must "file with his complaint a certificate" from office of territorial official, certifying that the parties have met twice and that the meetings did not result in a resolution of the dispute, was met where such a certificate was filed, notwithstanding evidence that an earlier letter by the same official tended to negative the existence of an irreconcilable dispute. A.S.C.A. § 43.0302. *Leota v. Sese*, 12 A.S.R.2d 18 (1988).

Letter from territorial official charged with mediating land disputes, stating the outline of a proposal by one of the parties but not even hinting that the other parties had ever agreed to the proposal, did not negate the existence of an irreconcilable dispute among the parties. A.S.C.A. § 43.0302. *Leota v. Sese*, 12 A.S.R.2d 18 (1988).

Statute requiring attempted resolution of "controversies over matai titles" before Secretary of Samoan Affairs before judicial action may be commenced applies not only to cases of matai appointment but also to petitions for matai removal. A.S.C.A. § 43.0302(a). *Members of the Taufi Family v. Taufi* (Mem.), 12 A.S.R.2d 6 (1989).

Where certificate of irreconcilable dispute from Secretary of Samoan Affairs was issued upon misinformation given by a party to the dispute, proceedings in Land & Titles Division would be stayed pending certification by the Secretary of compliance with statutory procedures for attempted resolution. A.S.C.A. § 43.0302. *In re Matai Title Mulitauaopele* (Mem.), 12 A.S.R.2d 8 (1989).

A party's contention that a piece of land is communal brings into play the requirements of A.S.C.A. § 43.0302. *Ava v. Logoai*, 20 A.S.R.2d 51 (1992).

**43.0303 Orders prior to proceedings-Effect-Modification.**

(a) If the Chief Justice or Associate Justice is satisfied that a dispute which is within the jurisdiction of the Land and Titles Division has arisen between Samoans and is likely to be the subject matter of proceedings under this chapter, he may, at any time before the commencement of proceedings, make such order as to him may seem just to restrain any Samoans from:

- (1) remaining in possession of or entering upon any Samoan land;
- (2) holding or using any Samoan name or title;
- (3) exercising any right or doing any act, matter or thing concerning or affecting any Samoan land or any Samoan name or title.

(b) Any order under subsection (a) may be made ex parte or otherwise and shall remain in full force and effect until the final judgment of the Land and Titles Division. The presiding judge may, at any time after the commencement of proceedings and upon the application of any party affected by such order, modify, vary or rescind the same.

**History:** 1969, PL 11-54; 1970, PL 11-119.

**Case Notes:**

Temporary restraining order enjoining defendants from clearing, etc., is proper under subsection (a). Tuilefano v. Beaver. ASR (1978).

Holding on Sofa'i in disregard of court order restraining defendant from participation in Sofa'i constitutes civil contempt. So'oso'oali'i Muasau Sotoa v. Leifitele Sinapati Sotoa, MT No. 003-86 (5/13/86).

Court may enjoin person wrongfully holding himself out as holder of matai title. Togiola v. Tafesilafa'i, 4 ASR2d 54 (1987).

Court may enjoin a person from holding himself out as the holder of a matai title that has been lawfully registered in the name of another person. A.S.C.A. § 43.0303. Togiola v. Tafesilafa'i, 4 A.S.R.2d 54 (1987).

In apparent recognition of the unusual nature of interests often being asserted in Samoan land disputes, the territorial legislature has provided that in such disputes a justice may make such preliminary orders as to him seem just to restrain any Samoan from exercising any right or doing any act, matter, or thing affecting or concerning any Samoan land pending the outcome of the litigation, without requiring that any specific irreparable harm be shown. A.S.C.A. § 43.0303. Leaana v. Laban (Mem.), 12 A.S.R.2d 93 (1989).

**43.0304 Interlocutory orders.**

In any proceeding, a justice may, pending final determination of the matter by the Land and Titles Division, make such interim orders as he thinks appropriate. The associate judges sitting in matai title disputes shall refer all requests for ex parte or interim orders to the Chief Justice or Associate Justice for appropriate action, unless the associate judges are in unanimous agreement thereon from entry of judgment and a trial de novo shall be held thereon.

**History:** 1969, PL 11-54. 1970, PL 11-119.

**Case Notes:**

Pursuant to power to make "such order as to him may seem just" in any land case, Chief Justice or Associate Justice of High Court need not stop at denying plaintiff's meritless claim for relief, but may issue preliminary injunction restraining plaintiff from interference with rights of defendant as delineated in earlier judgment. A.S.C.A. § 43.0304. Sialega v. Taito, 5 A.S.R.2d 99 (1987).

**43.0305 Status of orders.**

Any order made under 43.0303 or 43.0304 shall be deemed to be an order of the Land and Titles Division and shall be enforceable accordingly.

**History:** 1969, PL 11-54.

## Chapter 04

### PROCEDURE IN DISTRICT AND OTHER COURTS

**Sections:**

- 43.0420 Rules.**
- 43.0421 Appeals.**

#### **43.0420 Rules.**

The small claims department sessions shall be held pursuant to rules promulgated by the Chief Justice.

**History:**1967, PL 10-17, 1968, PL 10-62; 1969, PL 11-54; 1970, PL 11-116; 1970, PL 11-119.

#### **43.0421 Appeals.**

(a) An appeal may be taken to the Trial Division by either party adversely affected by a decision.

(b) Any appeal shall be filed in writing with the clerk of the High Court within 5 days from entry of judgment and a trial de novo shall be held thereon.

**History:**1967, PL 10-17; 1968, PL 10-62, 1969, PL 11-54; 1970, PL 11-116; 1970, PL 11-119.

### **Chapter 05**

#### **SERVICE OF PROCESS**

##### **Sections:**

- 43.0501 By publication-Permitted when.**
- 43.0502 How served-Notice.**
- 43.0503 Proof of service.**
- 43.0504 By means other than publication.**

#### **43 .0501 By publication-Permitted when.**

When an affidavit is filed that personal service cannot be made upon the defendant within American Samoa, service may be made by publication in any of the following cases:

(1) actions involving real property in American Samoa or any right, title, interest or estate therein, including, without limiting the foregoing, actions brought for:

(A) the sale, recovery or partition of real property;

(B) specific performance of a contract of sale covering real property;

(C) foreclosure under any mortgage, lien or other encumbrance or charge upon real property; or

(D) quieting of title to real property;

(2) an action brought against a nonresident of American Samoa or a foreign corporation, having in American Samoa property or debts owing to such defendant and sought to be appropriated in any way;

(3) all action where the defendant, being a resident of American Samoa, has departed therefrom with intent to delay or defraud his creditors, or to avoid the service of a notice, or keeps himself concealed in American Samoa with like intent;

(4) where the action is for a divorce or annulment, or for a change or modification of a decree of divorce or annulment, if the defendant is a nonresident of American Samoa or his residence is unknown.

**History:**1962, PL 7-36.

##### **Case Notes:**

When personal service cannot be made upon a respondent in a divorce action within American Samoa, a petitioner may apply for an order authorizing issuance of a notice for service by publication, supported by

an affidavit or another acceptable, verified statement of nonresidency or unknown residency. A.S.C.A. §§ 43.0501-43.0504; T.C.R.C.P. 4(e). *Pula v. Pula*, 24 A.S.R.2d 151 (1993).

When a petitioner files an affidavit that personal service cannot be made upon a respondent in a divorce action within American Samoa, due to nonresidency or unknown residency, service of process may be made by publication or registered mailing. A.S.C.A. §§ 43.0501-43.0504; T.C.R.C.P. 4(e), 12(a). *Pula v. Pula*, 24 A.S.R.2d 93 (1993).

#### **43.0502 How served-Notice.**

(a) After the complaint or petition has been filed with the court in which the matter is pending, notice shall be published once each month for 2 consecutive months in some newspaper or publication of general circulation, posted in the front of the court house in the village of Fagatogo, for the same period, and mailed by registered United States mail to the defendant at his last known address. If at any time there is no newspaper or other publication of general circulation in American Samoa available, and such fact is so found by the court, notice by posting and mails shall be sufficient.

(b) The notice shall contain and inform the defendant of the following:

(1) the name of the plaintiff:

(2) the name of the court wherein the action is brought and that the petition is on file in the court:

(3) a statement in general terms of the cause or causes of action, and, if it is for money, the amount, and that unless the defendant appears and defends within 2 months and 10 days from the date of the first publication, which date shall be published as a part of the notice, a default will be entered against him and judgment or decree rendered thereon.

**History:**1962, PL 7-36.

#### **Case Notes:**

Notice by publication must be calculated to afford due process and may require publication in multiple languages and in newspapers in jurisdiction outside American Samoa. Memorandum of the Justices, 2 ASR2d 33 (1986).

When personal service cannot be made upon a respondent in a divorce action within American Samoa, a petitioner may apply for an order authorizing issuance of a notice for service by publication, supported by an affidavit or another acceptable, verified statement of nonresidency or unknown residency. A.S.C.A. §§ 43.0501-43.0504; T.C.R.C.P. 4(e). *Pula v. Pula*, 24 A.S.R.2d 151 (1993).

When a petitioner files an affidavit that personal service cannot be made upon a respondent in a divorce action within American Samoa, due to nonresidency or unknown residency, service of process may be made by publication or registered mailing. A.S.C.A. §§ 43.0501-43.0504; T.C.R.C.P. 4(e), 12(a). *Pula v. Pula*, 24 A.S.R.2d 93 (1993).

Requirements of statute providing for notice by publication to defendant in legal proceeding must be complied with before action against defendant can proceed to trial. A.S.C.A. § 43.0502. *In re A Minor Child*, 7 A.S.R.2d 24 (1988).

To be genuinely calculated to give notice, service by publication on a person believed to reside in Western Samoa should ordinarily be in a Western Samoa newspaper in the Samoan language, and notice in Samoan should also be mailed to the party at his last known address. A.S.C.A. § 43.0502. *In re A Minor Child*, 7 A.S.R.2d 125 (1988).

Territorial statute allowing service on absent defendants by publication requires three forms of notice: publication in a newspaper, posting in front of the court house, and mailing by registered mail at his last known address. A.S.C.A. § 43.0502(a). *In re Three Minor Children*, 10 A.S.R.2d 57 (1989).

#### **43.0503 Proof of service.**

Proof of service by publication shall be by affidavit of the publisher to which affidavit shall be attached the notice clipped from a copy of the newspaper or publication in which

the publication was made. If the publication was made by mailing, affidavit of the person mailing the notice, with a copy of the notice mailed, shall be made. In either event, affidavit of posting shall also be made by the person posting such notice in the front of the Court House. The affidavits required by this section must be made before a default can be taken.

**History:** 1962, PL 7-36.

**Case Notes:**

When personal service cannot be made upon a respondent in a divorce action within American Samoa, a petitioner may apply for an order authorizing issuance of a notice for service by publication, supported by an affidavit or another acceptable, verified statement of nonresidency or unknown residency. A.S.C.A. §§ 43.0501-43.0504; T.C.R.C.P. 4(e). *Pula v. Pula*, 24 A.S.R.2d 151 (1993).

When a petitioner files an affidavit that personal service cannot be made upon a respondent in a divorce action within American Samoa, due to nonresidency or unknown residency, service of process may be made by publication or registered mailing. A.S.C.A. §§ 43.0501-43.0504; T.C.R.C.P. 4(e), 12(a). *Pula v. Pula*, 24 A.S.R.2d 93 (1993).

**43.0504 By means other than publication.**

Publication is not necessary if a copy of the order has been served upon the defendant in person or by registered mail at least [2 months and 10 days] before trial, and in case of service by registered mail an official return receipt signed by the defendant is attached to the affidavit of service.

**History:** 1962, PL 7-36, and 1984, PL 18-28 § 1.

**Amendments:** 1984 Provides for service by means other than publication.

**Case Notes:**

“Actual personal service” is not defined in code. Resorting to Rule 4(d)(1), Federal Rules of Civil Procedure, find no authorized agent is involved. Nor does rule when read with section authorize service by mail or any other method. *Pelesasa v. Te’o*, ASR (1978).

When personal service cannot be made upon a respondent in a divorce action within American Samoa, a petitioner may apply for an order authorizing issuance of a notice for service by publication, supported by an affidavit or another acceptable, verified statement of nonresidency or unknown residency. A.S.C.A. §§ 43.0501-43.0504; T.C.R.C.P. 4(e). *Pula v. Pula*, 24 A.S.R.2d 151 (1993).

When a petitioner files an affidavit that personal service cannot be made upon a respondent in a divorce action within American Samoa, due to nonresidency or unknown residency, service of process may be made by publication or registered mailing. A.S.C.A. §§ 43.0501-43.0504; T.C.R.C.P. 4(e), 12(a). *Pula v. Pula*, 24 A.S.R.2d 93 (1993).

**Chapter 06**

**PLEADINGS AND PARTIES (RESERVED)**

**Chapter 07**

**TRIAL AND JUDGMENT (RESERVED)**

**Chapter 08**

**APPELLATE PROCEDURE**

**Sections:**

- 43.0801 Powers.**
- 43.0802 Procedure applicable to appeal.**
- 43.0803 Stay of execution.**
- 43.0804 Decision on appeal final until otherwise provided by legislature.**

**43.0801 Powers.**

(a) The Appellate Division of the High Court shall have power on appeal or review to affirm, modify, set aside, or reverse the judgment or order appealed from or reviewed and to remand the case with such direction for a new trial or for the entry of judgment as may be just.

(b) The findings of fact of the trial, probate and Land and Titles Divisions of the High Court may not be set aside by the Appellate Division unless clearly erroneous.

**History:** 1962, PL 7-36; 1967, PL 10-17; 1969, PL 11-54.

**Case Notes:**

Although no clearly erroneous findings of fact, in the future, a series of legal conclusions, unsupported by meaningful discussion, may form basis of a reversal, in re "Fanene", ASR (1977).

Construes "clearly erroneous", Tuiagama v. Tomasi, ASR (1977).

Appellate Division is bound by findings of fact of Trial Court unless clearly erroneous. RCAS 3.0503. Willis v. Government, 4 ASR 926 (1965).

Appellate Division of the High Court will not set aside findings of fact of trial court unless clearly erroneous. RCAS 3.0503. Utu V. Aumoeualogo, 4 ASR 906 (1964).

Appellate court will not set aside findings of fact by Trial Division of the High Court unless clearly erroneous. RCAS 3.0503. Taufaaasau v. Manuma, 4 ASR 947 (1967).

Disparity from place to place in amounts generally awarded for pain and suffering is accounted for by many factors, including variations in the value of money and in social attitudes toward pain, and that awards tend to be lower in American Samoa than in some other jurisdictions does not make such an award clearly erroneous. A.S.C.A. § 43.0801. Kim v. Star-Kist Samoa, Inc., 8 A.S.R.2d 146 (1988).

Appellate court has no authority to increase the amount of damages awarded by trial court unless the amount was clearly erroneous. A.S.C.A. § 43.0801. Kim v. Star-Kist Samoa, Inc., 8 A.S.R.2d 146 (1988).

Appellate division of territorial court reviews findings of fact by Land and Titles Division for clear error. A.S.C.A. § 43.0801(b). Tuileata v. Amituana`i, 8 A.S.R.2d 173 (1988).

There is no clear error requiring appellate division to reverse a decision denying registration of land where (1) prior cases relied on by the appellant to show his presence in the area concerned another tract of land and (2) witnesses testified that appellant neither had houses or plantations in the area nor, owing to his long absence from the territory, had knowledge of the true extent of his family lands. A.S.C.A. § 43.0801(b). Tuileata v. Amituana`i, 8 A.S.R.2d 173 (1988).

Where each party has presented evidence to the trial court which supports its own claim to land ownership, the trial court's findings will not be disturbed on appeal unless clearly erroneous. A.S.C.A. § 43.0801(b). Suapilimai v. Faleafine, 9 A.S.R.2d 16 (1988).

Trial court findings of fact for which there is substantial evidence in the record are not clearly erroneous, and will not be disturbed on appeal, even though there is also substantial evidence in the record that would have supported a contrary finding by the trial court. A.S.C.A. § 43.0801(b). Suapilimai v. Faleafine, 9 A.S.R.2d 16 (1988).

Appellant who seeks to overturn the trial court's findings of fact on appeal bears the heavy burden of showing that these findings were "clearly erroneous" in light of the record. A.S.C.A. § 43.0801(b). Toleafoa v. Tiapula, 12 A.S.R.2d 56 (1989).

Where trial court finding that appellant had relinquished possession of house by many years of absence was supported by testimony that appellant lived in another village and rarely visited the village in which the disputed house was located, the finding was not clearly erroneous and appellate court would not disturb it. A.S.C.A. § 43.0801(b). Toleafoa v. Tiapula, 12 A.S.R.2d 56 (1989).

It is not within the province of the appellate court to re-weigh the evidence and interfere with a decision based on the lower court's choice of one version of the facts over another; findings of facts may not be set aside by the appellate court unless clearly erroneous. A.S.C.A. § 43.0801(b). Utuutuvanu v. Mataituli, 12 A.S.R.2d 88 (1989).

Trial court's finding of facts may not be set aside on appeal unless clearly erroneous. A.S.C.A. § 43.0801(b). *Moea'i v. Alai'a*, 12 A.S.R.2d 91 (1989).

The trial division's factual findings may not be set aside by the appellate division unless clearly erroneous. A.S.C.A. § 43.0801(b); T.C.R.C.P. 52(a). *Saufo'i v. American Samoa Gov't*, 19 A.S.R.2d 54 (1991).

The "clearly erroneous" standard is used by an appellate court to test a lower court's findings of negligence, as well as related findings such as "proximate cause." A.S.C.A. § 43.0801(b); T.C.R.C.P. 52(a). *Saufo'i v. American Samoa Gov't*, 19 A.S.R.2d 54 (1991).

In resolving issues of witnesses' credibility, motive, and character, the Appellate Division is limited to the trial court's transcripts and will presume their determinations to be correct, unless clearly erroneous. A.S.C.A. § 43.0801(b). *Rocha v. Rocha*, 20 A.S.R.2d 63 (1992).

On appeal, a clearly erroneous standard applied to questions of fact, but questions of law are reviewed de novo. A.S.C.A. § 43.0801(b). *Anderson v. Vaivao*, 21 A.S.R.2d 95 (1992).

### **43.0802 Procedure applicable to appeal.**

The following procedure shall apply to appeals taken to the Appellate Division of the High Court:

(a) Before filing a notice of appeal, a motion for a new trial shall be filed within 10 days after the announcement of the judgment or sentence.

(b) A notice of appeal shall be filed within 10 days after the denial of a motion for a new trial.

(c) The appellant shall cause the record on appeal to be filed with the appellate division and the appeal to be docketed there within 30 days from the date the notice or appeal is filed.

**History:** 1962, PL 7-36; 1966, PL 10-42; 1967, PL 10-17; 1968, PL 10-62.

#### **Case Notes:**

Reporter's failure to complete transcript not grounds for dismissal for failure to comply. *Ripley v. Kelemete*. ASR (1978).

Time is computed as provided in Rule 6(a), Federal Rules of Civil Procedure. *Ailua v. Maga Family*, ASR (1978).

Time for filing a notice of appeal is jurisdictional and court may not extend under Rule 26(c), Federal Rules of Appellate Procedure, which allows 3 days for mailing or under Federal Rules of Civil Procedure provision on excusable neglect. *Taufua v. Steffany*, ASR (1977).

"Announcement" means "entry of judgment" which means docketing of an order or decision by the Clerk of the Court. Motion for new trial, therefor, not timely, and action taken thereon is nullify. *Fai'ivae v. Tuse*, ASR (1977).

Motion for new trial must be filed within 10 days after judgement but may be served on parties after the tenth day. *Manuma v. Bartley*, 3 ASR2d 21(1986).

Period for filing motion for new trial commences with formal announcement of judgement. Subsequent events such as issuance of written opinion, correction of error or receipt by counsel of notice of judgement, do not extend period for filing.

Failure of clerk to file written entry of formally announced judgement does not prevent period from running. *Judicial Memorandum*, 4 ASR2d 172 (1987).

Territorial statute requiring motions for new trial to be "filed" within ten days of judgment would not be construed to require service on opposing parties within the ten day period. A.S.C.A. § 43.0802. *Olotoa v. Bartley*, 3 A.S.R.2d 21 (1986).

Motion for new trial is a statutory prerequisite to appeal, and no issue can be raised on appeal that was not raised in motion for new trial. A.S.C.A. § 43.0802. *Kim v. Star-Kist Samoa, Inc.*, 8 A.S.R.2d 146 (1988).

Parties who did not file a motion for new trial or reconsideration within ten days of judgment gave up their right to appeal the decision. A.S.C.A. § 43.0802(a),(b). *Gi v. Temu (Mem.)*, 12 A.S.R.2d 33 (1989).

The statutory deadline for filing motions for reconsideration or new trial is jurisdictional; if no such motion is filed within the requisite ten days, the Court no longer has the power to reconsider or amend its judgment and the losing party no longer has a right to appeal. A.S.C.A. § 43.0802(a) *In re Matai Title Muagututi'a*, 15 A.S.R.2d 1 (1990).

The requirement that before filing a notice of appeal, a motion for a new trial shall be filed within 10 days after the announcement of the judgment or sentence is jurisdictional. A.S.C.A. § 43.0802(a). *Taulaga v. Patea*, 17 A.S.R.2d 34 9 (1990).

If no timely motion for reconsideration or new trial conforming to the "particularity" requirement of T.C.R.C.P. 7(b)(1) is filed within the statutory ten-day deadline, then the Appellate Division lacks jurisdiction to entertain an appeal. A.S.C.A. § 43.0802(a). *Taulaga v. Patea*, 17 A.S.R.2d 34 (1990).

The requirement that a notice of appeal shall be filed within 10 days after the denial of a motion for a new trial is jurisdictional. A.S.C.A. § 43.0802(b). *Taulaga v. Patea*, 17 A.S.R.2d 34 (1990).

The requirement that a motion for a new trial be filed within ten days after the announcement of the judgment is a mandatory prerequisite to the exercise of jurisdiction by the Appellate Division. A.S.C.A. § 43.0802(a). *In re Matai Title Mulitauapele*, 17 A.S.R.2d 75 (1990).

The ten-day time limit to file a motion for a new trial is mandatory and jurisdictional; errors of law not raised within ten days of judgment or sentence are waived, at least insofar as they concern the right to appeal. A.S.C.A. §§ 43.0802(a), 46.2402(a). *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

The filing of a motion for new trial within ten days of the announcement of judgment is a mandatory prerequisite to appeal. A.S.C.A. § 43.0802(a). *Lualemana v. Asifoa*, 17 A.S.R.2d 151 (1990).

A party whose motion for a new trial has been denied, in whole or in part, has ten days from that date to file a notice of appeal. A.S.C.A. § 43.0802(b). *Willis v. Fai'ivae*, 17 A.S.R.2d 179 (1990).

The Appellate Division can hear an appeal only if a motion for new trial has been made within ten days of judgment, and only if a notice of appeal has been filed within ten days of the denial of a motion for new trial. A.S.C.A. § 43.0802. *Taulaga v. Patea*, 17 A.S.R.2d 206 (1990).

Where a motion for reconsideration has been filed after the statutory deadline, the Appellate Division has no jurisdiction to entertain an appeal regardless of any arguments, equitable or otherwise. A.S.C.A. § 43.0802. *Lualemana v. Asifoa*, 18 A.S.R.2d 49 (1991).

Although the statute does not provide a remedy for a situation in which, due to an error on the part of a Court employee or a theft from counsel's Court box a litigant does not receive notice of the judgment until after the ten-day deadline, the Court might, in extraordinary situations, entertain a T.C.R.C.P. Rule 60(b) motion and vacate the previous order dismissing the motion for reconsideration for lack of jurisdiction. A.S.C.A. § 43.0802. T.C.R.C.P. Rule 60(b). *Lualemana v. Asifoa*, 18 A.S.R.2d 49 (1991).

The requirement of filing a motion for a new trial or reconsideration of judgment prior to an appeal is jurisdictional. A.S.C.A. § 43.0802(a). *Rocha v. Rocha*, 20 A.S.R.2d 63 (1992).

In order for the appellate court to have jurisdiction over an appeal, (1) a motion for new trial or reconsideration must be filed within ten days after the announcement of the judgment or sentence, and (2) the notice of appeal must be filed within ten days after the denial of that timely motion. A.S.C.A. § 43.0802. *Toluao v. Fuimaono*, 21 A.S.R.2d 12 (1992).

Attorney who was served with the court's opinion and judgment had a duty to inform his clients of the result in time for them to decide whether they wished to file a motion for new trial or reconsideration. A.S.C.A. § 43.0802(a),(b). *Gi v. Temu* (Mem.), 12 A.S.R.2d 33 (1989).

Statute imposing ten day time limit on motions for new trial is jurisdictional and leaves court no discretion to extend or disregard the time limit. A.S.C.A. § 43.0802(a). *Satele v. Uiagalelei*, 8 A.S.R.2d 97 (1988).

Although deadlines for filing motions for new trial and appeal are set by the legislature and court is not free to overlook or extend them, a party may file a motion for relief from judgment after the statutory deadline for filing a motion for new trial. A.S.C.A. § 43.0802(a),(b); T.C.R.C.P. Rule 60(b). *Gi v. Temu* (Mem.), 12 A.S.R.2d 33 (1989).

To prevail on a motion for relief from judgment, a party must show not only that the judgment was wrong but also that he has some compelling justification for not having called the mistake to the court's attention within the ten days provided for filing a motion for new trial. A.S.C.A. § 43.0802(a),(b); T.C.R.C.P. Rule 60(b). *Gi v. Temu* (Mem.), 12 A.S.R.2d 33 (1989).

Depending on the circumstances, parties' receipt of notice of judgment from their attorney after expiration of the statutory time limit for filing a motion for reconsideration or new trial might support a motion for relief from the judgment. A.S.C.A. § 43.0802(a),(b); T.C.R.C.P. Rule 60(b). *Gi v. Temu* (Mem.), 12 A.S.R.2d 33 (1989).

A failure to respond to the court's notice of dismissal and to move within the ten days required by statute for a reconsideration of its order of dismissal did not constitute "excusable neglect" under Rule 60(b). A.S.C.A. § 43.0802(a); T.C.R.C.P. 60(b)(1). *Jennings v. Jennings*, 19 A.S.R.2d 34 (1991).

Statute requiring mediation of disputes over communal land did not apply to dispute over land which trial court concluded, consistently with the record before it, to be individually owned. A.S.C.A. § 43.0802. *Leota v. Sese*, 12 A.S.R.2d 18 (1989).

The requirement of filing a motion for a new trial or reconsideration of judgment prior to an appeal is jurisdictional. A.S.C.A. § 43.0802(a). *Rocha v. Rocha*, 20 A.S.R.2d 63 (1992).

Statutory period for filing a motion for a new trial commences with the announcement of judgment. A.S.C.A. § 43.0802. *Judicial Memorandum*, 4 A.S.R.2d 172 (1987).

The Clerk of Court will file a written entry of any judgment announced from the bench; the failure of the Clerk to do so, however, does not prevent the statutory period for filing motions for new trial from commencing with the announcement of judgment by the court. A.S.C.A. § 43.0802. *Judicial Memorandum*, 4 A.S.R.2d 172 (1987).

Attorney who was served with the court's opinion and judgment had a duty to inform his clients of the result in time for them to decide whether they wished to file a motion for new trial or reconsideration. A.S.C.A. § 43.0802(a),(b). *Gi v. Temu (Mem.)*, 12 A.S.R.2d 33 (1989).

The formal style or caption of a motion for a new trial is not essential to fulfill the statutory requirement; nor must the motion specifically request a new trial rather than some lesser or different form of relief, as long as the asserted errors are susceptible of such relief. A.S.C.A. §§ 43.0802(a), 46.2402(a). *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

### **43.0803 Stay of execution.**

Pending the hearing and determination of an appeal, execution of the final judgment or order of the High Court shall not be stayed unless the Appellate, Trial, or Land and Titles Division, or Chief Justice, orders a stay for cause shown and upon such terms as it or he may fix.

**History:** 1962, PL 7-36. 1967, PL 10-17, 1968, PL 10-62.

#### **Case Notes:**

Does not require the court to impose a supersedes bond upon granting a stay of enforcement, it is within the court's discretion. *Korea Marine Industry Development v. American International Underwriters, et al.*, ASR (1977).

A court should not automatically or casually grant a stay of judgment pending appeal; the court's discretion to grant a stay should be exercised only if cause is shown. A.S.C.A. § 43.0803; T.C.R.C.P. 62(a), (c); A.C.R. 8. *Asifoa v. Lualemana*, 17 A.S.R.2d 10 (1990).

Execution of a final judgment of the High Court will not be stayed pending appeal unless the appellate, trial, Land and Titles Division, or Chief Justice orders a stay for cause shown upon such terms as it or he may fix. A.S.C.A. § 43.0803. *Asifoa v. Lualemana*, 17 A.S.R.2d 100 (1990).

Similar to a petition for a preliminary injunction, the decision to grant or deny a motion for a stay of an injunction pending appeal depends partly on the "balance of equities" and partly on the likelihood of appeal's success. A.S.C.A. § 43.0803; T.C.R.C.P. 62(c); A.C.R. 8. *Lutali v. Foster*, 24 A.S.R.2d 81 (1993).

Regarding a motion to stay pending appeal, the moving party bears the burden of showing "cause" as to why an injunction should be stayed and must show that he is likely to prevail on the appeal's merits. A.S.C.A. § 43.0803; T.C.R.C.P. 62(c); A.C.R. 8. *Lutali v. Foster*, 24 A.S.R.2d 81 (1993).

Corporate directors claiming economic loss are not entitled to a stay of an injunction pending appeal when they lack standing because they are not parties to the lawsuit against the corporation and when their individual economic interests are not coincidental with or necessarily those of the corporation; in any event, prospective monetary loss as a result of an injunction is insufficient to suspend an injunction. A.S.C.A. § 43.0803; T.C.R.C.P. 62(c); A.C.R. 8. *Lutali v. Foster*, p. 81.

### **43.0804 Decision on appeal final until otherwise provided by legislature,**

Unless and until the Legislature of American Samoa provides for an appeal to a court created by an act of the Legislature, the decisions of the Appellate Division of the High Court shall be final. When and if the Legislature of American Samoa provides for an appeal from any decision of the courts of American Samoa to a court created by an act of the Legislature, any right of appeal granted from such decisions to the appellate division

of the High Court and right or review by the Secretary of the Interior shall cease.

**History:** 1962, PL 7-36, 1968, PL 10-46.

## Chapter 09

### ATTACHMENT

#### Sections:

- 43.0901 Writ of attachment.**
- 43.0902 Affidavit.**
- 43.0903 Plaintiffs bond.**
- 43.0904 Motion for additional security.**
- 43.0905 Action on bond.**
- 43.0906 Amount of levy.**
- 43.0907 Manner of execution.**
- 43.0908 Indemnity for marshal.**
- 43.0909 Examination of defendant where sufficient property cannot be found.**
- 43.0910 Sale of perishable property.**
- 43.0911 Return by marshal.**
- 43.0912 Discharge of writ upon termination of action.**
- 43.0913 Discharge of writ upon bond by defendant.**
- 43.0914 Discharge of improperly issued writ.**
- 43.0915 Filing discharge order.**
- 43.0916 Payment of expenses where writ discharged.**
- 43.0917 Execution.**
- 43.0918 Priority among attachments.**
- 43.0919 Collection of balance due-Return of surplus.**
- 43.0920 Appointment of receiver.**

**Reviser's Comment:** The law dealing with alienation of land contained in 43.0907 and 43.0917 of the ASCA as recodified by the legislative reference bureau had been questioned as to whether the requirements of Art. I, § 3 and Art. II, § 9, American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-88 and PL 17-31 to ensure that the law dealing with alienation of land compiles with the Constitution.

#### **43.0901 Writ of attachment.**

(a) The plaintiff in any permitted action upon a contract, express or implied, may, at the commencement of the action, or at any time afterward, and before judgment, have such property of the defendant or of any one or more of several defendants as is not exempt from execution, attached as security for the satisfaction of such judgment as he may recover.

(b) No writ of attachment may be issued against the government or any instrumentality thereof, the Development Bank of American Samoa, or the United States.

(c) The clerk of the High Court may issue writs of attachment.

(d) The writ of attachment shall be issued by the clerk with the approval of the court and directed to the marshal, and shall require him to attach and safely keep so much of the property of the defendant as will be sufficient to satisfy the demand of the plaintiff, with costs and expenses.

**History:** 1962, PL 7-36; 1969, PL 11-54.

**Research Guide:** For provisions on exemption, from sale to satisfy judgments, of real property of Samoans, see 43.0909.

**Case Notes:**

Not relevant to the arrest of vessels for purpose of obtaining in rem jurisdiction. *Star-Kist Samoa, Inc., v. Poong No. 5*, ASR (1979).

The High Court has in personam jurisdiction over admiralty and maritime causes of action, even though it does not have in rem admiralty and maritime jurisdiction, and in the enforcement of such personal liability, a vessel or other goods or chattels, or credits, may be seized, attached and levied upon; and the Federal Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims, are on their face applicable in such in personam cases, insofar as they are consistent with the court's statutory jurisdiction. *Vessel Fijian Swift v. Trial Division*, 4 ASR 983 (1975).

**43.0902      Affidavit.**

Before any writ of attachment shall issue, the plaintiff, or someone in his behalf, shall make and file with the clerk an affidavit showing that the defendant is indebted to the plaintiff, specifying the amount of such indebtedness over and above all just due credits and offsets, and stating that the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant.

**History:** 1962, PL 7-36.

**43.0903      Plaintiff's bond.**

(a) Before a writ of attachment shall issue, the plaintiff shall execute and file with the clerk a bond or undertaking with a surety company or 2 or more sureties, to be approved by such clerk, in a sum at least double the amount for which the plaintiff demands judgment, and in no case less than \$50 in a district court and \$100 in the High Court, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant and all damages defendant may sustain by reason of wrongful suing out of the attachment.

(b) No bond is required when the plaintiff is the government, any instrumentality thereof, the Development Bank of American Samoa, or the United States. No bond is required in a case in which the Attorney General, as the next friend of a Samoan, shall sue a non-Samoan. A Samoan, for the purposes of this subsection, is defined to be a person of one-half or more Samoan blood by descent.

**History:** 1962, PL 7-36.

**43.0904      Motion for additional security.**

The defendant may at any time before judgment move the court or judge for additional security on the part of the plaintiff, and if the court or judge is satisfied that the surety on the plaintiff's bond is insufficient or has been removed from American Samoa, the attachment may be vacated and restitution directed of any property taken under it unless in a reasonable time to be fixed by the court or judge sufficient security is given by the plaintiff.

**History:** 1962, PL 7-36.

**43.0905      Action on bond.**

(a) In an action on an attachment bond, the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out, the actual damages sustained and reasonable attorney's fees, of not more than \$25 in any case, to be fixed by the court; and if it is shown that such attachment was sued out maliciously, he may recover exemplary

damages.

(b) No action may be maintained on a bond until after final judgment in the main action unless the same is discontinued or dismissed.

**43.0906 Amount of levy.**

The marshal shall attach property of the defendant in an amount sufficient to satisfy the demand of the plaintiff, with costs and expenses, if sufficient property not exempt from execution can be found, giving that to which the defendant has an unquestionable title a preference over that to which his title is doubtful, and he shall, as nearly as the circumstances of the case will permit, levy upon property 20 percent greater in value than the amount which the plaintiff in his affidavit claims to be due.

**History:** 1962, PL 7-36.

**43.0907 Manner of execution.**

The marshal to whom the writ is directed and delivered must execute the same without delay as follows:

(a) Real property or an interest therein shall be attached by filing in the office in which conveyances of the real property attached should be recorded, a copy of the writ of attachment, endorsed or affixed with the officer's certificate stating that by virtue of the original writ of which such copy is a true copy, he has attached such real estate, or all of the interest of the defendant therein, describing the same with convenient certainty as the property of the defendant and naming the defendant. This subsection shall not, however, render any real property subject to attachment or execution, which by any other section of this code is made exempt therefrom.

(b) Personal property capable of manual delivery shall be attached by taking the same into custody.

(c) Stock in any corporation shall be attached by notifying the president, secretary, treasurer or managing agent of the corporation and also the defendant, if within American Samoa, that the stock has been so attached.

**History:** 1962, PL 7-36; readopted 1980, 16-88 § ; 1982, PL 17-31 § 1.

**43.0908 Indemnity for marshal.**

If the marshal has any reasonable doubt as to the ownership of the property or its liability to be taken on the writ, he may require sufficient security to indemnify him for attaching it.

**History:** 1962, PL 7-36.

**43.0909 Examination of defendant where sufficient property cannot be found.**

Whenever it appears by the affidavit of the plaintiff or by the return of the attachment that no property is known to the plaintiff or officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, the defendant may be required by the court or judge to appear before it or him and give information on oath respecting the same.

**History:** 1962, PL 7-36.

**43.0910 Sale of perishable property.**

If any attached property is perishable or in danger of serious and immediate waste or decay, the marshal shall sell the same in the manner in which property is sold on execution. Whenever it is made to appear satisfactorily to the court or judge that the interest of the parties to the action will be subserved by a sale of any attached property, the court or judge may order the property to be sold in the same manner as like property is sold under execution. Such order shall be made only upon notice to the adverse party or his attorney in case such party shall have been personally served in his action.

**History:** 1962, PL 7-36.

**43.0911 Return by marshal.**

The marshal shall make out a full inventory of the property attached and return the same with the writ of attachment. He shall return the writ with the summons if issued at the same time; otherwise, within such time after receipt as is allowed for a return of summons, with a certificate of his proceedings endorsed thereon or attached thereto.

**History:** 1962, PL 7-36.

**43.0912 Discharge of writ upon termination of action.**

If the defendant recovers judgment or the plaintiff is nonsuited or the action is discontinued or dismissed, all the proceeds of the sale and money collected by the marshal, and all the property attached remaining in the marshal's hands, shall be delivered to the defendant or his agent, and the order of attachment shall be discharged, and the property released therefrom.

**History:** 1962, PL 7-36.

**43.0913 Discharge of writ upon bond by defendant.**

If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties and approved by the officer having the attachment, or, after the return thereof, by the clerk, to the effect that he will perform the judgment of the court, the attachment shall be discharged and restitution made of the property taken or the proceeds thereof. The execution of the bond shall be deemed an appearance of the defendant in the action. The bond shall be part of the record, and if judgment is against the defendant, the same shall be entered against him and the sureties.

**History:** 1962, PL 7-36.

**43.0914 Discharge of improperly issued writ.**

The defendant may at any time after he has appeared in the action, either before or after the release of the attached property, or before any attachment has actually been levied, apply by motion and upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, that the writ of attachment be discharged on the ground that the same was improperly issued. If it satisfactorily appears that the writ of attachment was improperly issued, it shall be discharged.

**History:** 1962, PL 7-36.

**43.0915 Filing discharge order.**

Whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of the order may be filed in the office in which a copy of the

writ has been filed and indexed in like manner.

**History:** 1962, PL 7-36.

**43.0916 Payment of expenses where writ discharged.**

All expenses relating to an attachment shall be paid by the plaintiff when a writ is discharged.

**History:** 1962, PL 7-36.

**43.0917 Execution.**

If judgment is recovered by the plaintiff, the marshal shall satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant or subjected to execution on another judgment recovered before the issuing of the attachment, by applying on the execution issued on the judgment the proceeds of all sales of perishable or other property sold by him or as much as shall be necessary to satisfy the judgment. If any balance remains due on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance. Notices of sale at public auction shall be given by posting at the courthouse door and 2 other conspicuous places in the vicinity thereof for 2 weeks in case personal property is to be sold, and 4 weeks in case of real property. Approval of the court shall be necessary for sales of real property.

**History:** 1962, PL 7-36.

**43.0918 Priority among attachments.**

When there are several attachments against the same defendant, they shall be executed in the order in which they are received by the marshal.

**History:** 1962, PL 7-36.

**43.0919 Collection of balance due-Return of surplus.**

(a) If, after selling all the property attached by him remaining in his hands and applying all the proceeds, after deduction of his fees, to the payment of the judgment, any balance remains due, the marshal shall proceed to collect such balance as upon an execution in other cases.

(b) Whenever the judgment has been paid, the marshal, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

**History:** 1962, PL 7-36.

**43.0920 Appointment of receiver.**

The court before which the action is pending, or the judge thereof, may at any time appoint a receiver, whose pay shall be fixed by the court and assessed as part of the costs, to take possession of property attached under the provisions of this chapter, collect the revenues thereof, manage and control the same, and pay over the proceeds according to the nature of the property and the exigency of the case.

**History:** 1962, PL 7-36.

## Chapter 10

### CONDEMNATION

#### Sections:

#### I. General Provisions

- 43.1001 Filing of complaint and declaration.
- 43.1002 Possession immediately after service of notice.
- 43.1003 Compensation.
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- 43.1005 Vesting of title, and of right to compensation.
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- 43.1033 Stipulated dismissal.
- 43.1034 Dismissal by court.
- 43.1035 Effect of dismissal.
- 43.1036 Deposit of money-Distribution.

**Research Guide:** See also 37.0401 et seq. for provisions on eminent domain.

#### I. General Provisions

**Reviser's Comment:** The law dealing with alienation of land contained in 43.1001—43.1013 of the A.S.C.A. as recodified by the legislative reference bureau had been questioned as to whether the requirements of Art. I, § 3 and Art. II, § 9, American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-88 and PL 17-31 to ensure that the law dealing with alienation of land complies with the Constitution.

#### **43.1001 Filing of complaint and declaration.**

When the government desires to acquire any land, easement, right-of-way, or other property interest, it may file a complaint in the Trial Division of the High Court of American Samoa, and, at any time before judgment, it may file a declaration of taking signed by the Attorney General, declaring that the lands or other property rights described in the complaint are thereby taken for the use of the government. The declaration of taking shall contain, or have annexed thereto:

- (1) a statement of the public use for which the lands or other property rights are taken;
- (2) a description of the property taken sufficient for identification;
- (3) a statement of the estate or interest or property right taken for public use;
- (4) a plan showing lands taken;
- (5) a statement of the sum of money estimated by the government to be just compensation for the land to be taken.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

#### **43.1002 Possession immediately after service of notice.**

When the government desires to enter into the possession of the property immediately after the service of the notice provided for in 43.1026, the Territorial Registrar shall so state in the notice and any damage sustained by the occupant, lessee, lessor or owner of such property by reason of the immediate occupancy by the government shall be included in the compensation to the aggrieved parties. When the required notice has not been given and the government desires to enter into the possession of the property at any time during the proceedings and before the rights of the parties and the amount of compensation are determined, the Territorial Registrar shall give the required notice, which shall also specify the date upon which the government may enter into the possession of the property.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

#### **43.1003 Compensation.**

Along with the declaration of taking, the government shall deposit in the court, to the use of persons entitled thereto, the amount of the estimated compensation stated in the declaration.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

#### **43.1004 Payment of compensation awarded.**

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith or on account of the just compensation to be awarded in the proceeding. If the compensation finally awarded for the lands, or any parcel thereof, exceeds the amount of the money so received by any person entitled, the court shall enter judgment against the government for the amount of the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the court shall enter judgment against him and in favor of the government for the overpayment.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-48 § 1; 1982, PL 17-31 § 1.

#### **43.1005 Vesting of title, and of right to compensate.**

Upon the filing of the declaration of taking and the deposit, title to the lands in fee simple absolute, or such less estate or interest therein as is specified in the declaration, shall vest in the government, and the lands shall be deemed to be condemned and taken for the use of the government, and the right to just compensation for the lands shall vest in the persons entitled thereto.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

**43.1006 Determination and award of compensation.**

Just compensation shall be ascertained and awarded in the court proceeding and established by the judgment of the court. The judgment shall include, as part of the just compensation awarded, interest at the rate of 6 percent per year on the amount finally awarded as the value of the property as of the date of taking, from the date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into court shall be charged with commissions or poundage.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-48 § 1; 1982, PL 17-31 § 1.

**43.1007 Failure of interested parties to appear.**

When all of the parties interested in the property involved in condemnation proceedings fail to appear within the time set by this chapter, the court may proceed to fix the amount of compensation by arbitration, as provided for in this chapter, and also determine the ownership of the property. Such award and determination shall be as effective as though the parties had appeared and answered. Any sums ordered to be paid by the government shall be held by the government for 7 years, to be paid to the proper claimant on demand. Such sums shall bear no interest.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

**43.1008 Cost of litigation.**

Costs of litigation shall not be assessed against any party.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

**43.1009 Title disputes-Determination.**

(a) When a dispute as to the ownership of the property prevents the amicable settlement of and payment for the property, the Territorial Registrar shall so certify to the Trial Division of the High Court, requesting that the court determine the ownership of the property in question, except that all disputes as to the ownership of communal land shall be referred to the Land and Titles Division of the High Court, solely for the purpose of determination of ownership.

(b) When a dispute is so certified by the registrar, the court shall hear the same as a civil matter, and shall, after proper hearing, enter its order and judgment determining the ownership of the property, which shall be good against all persons.

**History:** 1962, PL 7-25; 1969, PL 11-54; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

**43.1010 Arbitration of compensation disputes.**

(a) When the government does not agree to pay the sum demanded or the parties or any of them do not accept the deposit made by the government, either before or after the settlement of the question of title, the sum to be paid by the government shall be

determined by arbitration.

(b) One arbitrator shall be appointed by the Governor on behalf of the government, one shall be appointed by the person or persons claiming compensation, and one, who shall be the chairman, shall be appointed by the other 2 arbitrators.

(c) In the event the person or persons claiming compensation do not agree upon an arbitrator or the 2 arbitrators who are to choose the third arbitrator fail to agree upon a third arbitrator by a day to be fixed by the court, an arbitrator shall be named and appointed for them by the court.

(d) The award shall be determined by a majority of the arbitrators after viewing the property involved and considering such evidence concerning the value of the property as may be submitted by interested parties.

(e) The award shall be made within one month after the arbitrators have entered upon their duties, or have been called on to act by a notice in writing from any party unless the court sets a different time. The chairman of the arbitrators shall, within the time limit for the award, file the determination of the amount of the award with the court, enclosed in a sealed cover endorsed with the names of the parties to the arbitration. The court shall open the award and forward a copy of the same to the parties.

(f) The decision of the arbitrators shall be final if notice of appeal is not served within the time limited by law.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

#### **43.1011 Appeal.**

(a) The decision of the arbitrators may be appealed to the Appellate Division of the High Court by any person or by the government.

(b) The adverse party or parties shall be served written notice of the intention to appeal within 10 days after the appealing party receives notice of the award from the Trial Division of the High Court. The notice of appeal, together with proof of service, shall be filed with the clerk of the High Court within 2 days after service is completed.

(c) On appeal, the appellate Division may hear such evidence, including the testimony of the arbitrators, as is material, may approve, modify, revise, or reject the award of the arbitrators, and may either make a new and different award or resubmit the matter to the same or different arbitrators to be appointed in the same manner as the original arbitrators.

(d) Following its decision, the court shall enter an order that upon the payment of the required sum the government shall be the lawful owner of the property. The order shall bind all persons.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

#### **43.1012 Payment of arbitrators.**

Payment to arbitrators shall be made by the government for the time they are actually engaged in hearing the case, and for their traveling expenses to and from the place of hearing. The amount of the payment shall be fixed by the court, but the payment to each arbitrator shall not exceed \$20 per day, plus transportation.

**History:** 1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

#### **43.1013 Incapacity of claimants.**

When a question arises as to the legal capacity of any claimant for compensation to

execute a discharge or release upon payment of the sum agreed to be paid, rendered, or awarded, the court shall appoint a guardian or take such other action as may be required by law.

**History:**1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

## **II. Procedural Rules**

### **43.1020 Applicability of United States Federal Rules of Civil Procedure.**

The Rules of Civil Procedure for the District Courts of the United States of America shall govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in 43.1021 et seq.

**History:**1962, PL 7-25; 1967, PL 10-25.

### **43.1021 Complaint-Caption and contents-Names of defendants.**

(a) The complaint shall contain a caption setting forth the name of the court, the title of the action, the file number and the designation "Complaint".

(b) The government shall name as defendants the property, designated generally by kind, quantity and location, and at least one of the owners of some part or interest in the property.

(c) The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and, as to each separate piece of property, a designation of the defendants who have been joined as owners thereof or of some interest therein.

(d) Upon commencement of the action, the government need join as defendants only those persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property the government shall add as defendants all persons having or claiming to have an interest in that property whose names can be ascertained by a reasonable diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "unknown owners".

**History:**1962, PL 7-25; 1967, PL 10-25.

### **43.1022 Filing complaint.**

In addition to filing the complaint with the court, the government shall furnish to the court at least one copy thereof for the use of the defendants and additional copies at the request of the clerk of the court or a defendant.

**History:** 1962, PL 7-25; 1967, PL 10-25.

### **43.1023 Joinder of properties to be taken.**

The government may join in the same action one or more separate pieces of property, whether in the same or different ownership, and whether or not sought for the same use.

**History:** 1962, PL 7-25; 1967, PL 10-25.

### **43.1024 Order for distribution of deposit.**

Following the filing of the complaint, the court may order such distribution of any deposit of the estimated compensation for the property taken as the facts warrant.

**History:** 1962, PL 7-25; 1967, PL 10-25.

**43.1025 Notices-Delivery-Form.**

(a) Upon the filing of the complaint, the government shall forthwith deliver to the clerk of the court joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall also be so delivered.

(b) The delivery of the notice and its service have the same effect as the delivery and service of a summons under Rule 4 of the Federal Rules of Civil Procedure of the United States of America.

(c) Each notice shall state the court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the Attorney General an answer within 20 days after service of the notice, and that the failure to so serve an answer constitutes a consent to the taking and to the authority of the court to hear the action and to fix the compensation. The notice shall conclude with the address of the Attorney General where he may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

**History:** 1962, PL 7-25; 1967, PL 10-25.

**43.1026 Service of notice.**

Personal service of the notice, without copies of the complaint, shall be made by any policeman of American Samoa or any person duly appointed by the court, in the manner described in Rule 4(d) of the Federal Rules of Civil Procedure. If personal service cannot be made upon any defendant, the service may be accomplished by mailing a copy of a notice by registered mail to the defendant at his last known post office address; the notice shall also be posted on the property to be acquired and at the court house in Fagatogo, and if a newspaper is published in American Samoa, a copy of the notice shall be published therein on each week for 3 successive weeks. Notice shall be in both the English and Samoan languages.

**History:** 1962, PL 7-25; 1967, PL 10-25.

**43.1027 Proof of service.**

Proof of service of the notice shall be made in the manner provided for the return amendment of a summons under Rule 4(g) of the Federal Rules of Civil Procedure.

**History:** 1962, PL 7-25; 1967, PL 10-25.

**43.1028 Amendment of notice or proof of service.**

Amendment of the notice or of proof of service shall be allowed in the manner provided in Rule 4(h) of the Federal Rules of Civil Procedure.

**History:** 1962, PL 7-25; 1967, PL 10-25.

**43.1029 Notice of appearance-Waiver of defenses.**

(a) If a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter he shall receive notice of all proceedings affecting it.

(b) If a defendant has any objection or defense to the taking of his property, he shall serve his answer within 20 days after the service of notice upon him. The answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking of his property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection may be allowed.

**History:** 1962, PL 7-25; 1967, PL 10-25.

**43.1030 Amendment of pleading.**

(a) Without leave of court, the government may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by 43.1035.

(b) The government need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Rule 5(b) of the Federal Rules of Civil Procedure, upon any party affected thereby who has appeared and, in the manner provided in 43.1026, upon any party affected thereby who has not appeared.

(c) The government shall furnish to the clerk of the court for the use of the defendants at least one copy of each amendment, and he shall furnish additional copies on the request of the clerk or of a defendant.

(d) Within the time allowed by 43.1029, a defendant may serve his answer to the amended pleading, in the form and manner and with the same effect as therein provided.

**History:** 1962, PL 7-25; 1967, PL 10-25.

**43.1031 Substitution of parties.**

(a) If a defendant dies, becomes incompetent or transfers his interest after his joinder in the action, the court may order substitution of the proper party upon motion and notice of hearing.

(b) If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in 43.1026.

**History:** 1962, PL 7-25; 1967, PL 10-25.

**43.1032 Dismissal of action.**

If no hearing to determine the compensation to be paid for a piece of property has begun and the government has not acquired the title or a lesser interest or taken possession, the government may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

**History:** 1962, PL 7-25; 1967, PL 10-25.

**43.1033 Stipulated dismissal.**

Before the entry of any judgment vesting the government with title of a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and if the parties so stipulate, the court may vacate any judgment that has been entered.

**History:**1962, PL 7-25; 1967, PL 10-25.

**43.1034 Dismissal by court.**

At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may sever a defendant unnecessarily or improperly joined.

**History:** 1962, PL 7-25; 1967, PL 10-25.

**43.1035 Effect of dismissal.**

Except as otherwise provided in the notice, or stipulation of dismissal, or order of the court, any dismissal is without prejudice.

**History:**1962, PL 7-25; 1967, PL 10-25.

**43.1036 Deposit of money-Distribution.**

(a) The government shall deposit with the court the money required by 43.1001.

(b) The court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation.

(c) If the compensation finally awarded to any defendant exceeds the amount which has been paid to him on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the court shall enter judgment against him and in favor of the government for the overpayment.

**History:** 1962, PL7-25; 1967, PL 10-25.

## **Chapter 11**

### **DECLARATORY RELIEF**

**Sections:**

**43.1101 Right of action-Declaration.**

**43.1102 Refusal to hear cause.**

**43.1103 Time for trial.**

**43.1104 Other remedies not affected.**

**43.1101 Right of action-Declaration.**

Any person interested under a deed, will or other written instrument, or under a

contract, or who desires a declaration of his rights or duties with respect to another, or in respect to, in, over or upon property, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an action in the trial division of the High Court for a declaration of his rights and duties, including a determination of any question of construction or validity arising under an instrument or contract. He may ask for a declaration of his rights and duties, either alone or with other relief. The court may make a binding declaration of such rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and such declaration shall have the force of a final judgment. Such declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

**History:** 1967, PL 10-22.

**Case Notes:**

Issue of constitutionality of statute requiring gubernatorial candidates to resign from government employment is not within scope of jurisdiction of this section; however, under “contractual relationship”, disregard of petitioner’s employment rights in firing him is. *Soifele v. Lee*, ASR (1977).

Appropriate procedure for review of administrative decision raising airport landing fees is to seek review pursuant to 4.1040 et seq. and declaratory relief pursuant to 43.110 et seq. *Pan Am v Barnett* ASR (1977).

Court has jurisdiction to make a declaratory judgment construing will. *Tolmie v Hunkin* ASR (1977)

The purpose of a declaratory judgment is to liquidate uncertainties and controversies which might result in future litigation *In re High Chief Title Mauga*, 4 ASR 132 (1974).

Court had jurisdiction, which it would exercise, to decide question whether the High Chief Title “Mauga” of the Village of Pago Pago was a split title, where there was continuous ill feeling and fighting over the issue, it appeared such a state of affairs would continue, and there had been five court cases seeking the removal of the holder of the Mauga title. *In re High Chief Title Mauga*, 4 ASR 132 (1974).

The basic question in determining whether a complaint presents a justiciable issue which can serve as a basis for a declaratory judgment suit is whether the facts alleged, under all the circumstances, show that there is a substantial controversy between parties that have adverse legal interests of sufficient immediacy and reality to warrant issuance of a declaratory judgment: and the test generally applied is whether it is relatively certain that coercive litigation will eventually ensue between the same parties if a declaratory judgment is refused. *In re High Chief Title Mauga*, 4 ASR 132 (1974).

Where trustees filed a pleading styled as a petition to a nonexistent “probate division” of the High Court for advice and instructions, the Court denied a motion to dismiss for failure to state a claim by the surviving settlor of the trust, since the trustees did not merely seek an advisory opinion but stated a claim for declaratory relief. A.S.C.A. § 43.1101 et seq. *In re Beaver Family Trust*, 17 A.S.R.2d 9 (1990).

To bring a declaratory relief action, there must be a justiciable issue based on alleged facts showing, under all the circumstances, that a substantial controversy exists between parties having adverse legal interests of sufficient immediacy and reality to warrant issuance of a declaratory judgment; the test generally applied is the relative certainty that litigation will eventually follow if declaratory relief is not granted. A.S.C.A. § 43.1101. *Sala v. American Samoa Gov’t*, 21 A.S.R.2d 50 (1992).

**43.1102 Refusal to hear cause.**

The court may refuse to exercise the power granted by this chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances.

**History:** 1967, PL 10-22.

**Case Notes:**

Under discretionary power, court can only take jurisdiction to extent petitioner’s complaint is cognizable under statute 7.0801 et seq. petitioner selects. *Soifele v. Lee*, ASR (1977).

Even if an actual controversy exists, a court has the discretion to refuse declaratory relief when, under all the circumstances, it is unnecessary or improper at the time it is sought. A.S.C.A. § 43.1102. *Sala v. American Samoa Gov’t*, 21 A.S.R.2d 50 (1992).

**43.1103 Time for trial.**

Actions brought under the provisions of this chapter shall be set for trial at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence may be given by law.

**History:**1967, PL 10-22.

**43.1104 Other remedies not affected.**

The remedies provided by this chapter are cumulative and shall not be construed as restricting any other remedy, provisional or otherwise, provided by law for the benefit of any party to such action, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts.

**History:**1967, PL 10-22.

## Chapter 12

### GOVERNMENT TORT LIABILITY

**Sections:**

- 43.1201 Short title.**
- 43.1202 Definitions.**
- 43.1203 Liability of government-Exceptions.**
- 43.1204 Statute of limitations.**
- 43.1205 Prerequisite administrative remedy.**
- 43.1206 Administrative decision conclusive upon government.**
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- 43.1208 Administrative disposition not evidence of liability or damages.**
- 43.1209 Jurisdiction over actions.**
- 43.1210 Settlement of actions.**
- 43.1211 Action against government exclusive remedy-Defense and settlement of other actions.**
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- 43.1230 Liability of government-Exceptions.**
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- 43.1234 Severability.**
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**43.1201 Short title.**

This chapter may be cited as the “Government Tort Liability Act”.

**History:**1967, PL 10-1.

**Case Notes:**

Under the Government Tort Liability Act, a party may not sue the government in tort until after he files an administrative claim with the Attorney General which is either still pending or denied within three months of its filing. A.S.C.A. §§ 43.1201 et seq. Mataipule v. Tifaimoana Partnerships, Ltd., 16 A.S.R.2d 48 (1990).

An administrative claim is a jurisdictional prerequisite to a suit against ASG under the Government Tort Liability Act. A.S.C.A. §§ 43.1201 et seq. *Rakhshan v. American Samoa Government*, 20 A.S.R.2d 1 (1991).

Plaintiff alleging injury by employee of territorial government had the option, in accordance with territorial statute, to bring an action against the employee or to waive this action and follow statutory procedures for making a claim against the government. Government Tort Liability Act, A.S.C.A. 43.1201 et seq. *Aga v. American Samoa Government*, 3 A.S.R.2d 130 (1986).

Suits for false arrest or imprisonment are outside the scope of the Government Tort Liability Act. A.S.C.A. §§ 43.1201 et seq. *Rakhshan v. American Samoa Government*, 20 A.S.R.2d 1 (1991).

### **43.1202 Definitions.**

As used in this chapter:

(1) “Computer-based system: includes any computer or other information technology system, and any electronic device that controls, operates, monitors, or assists in the operation or functioning of equipment, machinery, plant, or a device using an embedded or installed microprocessor or chip.

(2) “Employees of the government” includes officers and employees of any government agency, and persons acting in behalf of a government agency in an official capacity, temporarily, whether with or without compensation.

(3) “Government agency or America Samoa Government” includes without limitation the Legislative, Judicial and Executive branches, including their respective departments, offices, agencies, authorities, boards or commissions but do not include any contractor with the government.

(4) “Government computer system” means a computer-based system owned or operated by or on behalf of the American Samoa Government.

(5) “Y-2K compliant” means, that the system accurately processes date and time data, including but not limited to, calculating, comparing, projecting, and sequencing from, into, and between the twentieth and twenty-first centuries and the years 1999 and 2000 and beyond, and leap year calculations”.

(6) “Y-2K error” means the failure of a computer-based system to accurately store, display, transmit, receive, process, calculate, compare, or sequence date and time data from, into, or between the twentieth and twenty-first centuries, the years 1999 and 2000 and beyond, and leap year calculations.”

**History:** 1967, PL 10-1; and 1990 PL 21-29, 1999, PL 26-14.

### **43.1203 Liability of government-Exceptions.**

(a) The government is liable, except as otherwise provided in this chapter, in the same manner and to the same extent as a private individual under like circumstances, but is not liable for interest prior to judgment or for punitive damages, except that in a case wherein death is caused and the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the government is liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively for whose benefit the action was brought.

(b) The provisions of this chapter do not apply to:

(1) any claim based upon act or omission of an employee of the government exercising due care in the execution of a statute or regulation, whether such statute or regulation is valid;

(2) any claim based upon the exercise or performance of, or the failure to exercise or

perform, a discretionary function or duty on the part of an officer or employee, whether or not the discretion involved is abused;

(3) any claim regarding the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise, by any law officer, customs or tax officer, or any other law enforcement officer;

(4) any claim for which a remedy is provided elsewhere in the laws of the government;

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

(6) any claim arising in a foreign country.

(c) Action under this section may not be instituted for any sum in excess of the amount of the claim presented to the Attorney General under 43.1205, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the Attorney General, or upon allegation and proof of intervening facts, relating to the amount of the claim.

**History:**1967, PL 10-1.

**Case Notes:**

Discretionary function exemption designed for policy decisions. *K.M.J.D.C. v. Marine Railway*, A5R (1979).

Section does not constitute waiver of sovereign immunity from suit allowing right of action against territorial government under federal civil rights statutes, *Ferstie v. A.S.G.*, 4 A.S.R. 2d 160 (1987)(mern).

The sum-certain requirement for administrative claims filed against ASG is both statutorily and administratively an integral part of the jurisdictional administrative-claim process. A.S.C.A. § 43.1203(c); A.S.A.C. § 43.0103(a). *Bryant v. Southwest Marine of Samoa, Inc.*, 23 A.S.R.2d 55 (1992).

Government Tort Liability Act does not constitute waiver of immunity from suit so as to give right of action against territorial government under federal civil rights law. A.S.C.A. § 43.1203 et seq.; 42 U.S.C. § 1983. *Ferstle v. American Samoa Government*, 4 A.S.R.2d 160 (1987).

In a civil action for personal injury caused by the negligent or wrongful act or omission of a government employee acting within the scope of his office or employment, the government is liable in the same manner and to the same extent as a private individual under like circumstances, subject to a number of specific exceptions. A.S.C.A. § 43.1203(a). *Tauiliili v. American Samoa Government*, 13 A.S.R.2d 61 (1989).

Complaint alleging facts which could, if proved at trial, warrant statutory remedy would not be dismissed for failure to state a claim, despite alternative possibility that case could prove to be within exception to statutory remedy. T.C.R.C.P. Rule 12(b)(6); A.S.C.A. § 43.1203(b)(5). *Tevaseu v. American Samoa Government*, 5 A.S.R.2d 10 (1987).

**43.1204 Statute of limitations.**

A tort claim against the government shall be forever barred unless an action on it is begun within 2 years after the claim accrues.

**History:**1967, PL 10-1.

**Case Notes:**

Tort Liability Act provides that no tort action may be instituted against ASG unless the claimant has first presented the claim in writing to the Attorney General, and the claim has been finally denied by the Attorney General. A.S.C.A. § 43.1204. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

A prospective plaintiff's "claim" under the Government Tort Liability Act does not accrue, and therefore the two-year limitation period does not begin to run, until after the claim has been finally denied by the Attorney General. A.S.C.A. §§ 43.1204-43.1205. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

When plaintiff is statutorily required to file an administrative claim with the attorney general before he may sue the government, the filing of such a claim begins an action and tolls the statute of limitations. A.S.C.A. § 43.1204. *Mataipule v. Tifaimoana Partnerships, Ltd.*, 16 A.S.R.2d 48 (1990).

Because an injured person cannot sue until he has exhausted his administrative remedy, the Government The right to sue under the Government Tort Liability Act is absolutely barred by failure to bring an administrative claim within a two-year period from the date of injury, and the Attorney General has a reasonable time in which to review such claim. A.S.C.A. §§ 43.1204-43.1205. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

An action under the Government Tort Liability Act is subject to dismissal when the statute of limitations has run or when administrative remedies have not been exhausted. A.S.C.A. §§ 43.1204-43.1205; T.C.R.C.P. 12(b). *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

Where statute provides that minor has one year after termination of minority to commence any action regardless of any otherwise applicable limitation period, an action brought within this one year period is not barred by two year statute of limitations on tort actions against the government. A.S.C.A. §§ 43.0126, 43.1204. *Lutu v. American Samoa Government*, 7 A.S.R.2d 61 (1988).

Under statute providing that minors shall have one year after the termination of their disability to commence any action, a claim by a minor against the government is not barred so long as action is begun within one year after attainment of majority or appointment of a guardian ad litem, notwithstanding the two-year statute of limitations otherwise applicable to actions against the government. A.S.C.A. §§ 43.0126, 43.1204. *Utu v. National Pacific Insurance Co.*, 9 A.S.R.2d 88 (1988).

Government Tort Liability Act requires a tort claim against the government to be filed within two years after the claim accrues. A.S.C.A. § 43.1204. *Mataipule v. Tifaimoana Partnerships, Ltd.*, 16 A.S.R.2d 48 (1990).

Under the statute of limitations applicable to the Government Tort Liability Act, the High Court has construed the term "claim" as being synonymous with "cause of action." A.S.C.A. § 43.1204. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

Under the Government Tort Liability Act, injured persons may bring suit within two years from the date of injury (or, in certain cases, of knowledge thereof). A.S.C.A. § 43.1204. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

An action under the Government Tort Liability Act is subject to dismissal when the statute of limitations has run or when administrative remedies have not been exhausted. A.S.C.A. §§ 43.1204-43.1205; T.C.R.C.P. 12(b). *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

ASG waived the statute of limitations applicable to the Government Tort Liability Act when it did the following: filed an answer which affirmatively admitted that the Court had jurisdiction over the parties and the subject matter; vigorously litigated the merits of the action for several years; required the defendant to undergo a deposition and to answer numerous interrogatories, requests for production of documents, and requests for admissions; sought and obtained affirmative relief from the Court by filing what amounted to a mandatory counterclaim, a permissive counterclaim, and another permissive counterclaim on behalf of a wholly-owned entity; and effectively reduced one of these claims to a substantial judgment. A.S.C.A. § 43.1204. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

The two-year statute of limitations applicable to the Government Tort Liability Act is not a jurisdictional prerequisite but is a statute of limitations, an affirmative defense which is waived if not affirmatively pled by the defendant. A.S.C.A. § 43.1204. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

Unlike its quite differently phrased and structured counterpart in the Federal Tort Claims Act, the statute of limitations applicable to American Samoa's Government Tort Liability Act has been held to be subject to tolling during the minority of an injured person. A.S.C.A. § 43.1204. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

In the absence of any evidence that the Fono meant the two-year limitation on tort actions against ASG to be construed and applied differently than the similar two-year limitation on tort actions against private persons, the High Court will not conclude that the Fono intended or would have intended the "harsh result" of depriving litigants against the Government of the benefit of the traditional rule that a party entitled to plead the statute of limitations can waive the statute by not pleading it as an affirmative defense and by proceeding to litigate the suit on its merits. A.S.C.A. § 43.1204. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

Prejudice to the plaintiff resulting from ASG's failure to plead in its answer the statute of limitations applicable to the Government Tort Liability Act should be evaluated as of the time that the defendant finally asserted the statute, not when plaintiff failed to plead the statute as a defense and could not have

cured the defect in his action by filing a new complaint. A.S.C.A. § 43.1204. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

When the defense that the complaint was not filed within the Government Tort Liability Act's statute of limitations was not available at the time ASG filed its answer, failure to plead this defense did not amount to a waiver of the statute of limitations with respect to any future amendment of the complaint. A.S.C.A. § 43.1204. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 126 (1991).

Even though the failure to plead in its answer the statute of limitations applicable to the Government Tort Liability Act could not be characterized as a waiver with respect to any future amendment of the complaint, ASG was estoppel from raising the statute of limitations with respect to an amended complaint when the same combination of defenses raised in its motion to dismiss could have been raised in its answer to the original complaint five years earlier, but the government instead vigorously litigated on the merits for several years and also sought affirmative relief from plaintiff by way of counterclaims and cross-claims. A.S.C.A. § 43.1204. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 126 (1991).

When plaintiff is statutorily required to file an administrative claim with the attorney general before he may sue the government, the filing of such a claim begins an action and tolls the statute of limitations. A.S.C.A. § 43.1204. *Mataipule v. Tifaifoana Partnerships, Ltd.*, 16 A.S.R.2d 48 (1990).

### **43.1205 Prerequisite administrative remedy.**

(a) An action may not be instituted upon a claim against the government for money damages for damage to or loss of property, or personal injury or death, caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment unless the claimant has first presented the claim to the Attorney General and his claim has been finally denied by the Attorney General in writing, notice of the denial sent to claimant by certified or registered mail. The failure of the Attorney General to make a final disposition of a claim within 3 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for the purposes of this section.

(b) The Attorney General shall, in accordance with regulations prescribed by the Governor, consider and determine, compromise or settle any claim for money damages against the government for damage to or loss of property, or personal injury or death, caused by the negligent or wrongful act or omission of any employee of a government agency while acting within the scope of his office or employment, under circumstances where the government, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

**History:** 1967, PL 10-1; amd 1985, PL 19-11 § 1.

**Amendments:** 1985 Added "a"; replaced "6" with "3"

#### **Case Notes:**

Prerequisite to tort liability action against the government of American Samoa is presentation of claim to Attorney General, in re *Faoato v. Government of American Samoa* ASR (1979).

Complaint when filed was jurisdictionally deficient for failure to file with Attorney General which is mandatory. Although later filed with Attorney General, complaint was never amended therefore must be dismissed. *Gobrait v. American Hotels, inc.*, A5R (1978).

Requirement for sum certain in suit against government is mandatory under Government Tort Liability Act: action dismissed with prejudice for failure to state a sum certain in the claim. *Kelemete Moananu v. A.S.G. et. al. C.A. 133-85 (11/12/85)*.

Under statute requiring plaintiff to file an administrative claim before bringing action against the government, administrative claim by mother that she and her family had suffered damages adequately notified the government of the claims of her minor children, so that suit by minors should not be dismissed for failure to exhaust administrative remedies. A.S.C.A. § 43.1205(a). *Utu v. National Pacific Insurance Co.*, 9 A.S.R.2d 88 (1988).

For a trial court to have subject matter jurisdiction over actions arising under the Government Tort Liability Act, an administrative claim must first be made and either denied or ignored for three months. A.S.C.A. § 43.1205(a). *Mataipule v. Tifaifoana Partnership, Ltd.* (Mem), 14 A.S.R.2d 100 (1990).

A prospective plaintiff's "claim" under the Government Tort Liability Act does not accrue, and therefore the two-year limitation period does not begin to run, until after the claim has been finally denied by the Attorney General. A.S.C.A. §§ 43.1204-43.1205. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

The right to sue under the Government Tort Liability Act is absolutely barred by failure to bring an administrative claim within a two-year period from the date of injury, and the Attorney General has a reasonable time in which to review such claim. A.S.C.A. §§ 43.1204-43.1205. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

An action under the Government Tort Liability Act is subject to dismissal when the statute of limitations has run or when administrative remedies have not been exhausted. A.S.C.A. §§ 43.1204-43.1205; T.C.R.C.P. 12(b). *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

The requirement of filing an administrative claim before filing suit under the Government Tort Liability Act is jurisdictional. A.S.C.A. § 43.1205. *Bryant v. Southwest Marine of Samoa, Inc.*, 22 A.S.R.2d 23 (1992).

Although based on the Federal Tort Liability Act, the territorial Government Tort Liability Act does not contain the former's exception for third-party complaints from the requirement that an administrative-claim is a prerequisite to filing suit. 28 U.S.C. § 2675; A.S.C.A. § 43.1205. *Bryant v. Southwest Marine of Samoa, Inc.*, 22 A.S.R.2d 23 (1992).

Though modeled on the Federal Tort Claims Act, as amended in 1966, the territorial Government Tort Liability Act does not contain the F.T.C.A.'s exception from the administrative-claim prerequisite for a cause of action asserted by third-party complaint, cross-claim, or counterclaim. 28 U.S.C. § 2675(a); A.S.C.A. § 43.1205(a). *Bryant v. Southwest Marine of Samoa, Inc.*, 22 A.S.R.2d 88 (1992).

Claims against the American Samoa Government for personal injury or property damage must be administratively submitted under the Government Tort Claims Act to the Attorney General for resolution before judicial action is instituted. A.S.C.A. § 43.1205. *Crispin v. American Samoa Gov't*, 21 A.S.R.2d 60 (1992).

A prospective plaintiff's "claim" under the Government Tort Liability Act does not accrue, and therefore the two-year limitation period does not begin to run, until after the claim has been finally denied by the Attorney General. A.S.C.A. §§ 43.1204-43.1205. *Randall v. American Samoa Gov't*, 19 A.S.R.2d 111 (1991).

### **43.1206 Administrative decision conclusive upon government.**

Subject to the provisions of this chapter relating to civil actions on tort claims against the government, any award, compromise, settlement or determination by the Attorney General shall be final and conclusive on all officers of the government, except when procured by means of fraud.

**History:** 1967, PL 10-1.

#### **Case Notes:**

Although the Attorney General's decision on an administrative claim is final and conclusively binding on all ASG officers, except when procured by fraud, his action cannot result in a waiver or estoppel preventing ASG from raising a jurisdictional issue at any stage of future litigation. A.S.C.A. § 43.1206. *Bryant v. Southwest Marine of Samoa, Inc.*, 23 A.S.R.2d 55 (1992).

### **43.1207 Bar to suit against government employee.**

The judgment in an action, or the payment of a claim by the Attorney General, under this chapter shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim.

**History:** 1967, PL 10-1.

**Case Notes:**

Statute providing that a judgment against or payment of a claim by the territorial government bars an action by the claimant against the responsible employee merely proscribes double recovery for a single harm, not suit against the individual government employee in the first instance. A.S.C.A. § 43.1207 *Tevaseu v. American Samoa Government*, 5 A.S.R.2d 10 (1987).

Statute providing that judgment against government precludes later claim against government employee based on same event does not bar suit against employee prior to judgment against government. A.S.C.A. § 43.1207. *Lutu v. American Samoa Government*, 7 A.S.R.2d 61 (1988)

**43.1208 Administrative disposition not evidence of liability or damages.**

Disposition of any claim by the Attorney General is not competent evidence of liability or amount of damages.

**History:** 1967, PL 10-1.

**43.1209 Jurisdiction over actions.**

(a) The Trial Division of the High Court shall have exclusive jurisdiction of civil actions on claims against the government accruing on or after the effective date of this chapter, for money damages, for damage to or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the government, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(b) The jurisdiction conferred by this section includes jurisdiction of any setoff, counterclaim or other claim or demand whatever on the part of the government against any plaintiff commencing an action under this section.

**History:** 1967, PL 10-1.

**Case Notes:**

Court has jurisdiction over civil actions against the government for personal injury caused by the negligent or wrongful act or omission of a government employee acting within the scope of his office or employment. A.S.C.A. § 43.1209. *Tauilili v. American Samoa Government*, 13 A.S.R.2d 61 (1989).

**43.1210 Settlement of actions.**

The Attorney General or his designee may arbitrate, compromise or settle any claim cognizable under this chapter, after the commencement of an action thereon.

**History:** 1967, PL 10-1.

**43.1211 Action against government exclusive remedy-Defense and settlement of other actions.**

(a) The remedy by suit against the government as provided by this chapter for damage to or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee whose act or omission gave rise to the claim, or his estate.

(b) The Attorney General shall defend any civil action or proceeding brought in American Samoa against any employee of the government, or his estate, for any such

damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior and that person shall promptly furnish copies of the pleadings and process therein to the Attorney General.

(c) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in 43.1210 and with the same effect.

**History:** 1967, PL 10-1.

**Case Notes:**

Court granted motion to strike named defendants LBJ Tropical Medical Center and individual government doctor because medical center is not an entity capable of being sued, and government tort liability act precludes naming individual employees as defendants. *Aga v. American Samoa Government*, 3 ASR2d 130 (1986).

Territorial statute has the effect of immunizing territorial employees from personal liability for torts they commit while acting within the scope of their employment, provided that the injured person chooses to proceed against the government employer. A.S.C.A. § 43.1211(a). *Tevaseu v. American Samoa Government*, 5 A.S.R.2d 10 (1987).

Individual government employee should not be stricken as defendant in a suit against territorial government under government tort liability statute unless and until it is shown that the employee was acting within the scope of his employment at the time of the alleged injury. A.S.C.A. § 43.1211(a). *Tevaseu v. American Samoa Government*, 5 A.S.R.2d 10 (1987).

Statute immunizing government employees from personal liability for wrongful acts committed within the scope of their employment bars suit against employee only after it has been established that the wrongful conduct underlying the claim was committed within the scope of employment. A.S.C.A. § 43.1211(a). *Lutu v. American Samoa Government*, 7 A.S.R.2d 61 (1988).

**43.1212 Payment of judgment or settled claim.**

(a) When the Attorney General has allowed or settled a claim against the government under the provisions of this chapter, the Treasurer shall pay any such claim or judgment which does not exceed the sum of \$25,000 in connection with any claim or judgment for personal injury or death, or which does not exceed the sum of \$5,000 in connection with any claim or judgment for damage to or loss of property. The Treasurer shall pay any judgment against the government immediately from the fund created herein. Payment shall be made from a fund which shall be appropriated by the Legislature each fiscal year in the amount of no less than \$100,000 for the payment of awards, compromises, settlements or judgments under this chapter. The said amount shall be submitted for appropriations under the budget of the department of legal affairs.

(b) When the fund authorized in subsection (a) above is exhausted the attorney general shall forward legislation to the Legislature at its next regular or special session to appropriate funds for the payment of the settled claims or judgments in excess of the funds. The Treasurer is authorized to pay a claim or judgment up to such amount as may be appropriated therefor by the Legislature.

(c) If any claim is allowed, settlement made or judgment rendered in excess of the amount for which payment is authorized by subsection (a), the Governor shall forward legislation appropriating funds for the payment of such amount to the Legislature, at its next regular session, for action. The Treasurer is authorized to pay such amount as may be appropriated there-for by the Legislature.

**History:** 1967, PL 10-1; and 1979, PL 16-46 § 1; 1995 PL 24-10.

**Amendments:** 1979 subsection (a): raised dollar amounts of personal injury from \$10,000 to \$15,000 and

loss of property from \$2,000 to \$5,000.

#### **43.1213 Attorney fees.**

No attorney may charge, demand, receive or collect for services rendered, fees in excess of 25 percent of any judgment rendered pursuant to this chapter, or in excess of 20 percent of any award, compromise, or settlement made by the Attorney General pursuant to this chapter.

**History:** 1967, PL 10-1.

#### **Case Notes:**

Where attorney had failed to represent one of his four clients, a minor child, and had failed to advise his other clients of their fiduciary obligations to the child, court charged with settlements involving minors would not approve an attorney's fee in the maximum amount permitted by law but would require a reduction in the fee. A.S.C.A. § 43.1213. *Galo v. American Samoa Government*, 10 A.S.R.2d 94 (1989).

#### **43.1230 Liability of government-Exceptions**

(a) The liability provisions of this chapter shall not be applied to allow for any claim arising out of or based upon any failure of or error produced, calculated, or generated by a government computer system as a result of the system not being Y-2K compliant, regardless of the cause for the system not being Y-2K compliant.

(b) Nothing in this chapter shall be deemed to provide immunity or release from liability to any person who:

(1) Deliberately tampers with a government computer system for the purpose of preventing it from being Y-2K compliant; causing the system to produce, calculate, or generate a Y-2K error; provided, however, that the immunity or release from liability shall remain where the Y-2K error arises out of to a test performed to determine whether a government computer system will produce, calculate, or generate a Y-2K error; or

(2) receives and fails to immediately return a benefit which the person is not legally entitled to arising out of or based upon any failure of or error produced, calculated, or generated by a government computer system as a result of the system's not being Y-2K compliant, which benefit was provided to the person as a result of a Y-2K error produced, calculated, or generated by a government computer system.

**History:** 1999, PL 26-14.

#### **43.1231 Immunity Against Suits.**

No action, including, without limitation, any action for declaratory or injunctive relief, may be brought against the American Samoa Government or a government employee, arising out of or based upon any failure of or error produced, calculated, or generated by a government computer system as a result of the system's not being Y-2K compliant, regardless of the cause for the system's not being Y-2K compliant.

**History:** 1999, PL 26-14.

#### **43.1232 Preventive and remedial measures.**

Nothing in this chapter shall be deemed to prevent the American Samoa Government, an agency, a board, or a government employee, from taking steps to prevent or remedy any failure of or a Y-2K error produced, calculated, or generated by a government computer system as a result of the system's not being Y-2K compliant, once the failure or

error has been verified.

**History:** 1999, PL 26-14.

**43.1233 Effect on insurance.**

Nothing in this act is intended to affect the indemnity and defense coverage rights and obligations under any contract of insurance.

**History:** 1999, PL 26-14.

**43.1234 Severability.**

If any provision of this act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**History:** 1999, PL 26-14.

**43.1235 Preemption.**

If any portion of this act is found to be preempted by federal law or regulation, the remainder shall remain in full force and effect to the fullest extent consistent with the preemption.

**History:** 1999, PL 26-14.

## **Chapter 13**

### **INJUNCTIONS**

**Sections:**

- 43.1301 Definitions.**
- 43.1302 Issuance of permanent injunction.**
- 43.1303 Issuance of preliminary injunction.**
- 43.1304 Issuance of temporary restraining order.**
- 43.1305 Time for hearing on preliminary injunction.**
- 43.1306 Modification and termination of injunctions.**
- 43.1307 Form and scope of injunction.**
- 43.1308 Transmission to law enforcement agencies.**
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**43.1301 Definitions.**

As used in this chapter, the following definitions apply:

(a) "Applicant" means the entity or entities requesting the court's issuance of an injunction in their favor.

(b) “Entity” means an individual, group of individuals, joint venture, partnership, corporation, trust, or other group, association, or thing cognizable under law.

(c) “Injunction” means a court order which commands a party to take, conduct or effectuate, or prohibits a party from taking, conducting, or effectuating, specific action or activity.

(d) “Opposing party” means the entity or entities who have been or are requested to be enjoined.

(e) “Party” An entity which may sue or be sued in the court issuing the injunction is a party, if that entity is subject to the personal jurisdiction of that court at the time the injunction is served upon that entity, regardless of whether prior to the issuance of the injunction, that entity has been served with summons, or complaint, or otherwise notified of a potential or pending action.

(f) “Permanent injunction” means an injunction issued only after a full and final trial on the merits. A permanent injunction is in force and effect during the time period specified by the court at the time of issuance, or if no time period is specified then continuously until terminated by court order.

(g) “Preliminary injunction” means an injunction issued only after a noticed hearing in a court of competent jurisdiction on whether there is sufficient grounds for its issuance. A preliminary injunction is in force and effect continuously until such time as:

(1) the court issuing the preliminary injunction, or a superior court by court order, terminates the preliminary injunction; or

(2) a court of competent jurisdiction issues a permanent injunction in the same case in which the preliminary injunction was issued; or

(3) a court of competent jurisdiction, after a full and final trial on the merits, determines that a permanent injunction should not issue against the opposing party.

(h) “Sa‘o” means head matai or ulu of a Samoan family, for the purpose of this act, the traditionally recognized and registered sa‘o or head matai in a Samoan family in American Samoa.

(i) “Samoan family” for the purpose of this act, means a unit of Samoan people bound together by tradition and blood heritage including blood relationship to the head matai title or sa‘o of said family in American Samoa.

(j) “Sufficient grounds for the issuance of a preliminary injunction” means:

(1) there is a substantial likelihood that the applicant will prevail at trial on the merits and that a permanent injunction will be issued against the opposing party; and

(2) great or irreparable injury will result to the applicant before a full and final trial can be fairly held on whether a permanent injunction should issue.

(k) “Sufficient grounds for the issuance of a temporary restraining order” means:

(1) there is a substantial likelihood that the applicant will prevail at the hearing for a preliminary injunction;

(2) great or irreparable injury will result to the applicant before a hearing can be reasonably held on whether a preliminary injunction should issue; and

(3) the applicant:

(A) has informed the opposing party, or his attorney of the place and time the application for a temporary restraining order is to be made;

(B) has, in good faith, attempted to inform the opposing party, or his attorney of the place and time the application for a temporary restraining order is to be made; or

(C) will probably incur substantial irreparable injury, loss, or damage, if required, prior to the issuance of the temporary restraining order, to inform the opposing party of

the place and time the application is to be made.

(1) "Temporary restraining order" means an injunction prohibiting a party from taking, conducting, or effectuating, specific action or activity, issued after a court of competent jurisdiction determines that there is sufficient grounds for its issuance. A temporary restraining order is in force and effect only from the time of service upon the opposing party until:

(1) a court of competent jurisdiction issues a preliminary injunction embracing the subject action or activity;

(2) a court of competent jurisdiction, after hearing on whether a preliminary injunction should issue, determines that a preliminary injunction, embracing the subject action or activity should not issue; or

(3) 15 days from the date of issuance elapses, except that:

(A) the 15-day limitation may be extended by court order up to a total of 20 days upon a finding of good cause for that extension;

(B) the 15-day limitation may be extended as to an opposing party that stipulates, up to the end of the period to which stipulated, by and as to that opposing party.

**History:**1981, PL 17-6.

**Case Notes:**

Subsection (j)(2): Irreparable injury demonstrated when injury is to traditional decision making process of Samoan family in land dispute. *Talili v. Momosca*, 3 A.S.R.2d 36(1986).

Plaintiff established sufficient grounds and was granted a preliminary injunction enjoining defendant from interfering with attempts to repair damage to plaintiff's home, where plaintiff's claim to reside on family lands was based on the fact that the matai and family had permitted her to use and occupy the homesite for ten years, while defendant's claim was based on the more tenuous ground that her immediate family exclusively owned the communal land in issue. A.S.C.A. §§ 43.1301(g),(j). *Uli v. Talaeai*, 16 A.S.R.2d 14 (1990).

Preliminary injunction was granted where plaintiff showed he was likely to prevail on the merits at trial and would suffer great injury before then if defendant was not enjoined from continuing construction of a house on land whose ownership was disputed. A.S.C.A. § 43.1301(j). *Utu v. Paolo*, 16 A.S.R.2d 113 (1990).

Sufficient grounds for issuing a preliminary injunction requires showing (1) a substantial likelihood that the applicant will prevail at the trial on the merits and that a permanent injunction will be issued; and (2) great or irreparable injury to the applicant before a full and final trial can be held regarding a permanent injunction. A.S.C.A. § 43.1301(j). *Lefiti v. Tauanu'u*, 24 A.S.R.2d 68 (1993).

A party seeking a preliminary injunction bears the burden of showing that great or irreparable injury will occur before a full and final trial can be held on whether a permanent injunction should issue. A.S.C.A. § 43.1301(j)(2). *Timu v. McMoore*, 24 A.S.R.2d 84 (1993).

Where plaintiff family member admitted that he had other living quarters, refusal of court to issue a preliminary injunction forbidding senior matai of family to interfere with ongoing construction on family land would not be likely to cause irreparable injury. A.S.C.A. § 43.1301(j). *Mailo v. Nua*, 5 A.S.R.2d 59 (1987).

Preliminary injunction may issue only if petitioner shows "sufficient grounds" after a hearing inter parties duly noticed. A.S.C.A. § 43.1301(g). *Gaoa v. Tulifua*, 13 A.S.R.2d 30 (1989).

To have sufficient grounds for issuing a preliminary injunction, a court must find that petitioner has a substantial likelihood of prevailing on the merits at trial and without such injunction will suffer great or irreparable injury before a full trial. A.S.C.A. § 43.1301(j). *Gaoa v. Tulifua*, 13 A.S.R.2d 30 (1989).

Indignity and sense of hurt felt by petitioners with respect to respondents' construction on disputed land was not "irreparable injury" within meaning of the preliminary injunction statute. A.S.C.A. § 43.1301(j). *Gaoa v. Tulifua*, 13 A.S.R.2d 30 (1989).

Sufficient grounds for issuing a preliminary injunction consist of (1) a substantial likelihood that the applicants will prevail at trial on the merits, and (2) great or irreparable harm to the applicant. A.S.C.A. § 43.1301(j). *Talaeuga v. Mulipola*, 22 A.S.R.2d 7 (1992).

Plaintiff established sufficient grounds and was granted a preliminary injunction enjoining defendant from interfering with attempts to repair damage to plaintiff's home, where plaintiff's claim to reside on family lands was based on the fact that the matai and family had permitted her to use and occupy the homesite for ten years, while defendant's claim was based on the more tenuous ground that her immediate family exclusively owned the communal land in issue. A.S.C.A. §§ 43.1301(g),(j). *Uli v. Talaeai*, 16 A.S.R.2d 14 (1990).

Where plaintiff family member admitted that he had other living quarters, refusal of court to issue a preliminary injunction forbidding senior matai of family to interfere with ongoing construction on family land would not be likely to cause irreparable injury. A.S.C.A. § 43.1301(j). *Mailo v. Nua*, 5 A.S.R. 2d 59 (1987).

To issue a preliminary injunction a court must find that the applicant has a substantial likelihood of prevailing on the merits at trial, and without such injunction will suffer great injury before a full trial. A.S.C.A. § 43.1301(j)(1)-(2). *Leaana v. Laban* (Mem.), 12 A.S.R.2d 93 (1989).

### **43.1302 Issuance of permanent injunction.**

A permanent injunction may be issued by a court having subject matter jurisdiction of the case and personal jurisdiction of the opposing party only after a full and final trial on the merits of the applicant's claim and determination that a judgment for money damages will inadequately remedy the complained of wrong.

**History:**1981, PL 17-6.

#### **Case Notes:**

The High Court possesses the statutory authority to issue an injunction if it deems money damages to be an inadequate remedy; as such, it may order a special shareholders' meeting if a board of directors, though lacking any discretion in the matter, fails to call a meeting. A.S.C.A. § 43.1302. *Lutali v. Foster*, 24 A.S.R.2d 39 (1993).

Actual physical interference with the use and enjoyment of another's land constitutes the most common type of nuisance and is subject to the issuance of a permanent injunction. A.S.C.A. § 43.1302. *Thompson v. Toluao*, 24 A.S.R.2d 127 (1993).

As an equitable remedy, the most distinguishing prerequisite of permanent injunctive relief is the inadequacy of a remedy at law, usually money damages. A.S.C.A. § 43.1302. *Thompson v. Toluao*, 24 A.S.R.2d 127 (1993).

### **43.1303 Issuance of preliminary injunction.**

(a) A preliminary injunction may be issued by a court having subject matter jurisdiction of the case and personal jurisdiction of the opposing party only after:

(1) there has been a hearing in which sufficient grounds for the issuance of a preliminary injunction has been established by a preponderance of the evidence adduced; and

(2) at least 48 hours prior to the hearing on the preliminary injunction, the applicant has filed with the court, and the opposing party, or his attorney has been served with a copy of the following documents:

- (A) notice of the place and time the hearing is to take place;
- (B) application for a preliminary injunction;
- (C) order to show cause why a preliminary injunction should not issue;
- (D) complaint praying for a permanent injunction;
- (E) proposed permanent injunctive order and preliminary injunctive order;
- (F) affidavits submitted in support of preliminary injunction; and
- (G) memorandum of points and authorities of law in support of preliminary injunction.

(b) The opposing party may waive any or all of the requirements for issuance of a preliminary injunction as provided for in this section. Failure to object prior to and at, the noticed preliminary injunction hearing constitutes a waiver. A waiver of a requirement by

an opposing party does not constitute a waiver of any other requirement, nor constitute a waiver by any other opposing party.

**History:**1981, PL 17-6.

**43.1304 Issuance of temporary restraining order.**

A temporary restraining order may be issued by a court having subject matter jurisdiction of the case if sufficient grounds for the issuance of a temporary restraining order have been established by way of affidavit, verified complaint, testimony under oath or other competent evidence.

**History:** 1981, PL 17-6.

**43.1305 Time for hearing on preliminary injunction.**

(a) Whenever a temporary restraining order is issued without notice to the opposing party, hearing on whether a preliminary injunction should issue shall be conducted on the earliest day that the business of the court will reasonably permit not to exceed 10 days, unless time is extended upon a finding of good cause for such extension after the opposing party has received notice of the proposed extension.

(b) Whenever an opposing party requests a continuance of the hearing on a preliminary injunction, upon notice to all interested parties, a reasonable continuance shall be freely granted, provided:

(1) if a temporary restraining order has been issued, then the party requesting the continuance stipulates that the temporary restraining order may remain effective until the ruling on the preliminary injunction; and

(2) if an opposing party, upon notice of a requested continuance by another opposing party, objects to the continuance, then the court may, upon balancing the relative interests of all parties, grant or deny a continuance.

(c) Notice of a continuance request by an opposing party may be oral or in writing to a party, or his attorney, and may be contemporaneously made with the continuance request.

(d) Hearing on whether a preliminary injunction should issue takes precedence over all other matters on the calendar day, except older matters of the same character, and matters to which special precedence may be given by law.

**History:**1981, PL 17-6.

**43.1306 Modification and termination of injunctions.**

(a) Upon notice and hearing, or on its own initiative, the court which issued an injunction, or a superior court, may modify an injunction upon terms that are fair. The modification is effective immediately upon its issuance; however, the modification is not effective against an opposing party until that opposing party, or his attorney, has notice of, or has been served with, the modification.

(b) An injunction is terminated upon the request of the applicant in whose favor the injunction issued.

**History:**1981, PL 17-6.

**43.1307 Form and scope of injunction.**

Every order granting an injunction must set forth the reasons for its issuance. Every

injunction issued must be specific in terms, must describe in reasonable detail, and not by reference to the complaint or other document, the acts enjoined, and is binding only upon the opposing parties, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them.

**History:** 1981, PL 17-6.

**43.1308           Transmission to law enforcement agencies.**

The clerk of courts transmits a copy of each injunction, modification, or termination thereof, granted under this chapter, by the close of the business day on which the order was granted, to the marshal and law enforcement officer or agency within the court's discretion that are requested by the applicant. Each appropriate law enforcement agency may make available information as to the existence and current status of the injunction to law enforcement officers responding to the scene of reported violations.

**History:** 1981, PL 17-6.

**43.1309           Undertaking-Justification of sureties-Termination of injunction for insufficient sureties.**

(a) Before issuing a preliminary injunction or temporary restraining order the court shall, except when the injunction is granted on the application of the United States government, the government, or an officer or agency thereof or on the application of either spouse against the other in an action for divorce or separate maintenance, require a written undertaking on the part of the applicant, with sufficient sureties as the court may determine to the effect that the applicant will pay the opposing party the costs and damages not exceeding an amount to be specified, that the opposing party may sustain by reason of the injunction, if the court decides that the applicant should not have been entitled to the injunction or that he should pay the damage as the court may determine.

(b) In matters concerning disputes or controversies over communal or aiga land and matai titles only, before the full and final trial on the merits or permanent injunction can be held, the matter shall first be referred to the department of local government pursuant to 43.0302. The security or bond herein required shall be waived if and when the application for injunction is sought by the sa'o of a Samoan family to enjoin or prohibit a party from taking, conducting, or effectuating, specific action or activity on matters pertaining to communal or alga land or matai titles within his own family where he is the sa'o. The sa'o is the only authorized person under this act to bring such an application, unless the matai title of the sa'o is vacant or that he is incapacitated on such events, at least two blood male matai members of said family over the age of 18 may bring such an application and security thereof be waived. If the family does not have blood matai male members, then on such an occasion, at least two blood members of the family over the age of 18 may bring such application and the bond be waived.

**History:** 1981, PL 17-6.

**Case Notes:**

Former title holder who removes himself and his family from village where former title held loses all power over such land. Current title holder in village may permanently enjoin former title holder and his family from entering land. *Ofoia v. Amosa*. ASR (1985).

Only the Sa'o (senior title holder) of a family may take injunctive action concerning matters of communal land within his family. *Fairhold, et al v. Mau'au, et al*, 1 A.S.R. 2d 73(1983).

Non-Sa'o's objection to land registration under section 37.0103 is not an action for injunction relating to communal land under this section. *Tavaseu v. Paulo*, 3 A.S.R.2d 97 (1986).

Issuance of a preliminary injunction requires a plaintiff's written undertaking to pay defendant's damages and costs, up to a specified amount and with sufficient sureties as the court may determine, which may result from the injunction if a permanent injunction is not granted and defendant is awarded damages and costs. A.S.C.A. § 43.1309(a). *Gurr v. Scratch*, 22 A.S.R.2d 103 (1992).

Statute prohibiting anyone but senior matai of Samoan family from bringing action to enjoin activities on communal land did not prohibit another member of family from objecting to registration of land by another family. A.S.C.A. §§ 37.0103, 43.1309. *Sagatu v. Vaioli*, 3 A.S.R.2d 97 (1986).

The sa'o of a family is the only person who is authorized to seek injunctive relief in actions concerning disputes or controversies over communal land; if the title is vacant or the sa'o is incapacitated, the application may be brought by (1) two blood matai male members of the family over age 18, or (2) if the family lacks two blood matai male members, two blood members of the family over age 18, if either is untitled or a female. A.S.C.A. § 41.1309(b). *Savea v. Tunu*, 24 A.S.R.2d 63 (1993).

A party seeking a preliminary injunction must post security to cover the costs and damages of a party wrongfully enjoined or restrained prior to a trial on the merits. A.S.C.A. § 41.1309. *Le Vaomatua v. American Samoa Government*, 23 A.S.R.2d 11 (1992).

Preliminary injunction against defendant's unauthorized construction on family communal land would be denied, as injunction would serve no purpose but punishment for past deeds, where: defendant had been assigned the building site by the late senior matai; defendant was rebuilding a home destroyed by fire; plaintiff matai did not object to defendant's having a home on communal land, but only to her doing so without his signature on the building permit; defendant would owe her contractor liquidated damages for any delay; and the normal requirement of security or bond requirement was not applicable. A.S.C.A. § 41.1309(b). *Leaana v. Laban* (Mem.), 12 A.S.R.2d 93 (1989).

#### **43.1310 Injunction after answer.**

After an opposing party has filed a responsive pleading, a temporary restraining order cannot be issued against the opposing party except upon reasonable notice.

**History:** 1981, PL 17-6.

#### **43.1311 Costs and fees.**

If a temporary restraining order or a preliminary injunction has been issued and thereafter it is determined that the applicant should not have been entitled to that injunction, then the opposing party may be awarded reasonable costs and attorney's fees resulting from the issuance of that injunction.

**History:** 1981, PL 17-6.

#### **43.1312 Effect on other laws.**

Nothing in this chapter precludes any right to use other existing civil remedies.

**History:** 1981, PL 17-6.

#### **43.1313 Failure to comply.**

Any party failing to comply with an effective injunction issued pursuant to this chapter is, upon a showing of contempt as provided by court rules, subject to the contempt sanctions available to the court issuing the injunction

**History:** 1981, PL 17-6.

## **Chapter 14**

### **SUMMARY PROCEEDINGS TO RECOVER POSSESSION OF LEASED REALTY AND CERTAIN ANCILLARY RELIEF**

**Sections:**

- 43.1401 Definitions.**
- 43.1402 Jurisdiction.**
- 43.1403 Rules.**
- 43.1404 Entry upon realty-Authorization-Manner.**
- 43.1405 Grounds for summary recovery of possession.**
- 43.1406 Demand for possession or payment-Form-Contents.**
- 43.1407 Service of demand.**
- 43.1408 Circumstances precluding entry of judgment for possession-Retaliatory termination of tenancy defense.**
- 43.1409 Pleadings-Motions-Process- Subpoenas-Witnesses, compelling attendance and testimony-Defaults-Default judgments-Adjournments-Continuances.**
- 43.1410 Summons, issuance, service, contents, time summons remains in effect-Hearing, time.**
- 43.1411 Joinder of claims and counterclaims-Separate disposition of claim for possession.**
- 43.1412 Judgment for possession-Entry-Enforcement by writ of restitution-Determination of amount payable to preclude issuance of writ-Costs.**
- 43.1413 Issuance of writ of restitution-Conditions.**
- 43.1414 Judgment for defendant for costs-Grounds.**
- 43.1415 Summary proceedings as additional to other remedies.**
- 43.1416 Review.**

**Reviser's Comment:** As required by Art I. § 3 and Art II. § 9 of the American Samoa Constitution. Ch. 43 14 was passed by two successive Legislatures.

**43.1401 Definitions.**

As used in this chapter unless the context otherwise requires, the following meanings apply:

(a) "Summary proceedings" means a civil action to recover possession of premises and to obtain certain ancillary relief as provided by this chapter and by court rules adopted in connection with these proceedings.

(b) "Premises" means lands, tenements, condominium property, cooperative apartments, air rights and all manner of real property. It includes structures, fixed or mobile, temporary or permanent, vessels, mobile trailer homes and vehicles which are used or intended for use primarily as a dwelling or as a place for commercial or industrial operations or storage.

(c) "Lease", means a written or verbal lease or license agreement for use or possession of premises.

**History:**1984, PL 18-27 §1, 1986, PL 19-41 § 1.

**Case Notes:**

Enactment of summary eviction statute did not deprive the Court of its pre-existing general jurisdiction to issue injunctions and declaratory judgments and to award damages. A.S.C.A. § 43.1401 et seq. Diocese of Samoa Pago Pago v. KMST, Inc., 15 A.S.R.2d 20 (1990).

Even if the summary eviction statute was jurisdictional and the demand letter for possession or payment did not comply with the statute, the court properly exercised its general jurisdiction in the absence of prejudice. A.S.C.A. § 43.1401 et seq. Diocese of Samoa Pago Pago v. KMST, Inc., 15 A.S.R.2d 20 (1990).

#### **43.1402 Jurisdiction.**

The Trial Division of the High Court of American Samoa has jurisdiction over summary proceedings to recover possession of premises under this chapter.

**History:**1984, PL 18-27 § 1, 1986, PL 19-41 § 1.

#### **43.1403 Rules.**

Except as otherwise provided in this chapter, the procedure in summary proceedings is regulated by rules adopted by the High Court of American Samoa.

**History:**1984, PL 18-27 § 1, 1986, PL 19-41 § 1.

#### **43.1404 Entry upon realty-Authorization-Manner.**

A person may not make entry into or upon premises unless the entry is permitted by law. If entry is permitted by law, he may not enter with force but only in a peaceable manner.

**History:**1984, PL 18-27 § 1, 1986, PL 19-41 § 1.

#### **43.1405 Grounds for summary recovery of possession.**

The person entitled to any premises may recover possession of the premises by summary proceedings in the following cases:

(1) whenever a person holds over any premises, after failing or refusing to pay rent due under the lease or agreement by which he holds after 7 days from the service of a written demand for possession for nonpayment of the rent due for the purpose of this provision, "rent due" does not include accelerated indebtedness by reason of a breach of the lease under which the premises are held; or

(2) whenever a person holds over any premises in either of the following circumstances:

(A) after termination of the lease, pursuant to a power to terminate provided in the lease or implied by law; or

(B) after the term for which the premises are demised to him or to the person under whom he holds; or

(3) whenever the person in possession willfully or negligently causes a serious and continuing health hazard to exist on the premises, or causes extensive and continuing physical injury to the premises and when the person in possession neglects or refuses for 7 days after service of a demand for possession of the premises or to substantially restore or repair the premises; or

(4) whenever a person takes possession of premises by means of a forcible entry, holds possession of premises by force after a peaceable entry or comes into possession of premises by trespass without color of title or other possessory interest.

**History:**1984, PL 18-27 § 1, 1986, PL 19-41 § 1.

#### **43.1406 Demand for possession or payment-Form-Contents.**

A demand for possession or payment must be in writing, addressed to the person in possession, and must include the address or a brief description of the premises. The reasons for the demand and the time to take remedial action must be clearly stated. Whenever nonpayment of rent or other sums due under the lease is claimed, the amount due at the time of the demand must be stated. The demand must be dated and signed by

the person entitled to possession, or by his attorney or agent.

**History:**1984, PL 18-27 § 1, 1986, PL 19-41 § 1.

**Case Notes:**

The rules pertaining to a demand letter for possession or payment of rent, like those dealing with service of process or the exhaustion of some types of administrative remedies, seem designed not to allocate decision-making power among tribunals or to ensure the existence of a case or controversy, but to protect a particular party; presumably, these rules may be waived by that party. A.S.C.A. § 43.1406. *Diocese of Samoa Pago Pago v. KMST, Inc.*, 15 A.S.R.2d 20 (1990).

**43.1407 Service of demand.**

The demand provided for in 43.1406 may be served by delivering it personally to the person in possession, or by delivering it on the premises to a member of his family or household or an employee, of suitable age and discretion, with a request that it be delivered to the person in possession, or by sending it by registered mail addressed to the person in possession with return receipt requested signed by the person in possession or his authorized agent. If the demand is mailed, the date of service for purposes of this chapter is the date of receipt by the person in possession or his authorized agent.

**History:**1984, PL 18-27 § 1, 1986, PL 19-41 § 1.

**43.1408 Circumstances precluding entry of judgment for possession-Retaliatory termination of tenancy defense.**

A judgment for possession of the premises for an alleged termination of tenancy may not be entered against a defendant if one or more of the following is established:

(1) the alleged termination was intended primarily as retribution for a lawful act arising out of the tenancy;

(2) the plaintiff attempted to increase the defendant's obligations under the lease or contract as a penalty for a lawful act and that the defendant's failure to perform the additional obligations was the primary reason for the alleged termination of tenancy; or

(3) the plaintiff committed a breach of the lease which excuses the payment of rent if possession is claimed for nonpayment of rent.

**History:**1984, PL 18-27 § 1, 1986, PL 19-41 § 1

**43.1409 Pleadings-Motions-Process-Subpoenas-Witnesses. Compelling attendance and testimony-Defaults-Default judgments-Adjournments-Continuances.**

Pursuant to applicable court rules, a court having jurisdiction over summary proceedings may provide for pleadings and motions, issue process and subpoenas, compel the attendance and testimony of witnesses, enter and set aside defaults and default judgments, allow amendments to pleadings, process, motions and orders, order adjournments and continuances, make and enforce all other writs and orders and do all other things necessary to hear and determine summary proceedings.

**History:**1984, PL 18-27 § 1; 1986, PL 19-41 § 1.

**43.1410 Summons, issuance, service, contents, time summons remains in effect-Hearing, time.**

(a) The court in which the proceeding is commenced issues a summons, which may be served on the defendant by any officer or person authorized to serve process of the court.

The summons commands the defendant to appear for trial in accordance with this section.

(b) The summons commands the defendant to appear for trial within 10 days unless extended by the court. The summons must be served not less than 3 days before the date set for trial.

(c) A summons issued under this section remains in effect until served or quashed, or until the action is dismissed, but additional summons as needed for service may be issued upon plaintiff's request.

(d) Except as otherwise provided by court rule, the proceeding must be heard within 7 days after the defendant's appearance or trial date and may not be adjourned beyond that time other than by stipulation of the parties in writing or as directed by the court.

**History:**1984, PL 18-27 § 1, 1986, PL 19-41 § 1.

**Case Notes:**

The only important difference between a "summary" and a "non-summary" proceeding for eviction is that plaintiffs who qualify for the former proceeding are ordinarily entitled to have trial within ten days, but this does not necessarily prohibit equally speedy trials in other cases. A.S.C.A. § 43.1410(b). *Diocese of Samoa Pago v. KMST, Inc.*, 15 A.S.R.2d 20 (1990).

**43.1411 Joinder of claims and counterclaims-Separate disposition of claim for possession.**

Except as provided by court rules, a party to summary proceeding may join claims and counterclaims for money judgment for damages attributable to wrongful entry, detainer or possession, for breach of the lease or contract under which the premises were held or for waste or malicious destruction to the premises, but the court may order separate summary disposition of the claim for possession, without prejudice to other claims or counterclaims.

**History:**1984, PL 18-27 § 1; 1986, PL 19-41 § 1.

**43.1412 Judgment for possession-Entry-Enforcement by writ of restitution-Determination of amount payable to preclude issuance of writ-Costs.**

If the court finds that the plaintiff is entitled to possession of the premises, or part of the premises, judgment may be entered in accordance with the finding and may be enforced by a writ of restitution. If it is found that the plaintiff is entitled to possession of the premises, in consequence of the nonpayment of money due under a tenancy, the court determines the amount due or in arrears at the time of trial and states that amount in the judgment for possession. In determining the amount due under a tenancy the court deducts that portion of the rent which it finds to be excused by the plaintiffs breach of the lease. The statement in the judgment for possession is for the sole purpose of prescribing the amount which, together with taxed costs, is to be paid to preclude issuance of the writ of restitution. The judgment may include an award of costs, enforceable in the same manner as other civil judgments for money in the same court.

**History:**1984, PL 18-27 § 1, 1986, PL 19-41 § 1.

**43.1413 Issuance of writ of restitution-Conditions.**

(a) Subject to the time restrictions of this section, the court entering a judgment for possession issues a writ commanding an officer authorized to serve the process, causing the plaintiff to be restored and put in full possession of the premises.

(b) On conditions determined by the court, the writ of restitution may be issued

immediately upon the entry of judgment for possession whenever one or more of the following is pleaded and proved, with notice, to the satisfaction of the court:

- (1) forcible entry was made contrary to law; or
  - (2) entry was made peaceably but possession is unlawfully held by force; or
  - (3) the defendant came into possession by trespass without color of title or other possessory interest; or
  - (4) the tenant, willfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continuing injury to the premises and is neglecting or refusing either to deliver up possession after demand or to substantially restore or repair the premises.
- (c) In all other cases, the writ of restitution may not be issued until the expiration of 10 days after the entry of the judgment for possession.
- (d) If an appeal is taken or a motion for new trial is filed before the expiration of the period during which the writ of restitution may not be issued and if a bond to stay proceedings is filed, the period during which the writ may not be issued is tolled until the disposition of the appeal or motion for new trial is final.
- (e) When the judgment for possession is for nonpayment of money due under a tenancy the writ of restitution may not issue if within the time provided, the amount as stated in the judgment, together with the taxed costs, is paid to the plaintiff

**History:**1984, PL 18-27 § 1; 1986, PL 19-41 § 1.

#### **43.1414 Judgment for defendant for costs-Grounds.**

If the plaintiff fails to prosecute his complaint, or if upon trial or motion the plaintiff is found not entitled to possession of the premises, judgment is rendered for the defendant for his costs, which are taxed and collected in the same manner as other civil judgments for money in the same court.

**History:**1984, PL 18-27 § 1; 1986, PL 19-41 § 1.

#### **43.1415 Summary proceedings as additional to other remedies.**

The remedy provided by summary proceedings is in addition to, and not exclusive of, other remedies, either legal, equitable or statutory. A judgment for possession under this chapter does not merge with or bar any other claim for relief.

**History:**1984, PL 18-27 § 1; 1986, PL 19-41 § 1.

#### **43.1416 Review.**

A party aggrieved by the determination or judgment of the court under this chapter may appeal to the appellate division of the High Court of American Samoa. The appeal is made in the same manner as an appeal in other civil actions from the same court, with bond and procedure as provided by court rules.

**History:**1984, PL 18-27 § 1; 1986, PL 19-41 § 1.

## **Chapter 15**

### **ORDERS AND EXECUTION**

## Sections:

### I. Orders in Aid of Judgment

- 43.1501 Application-Notice and hearing-Determination
- 43.1502 Evidence.
- 43.1503 Order for payment-Time and method.
- 43.1504 Stay of execution.
- 43.1505 Modification of order.
- 43.1506 Failure to comply with order.

### II. Execution Upon Judgment

- 43.1520 Time of issuance.
- 43.1521 Time within which returnable.
- 43.1522 Address and signature.
- 43.1523 Priority among executions.
- 43.1524 Manner of levy-Inventory.
- 43.1525 Advertisement for sale.
- 43.1526 Sale of property-Proceeds-Return.
- 43.1527 Execution form.
- 43.1528 Real property of Samoans not subject to execution-Exception.

### I. Orders in Aid of Judgment

#### 43.1501 Application-Notice and hearing-Determination.

(a) At any time after the entry of judgment for the payment of money by one party to another and before the judgment has been satisfied in full, either party may apply to the court for an order in aid of judgment.

(b) Upon such application or upon its own motion, the court, after notice to the debtor or if he is then present in court, may hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay the judgment.

(c) In making this determination, the court shall allow the debtor to retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents, including fulfillment of any obligation he may have to any family group in return for which he, or his dependents, receive any necessary part of the food, goods, shelter or services required for their living.

**History:** 1962, PL 7-36.

#### Case Notes:

Mortgage foreclosure is not an execution of money judgement and is not to be treated as such, though this section provides essential relief to debtors. *Patel v. Hisatake*, 2 ASR2d 99 (App. Div. 1986).

Territorial statute providing that judgment debtor may apply for an order setting payments on the judgment in accordance with his ability to pay is an important protection for debtors in the absence of a bankruptcy statute, and court should use the full reach of its equitable powers to effect the statutory protection. A.S.C.A. § 43.1501. *R.S.T.T.A.N. Hisatake, Inc., v. Dullabhbai K. Patel & Co., Ltd.*, 3 A.S.R.2d 99 (1986).

Territorial statute providing that court should set payments on a judgment in accordance with debtor's ability to pay did not defeat creditor's right to foreclose a chattel mortgage. A.S.C.A. §§ 37.1002, 37.1103, 43.1501. *R.S.T.T.A.N. Hisatake, Inc., v. Dullabhbai K. Patel & Co., Ltd.*, 3 A.S.R.2d 99 (1986).

Even without a showing of "clean hands," the Orders in Aid of Judgment statute permits relief from having to pay the entire amount of a judgment at once. A.S.C.A. § 43.1501 et seq. *Huff v. Huff*, 15 A.S.R.2d 83 (1990).

The "order in aid of judgment" statute requires the court, upon application from a judgment debtor, to order a payment schedule which "shall allow the debtor to retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents," specifically including traditional, Samoan family obligations. A.S.C.A. § 43.1501. *Samoa Products, Inc. v. A`asa*, 17 A.S.R.2d 66 (1990).

#### **43.1502 Evidence.**

At the hearing, the debtor may be examined orally before the court or the court may refer the examination to a single judge of the court to take evidence and report his findings. In either case, any evidence properly bearing on the question may be introduced by either party or by the court or the single judge, in the same manner as at the trial of a civil action.

**History:** 1962, PL 7-36.

#### **43.1503 Order for payment-Time and method.**

Upon having heard the evidence or having received the report of the single judge, the court shall make such order in aid of judgment as is just for the payment of the judgment. No payment may be required until after the time for appeal from the judgment has expired without notice of appeal being filed or after any appeal duly taken has been finally determined or after an order has been entered that an appeal shall not stay the judgment. The order in aid of judgment may provide for the transfer of particular assets at a value determined by the court, or for payments in specified installments on particular dates or at specified intervals, or for any other method of payment which the court deems just.

**History:** 1962, PL 7-36.

#### **43.1504 Stay of execution.**

After an application for an order in aid of judgment has been filed in any action, no writ of execution may be issued therein except under an order in aid of judgment made in accordance with this chapter or by special order of the court for cause shown. If a writ of execution is outstanding, a judgment creditor applying for an order in aid of judgment shall file the writ of execution with his application and a judgment debtor applying for an order in aid of judgment may request a stay of execution which may be granted by the court on such terms, if any, as it deems just.

**History:** 1962, PL 7-36.

#### **43.1505 Modification of order.**

Any order in aid of judgment made under this chapter may be modified at any time by the court as justice may require, upon application of either party and notice to the other, or on the court's own motion.

**History:** 1962, PL 7-36.

**43.1506 Failure to comply with order.**

If any debtor fails without good cause to comply with any order in aid of judgment made under this chapter, he is guilty of contempt of court and may be punished therefor.

**History:**1962, PL 7-36; 1966, PL 9-28.

**II. Execution Upon Judgment**

**43.1520 Time of issuance.**

Execution may be issued upon any judgment of any court at any time during the life of the judgment unless otherwise provided by law.

**History:**1962, PL 7-36.

**43.1521 Time within which returnable.**

All executions issued by or from any court must be made returnable within 60 days from the date thereof.

**History:**1962, PL 7-36.

**43.1522 Address and signature.**

All executions against property issued from any court must be addressed to a marshal or police officer and must be signed by the clerk of such court.

**History:**1962, PL 7-36.

**43.1523 Priority among executions.**

Every officer receiving an execution issued in due form by any court shall note thereon the day and hour of its receipt and shall give priority in levying upon property of a defendant in execution, to the executions received by him according to the order in which they are received.

**History:** 1962, PL 7-36.

**Case Notes:**

Inasmuch as 1) the holder of an unrecorded or deficiently recorded mortgage could acquire a lien superior to any right of prior unsecured creditors of the mortgagee by properly recording his mortgage, 2) a judgment creditor would appear to be an unsecured creditor until the moment he gives his writ of execution to the marshal, and 3) the American Samoa statute clearly seems designed to make actual knowledge a complete substitute for the constructive knowledge provided by recordation, a mortgage holder's interest would have priority over a judgment creditor the moment that the judgment creditor found out that the mortgage existed, if the deficiency in the mortgage has arisen from nonrecordation or improper recordation. A.S.C.A. § 43.1523. *Diocese of American Samoa Pago Pago v. K.M.S.T., Inc.*, 18 A.S.R.2d 67 (1991).

As between two judgment creditors, the one who first levies upon the property has priority, irregardless of the order in which the judgments were obtained. A.S.C.A. § 43.1523. *Diocese of American Samoa Pago Pago v. K.M.S.T., Inc.*, 18 A.S.R.2d 67 (1991).

A judgment creditor's lien attaches at the moment he gives his writ of execution, duly issued and describing specific property, to the marshal or other officer who will enforce it. A.S.C.A. § 43.1523. *Diocese of American Samoa Pago Pago v. K.M.S.T., Inc.*, 18 A.S.R.2d 67 (1991)

**43.1524 Manner of levy-Inventory.**

(a) Every levy by an officer, in pursuance of an execution issued by any court shall be made by taking the property levied upon into his possession, care and guardianship and, at his option, by removal of the same to some place of security.

(b) The officer shall make an inventory of the property levied upon.

**History:** 1962, PL 7-36.

**43.1525 Advertisement for sale.**

The officer shall, after levy, advertise for sale the property levied upon, whether real or personal, for 30 days, or for such time as the court shall order, by posting a written or printed notice in three conspicuous places within the district where the property is situated.

**History:** 1962, PL 7-36.

**43.1526 Sale of property-Proceeds-Return.**

The officer shall, on the day and at the place set for such public sale, unless paid the amount of the judgment, interest and costs, and his fees and disbursements accrued upon the writ, sell the property advertised to the highest bidder. He shall deduct from the proceeds of the sale sufficient moneys for the full satisfaction, if possible, of the execution and his costs, and expenses and commissions, and return the execution satisfied wholly or in part, paying the amount collected thereon to the plaintiff in execution or his attorney.

**History:** 1962, PL 7-36.

**43.1527 Execution form.**

The form of execution against property to be issued from any court shall be as follows:

In-----Court-----)  
Held at-----) **EXECUTION**  
-----)  
vs.  
-----of-----)

From: The Government of American Samoa  
To : The Marshal—or any Police Officer of American Samoa

Greeting:

To a Police Officer or the Marshal of -----  
Court.....American Samoa: You are commanded to levy upon the personal property of....., if any, within your jurisdiction, and if sufficient cannot be found, then upon his real property within your jurisdiction, and, giving 30 days notice, to sell the same, or so much thereof as may be found necessary, at public sale to the highest bidder, in order to satisfy a judgment rendered by me against him in favor of.....on the.....day of.....20.....for \$....., the costs of court included, collecting also legal interest thereon from the date thereof, and your costs and the expenses of levy, advertisement and sale. Make due return to me on this execution, with your proceedings, thereon, and the money by you so collected, on or before the expiration of.. ....days; and hereof fail not at your peril.

Given under my hand this. . . . . day of. . . . . 20. . . . .  
Clerk of. . . . . Court

**History:** 1962, PL 7-36.

**43.1528 Real property of Samoans not subject to execution-Exception.**

(a) No real property of a Samoan may be subject to sale under a writ of a court to satisfy any judgment other than a judgment foreclosing a valid mortgage, but the court may appoint a receiver to gather produce lying and being upon the property belonging to a Samoan debtor. Such receiver shall convert the same into cash for the purpose of satisfying any judgment.

(b) The remuneration to be paid to the receiver for his service shall be fixed by the court.

(c) For the purposes of this section “Samoan” includes American Samoans of at least one-half Samoan blood and persons born on other islands in the Pacific Ocean who are of at least one-half Polynesian, Melanesian or Micronesian blood and who reside in American Samoa.

**History:**1962, PL 7-32; 1968 PL 10-66; readopted 1980, PL 16-88 § 1; 1982, PL 17-31, § 1.

**Reviser’s Comment:** The law dealing with alienation of land contained in the ASCA as recodified by the legislative reference bureau had been questioned as to whether the requirements of Art. I, § 3 and Art. II, § 9, American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-88 and PL 17-31 to ensure that the law dealing with alienation of land complies with the Constitution.

**Case Notes**

No separation agreement to prevent the apartment from being the real property of a Samoan and therefore not subject to execution under this section. *Fin’s, Inc. v. Shimasaki*, ASR (1979).

Territorial statute prohibiting sale of real property of a Samoan to satisfy a judgment does not prohibit judgment creditor from recovering the cash proceeds resulting from a voluntary sale of property by the judgment debtor. A.S.C.A. § 43.1528(a). *Te’o v. Continental Insurance Co.*, 6 A.S.R.2d 135 (1987).

Policy underlying statutory prohibition on sale of Samoan real property to satisfy judgment, unlike policy underlying statutory homestead exemptions in the United States, is to discourage alienation of land; a Samoan who has voluntarily alienated his land and converted it into cash has placed himself not only outside the language of the statutory protection but also beyond its rationale. A.S.C.A. § 43.1528(a). *Te’o v. Continental Insurance Co.*, 6 A.S.R.2d 135 (1987).

Although real property of a Samoan may not be sold under a writ of court to satisfy a judgment, the proceeds from a voluntary sale of such property are not exempt from execution to satisfy a judgment. A.S.C.A. § 43.1528(a). *Tedrow v. Manuma*, 12 A.S.R.2d 51 (1989).

Purpose of territorial statute providing that real property of a Samoan may not be sold under a writ of court to satisfy a judgment is to protect land held by Samoans from being involuntarily alienated, and is not served by exempting from judgment the proceeds of voluntary sales. A.S.C.A. § 43.1528(a). *Tedrow v. Manuma*, 12 A.S.R.2d 51 (1989).

Analogy between territorial statute prohibiting forced sale of real property owned by a Samoan to satisfy a judgment and statutes in other jurisdictions exempting the proceeds of a homestead sale from execution of judgment is not entirely helpful; the purpose of the homestead exemption is to protect a rather small investment as a minimum means of survival for the debtor, whereas the Samoan land exemption applies to all land owned by a Samoan no matter how extensive the holdings, and once the land is voluntarily sold the policy against alienation is no longer served by protecting the proceeds. A.S.C.A. § 43.1528(a). *Tedrow v. Manuma*, 12 A.S.R.2d 51 (1989).

**Chapter 16**

**(RESERVED)**

## Chapter 17

### ENFORCEMENT OF FOREIGN JUDGMENTS

#### Sections:

- 43.1701 Short title.**
- 43.1702 Definition.**
- 43.1703 Filing-Status.**
- 43.1704 Filing-Notice.**
- 43.1705 Judgment not to be enforced for 30 days after filing.**
- 43.1706 Enforcement stayed when.**
- 43.1707 Fees.**
- 43.1708 Right to sue for enforcement of judgment not impaired.**
- 43.1709 Interpretation of chapter.**

#### **43.1701 Short title.**

This chapter may be cited as the “Uniform Enforcement of Foreign Judgments Act”.

**History:** 1965, PL 9-11.

#### **Case Notes:**

Court would accept foreign judgment for registration and enforcement in the name of the judgment creditor, but would not register and enforce an assignment to her attorney whose principal effect was to allow the attorney to avoid Court rule requiring admission to the Bar pro hac vice. A.S.C.A. § 43.1701 et seq.; H.C.R. 145. *Parisi v. Parisi*, 10 A.S.R.2d 106 (1989).

Petitions for registration of Western Samoan adoption decrees were denied where the petitions revealed nothing about the facts underlying the foreign judgments, sought a blanket declaration to the effect that Western Samoan adoption decrees were entitled to full faith and credit in American Samoa, and were conspicuously unrelated to any underlying rights at stake requiring "enforcement" in American Samoa. A.S.C.A. § 43.1701 et seq. *In re Petition of Puailoa*, 13 A.S.R.2d 22 (1989).

The Uniform Enforcement of Foreign Judgments Act was designed to give a foreign judgment creditor the same right to enforce his judgment in American Samoa that he would have in the State or Territory in which he obtained the judgment. A.S.C.A. § 43.1701 et seq. *Huff v. Huff*, 15 A.S.R.2d 83 (1990).

Although the California family court which granted divorce judgment retained jurisdiction to enforce the judgment and the parties to that judgment could move to enforce it in that California court, High Court was not precluded from enforcing the judgment under the Uniform Enforcement of Foreign Judgments Act where both parties currently resided in American Samoa. A.S.C.A. § 43.1701 et seq. *Huff v. Huff*, 15 A.S.R.2d 83 (1990).

Where enforcement of California judgment is sought in American Samoa, party against whom enforcement is sought is entitled to the same process here that he would receive in California. A.S.C.A. § 43.1701 et seq. *Huff v. Huff*, 15 A.S.R.2d 83 (1990).

Where court of foreign jurisdiction had issued new judgment substantially reducing the amount of its original judgment, the original judgment could no longer be registered in accordance with statute allowing for registration and enforcement of foreign judgments. A.S.C.A. § 43.1701 et seq. *Parisi v. Parisi*, 10 A.S.R.2d 106 (1989).

The Uniform Enforcement of Foreign Judgments Act was designed to give a foreign judgment creditor the same right to enforce his judgment in American Samoa that he would have in the State or Territory in which he obtained the judgment. A.S.C.A. § 43.1701 et seq. *Huff v. Huff*, 15 A.S.R.2d 83 (1990).

#### **43.1702 Definition.**

In this chapter, “foreign judgment” means any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this Territory.

**History:** 1965, PL 9-11.

**Case Notes:**

Uniform Enforcement of Foreign Judgments Act applies only to foreign judgments entitled to "full faith and credit" in American Samoa, but the Act does not define such judgments. A.S.C.A. § 43.1702. In re Petition of Puailoa, 13 A.S.R.2d 22 (1989).

Judgments of the courts of foreign nations are not entitled to full faith and credit in courts of the United States. U.S. Const. Art. IV, § 1; A.S.C.A. § 43.1702. In re Petition of Puailoa, 13 A.S.R.2d 22 (1989).

**43.1703 Filing-Status.**

A copy of any foreign judgment authenticated in accordance with an act of Congress or the laws of this Territory may be filed in the office of the clerk of the High Court of American Samoa. The clerk shall treat the foreign judgment in the same manner as a judgment of the High Court of American Samoa. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the High Court of American Samoa and may be enforced or satisfied in like manner.

**History:** 1965, PL 9-11.

**Case Notes:**

Under statute providing for the registration and enforcement of a foreign judgment, court would not register a divorce judgment on behalf of one who was not a party to the divorce but who claims to be the "owner" of the judgment by virtue of the assignment, without information concerning the circumstances of the acquisition of the judgment. A.S.C.A. § 43.1703. Parisi v. Parisi, 9 A.S.R.2d 116 (1988).

**43.1704 Filing-Notice.**

(a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer or representative shall make and file with the clerk of the High Court an affidavit setting forth the name and last known post office addresses of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office addresses of the judgment creditor and the judgment creditor's lawyer or representative, if any, in this Territory. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by clerk shall not affect the enforcement proceeding if proof of mailing by the judgment creditor has been filed.

**History:** 1965, PL 9-11.

**43.1705 Judgment not to be enforced for 30 days after filing.**

No execution or other process for enforcement of a foreign judgment filed under this chapter may issue until 30 days after the date the judgment is filed.

**History:** 1965, PL 9-11.

**43.1706 Enforcement stayed when.**

(a) If the judgment debtor shows the High Court of American Samoa that an appeal from the foreign judgment is pending or will be taken or that a stay of execution has been

granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the High Court of American Samoa any ground upon which enforcement of a judgment of any court of this territory would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment as is required in this territory.

**History:**1965, PL 9-11.

#### **43.1707 Fees.**

A person filing a foreign judgment shall pay to the clerk of the High Court \$25. Fees for docketing, transcription, or other enforcement proceedings shall be the same as those provided for judgments of the High Court of American Samoa.

**History:**1965, PL 9-11; amd 1975, PL 14-8 § 1.

**Amendments:** 1975 Raised fee from \$5 to \$25.

#### **43.1708 Right to sue for enforcement of judgment not impaired.**

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this chapter shall remain unimpaired.

**History:**1965, PL 9-11.

#### **43.1709 Interpretation of chapter.**

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states and territories of the United States which enact it.

**History:**1965, PL 9-11.

## **Chapter 18**

### **GARNISHMENT**

#### **Sections:**

- 43.1801 Right to garnish.**
- 43.1802 How effected-Service of notice.**
- 43.1803 Persons who may be garnished-Exclusions.**
- 43.1804 Death of garnishee.**
- 43.1805 Interrogatories to garnishee.**
- 43.1806 Refusal to answer interrogatories-Failure to appear and answer.**
- 43.1807 Controversion of answers by pleading.**
- 43.1808 Notice of controverting pleading.**
- 43.1809 Deposit in court by garnishee.**
- 43.1810 Pleading by defendant in main action-Resolution of issues.**
- 43.1811 Judgment.**
- 43.1812 Defendant to receive notice of proceedings before judgment.**
- 43.1813 Judgment conclusive.**
- 43.1814 Suspension of execution when debt is not due.**

### **43.1815 Garnishee's liability on debt due by negotiable paper.**

#### **43.1801 Right to garnish.**

Property of a defendant in the possession of another, or debts due him, may be reached on writ of garnishment.

**History:**1962, PL 7-36.

#### **43.1802 How effected-Service of notice.**

(a) The officer serving a writ of garnishment shall garnish such persons as the plaintiff may direct as supposed to debtors, or as possession property of the principal defendant.

(b) Garnishment shall be effected by serving a written notice on the garnishee forbidding his paying any debt owing the principal defendant, due or to become due, and requiring him to retain possession of all property of the defendant in his hands or under his control, to the end that the same may be dealt with according to law, and unless answers are required to be taken as hereinafter provided, the notice shall cite the garnishee to appear on the second Tuesday following the date of service of notice and answer such interrogatories as may be propounded or he will be liable to pay any judgment which the plaintiff may obtain against the defendant.

(c) Where the property to be garnished is a fund in court, the execution of a writ of garnishment shall be by leaving with the clerk of the court a copy thereof, with notice, specifying the fund.

**History:**1962, PL 7-36.

#### **43.1803 Persons who may be garnished-Exclusions.**

(a) A marshal or clerk of court may be garnished for money of the defendant in his hands. A judgment debtor of the defendant may be garnished if the judgment has not been assigned on the record or by writing, and filed in the office of the clerk and by him minuted as an assignment on the margin of the judgment record. An executor may be garnished with respect to money due from decedent.

(b) The United States may not be garnished, except in compliance with the laws of the United States providing for garnishment proceedings against the United States for the enforcement of child support and alimony obligations of federal employees, including members of the armed forces. The government, and any other public bodies or agencies shall not be garnished without the prior approval of the Governor.

**History:**1962, PL 7-36; 1963, PL 8-5; and 1977, PL 15-54.

**Amendments:** 1977 Subsection (b): added exception at end of first sentence and, in second sentence, substituted "and any other public bodies or agencies" for "municipal corporations" and substituted "prior approval" for "concurrence"

#### **43.1804 Death of garnishee.**

If a garnishee dies after he has been summoned by garnishment and pending the litigation, the proceedings may be revived by or against his heirs or legal representatives.

**History:**1962, PL 7-36.

#### **43.1805 Interrogatories to garnishee.**

(a) When the plaintiff, in writing, directs the marshal to take the answer of the

garnishee, he shall put to him the following interrogatories:

(1) Are you in any manner indebted to the defendant in this suit, or do you owe him money or property which is not yet due? If so, state the particulars.

(2) Have you in your possession or under your control any property, rights or credits of the defendant? If so, what is the value of the same? State all particulars.

(3) Do you know of any debts owing said defendant, whether due or not due, or any property, rights or credits belonging to him and now in the possession or under the control of others? If so, state the particulars.

(b) The marshal shall append the examination to his return.

**History:**1962, PL 7-36.

### **43.1806 Refusal to answer interrogatories-Failure to appear and answer.**

(a) If the garnishee refuses to answer the interrogatories fully and unequivocally, he shall be notified to appear and answer as provided in 43.1802, and he may be so required in any event if the plaintiff so notifies him.

(b) The questions propounded to the garnishee in court may be such as are described in 43.1805, and such others as the court may think proper.

(c) If a garnishee notified to appear and answer fails to do so without sufficient excuse, he shall be presumed to be indebted to the defendant to the full amount of the plaintiff's demand, but for a mere failure to appear, no judgment shall be rendered against him until he has had an opportunity to show cause against the same.

**History:**1962, PL 7-36; 1966, PL 9-51.

#### **Case Notes:**

A garnishee who fails to appear in response to a writ of garnishment without sufficient excuse is presumed to be indebted to the defendant in the full amount of plaintiff's demand. A.S.C.A. § 43.1806(c). *Amerika Samoa Bank v. Haleck*, 6 A.S.R.2d 54 (1987).

Garnishee who fails to appear in response to a writ of garnishment without sufficient excuse is presumed to be indebted to the defendant in the full amount of the plaintiff's demand. A.S.C.A. § 43.1806(c). *Development Bank v. Savusa* (Mem.), 11 A.S.R.2d 46 (1989).

In order to rebut the statutory presumption of indebtedness by a garnishee, the garnishee not only must show that he is not in fact indebted to plaintiff in the amount in question, but also must give sufficient excuse for not having appeared or answered the interrogatories. A.S.C.A. § 43.1806(c). *Development Bank v. Savusa* (Mem.), 11 A.S.R.2d 46 (1989).

Where a garnishee does not give sufficient excuse for not having appeared or answered interrogatories, it is within the Court's discretion to hold him liable for the whole amount of the judgment debt. A.S.C.A. § 43.1806(c). *Development Bank v. Savusa* (Mem.), 11 A.S.R.2d 46 (1989).

Garnishee who was evasive and dishonest, in an apparent attempt to assist the judgment debtors in avoiding payment, would be held liable for the whole amount of the judgment debt. A.S.C.A. § 43.1806(c). *Development Bank v. Savusa* (Mem.), 11 A.S.R.2d 46 (1989)

### **43.1807 Controversion of answers by pleading.**

When the garnishee has answered the interrogatories propounded to him, the plaintiff may controvert them by pleading thereto, and an issue may be joined, which shall be tried in the usual manner, upon which trial such answer of the garnishee shall be competent testimony.

**History:**1962, PL 7-36.

### **43.1808 Notice of controverting pleading.**

No judgment may be rendered against a garnishee on a pleading which controverts his answer until notice of the filing of the controverting pleading and of the time and place of trial thereon is served on the garnishee for such time and in such manner as the court or judge shall order.

**History:**1962, PL 7-36.

**43.1809          Deposit in court by garnishee.**

A garnishee may, at any time after answer, exonerate himself from further responsibility by paying over to the clerk of the court any amount owing by him to the defendant and placing at the clerk of the court's disposal any property of the defendant or so much of the defendant's property as is equal to the value of any property attached.

**History:**1962, PL 7-36.

**43.1810          Pleading by defendant in main action-Resolution of issues.**

The defendant in the main action may, by suitable pleading filed in the garnishment proceedings, set up facts showing that the debt or property garnished is exempt from execution, or for any other reason is not liable for plaintiff's claim, and if issue thereon be joined by the plaintiff, it shall be tried with the issues as to the garnishee's liability. If such debt or property, or any part thereof, is found to be thus exempt or not liable, the garnishee shall be discharged as to that part which is exempt or not liable.

**History:**1962, 7-36.

**43.1811          Judgment.**

(a) If it is made to appear that the garnishee was indebted to the defendant or had any of his property in his hands at the time of being served with the notice of garnishment, the garnishee shall be liable to the plaintiff, in case judgment is finally recovered by plaintiff, to the full amount of the judgment, or to the amount of such indebtedness or property held by the garnishee.

(b) The plaintiff may have judgment against the garnishee for the amount of money due from the garnishee to the defendant, or for the delivery to the clerk of the court, within a time to be fixed by the court of any money or property in the garnishee's hands belonging to the defendant as fixed in the judgment, and for the value of the same if not delivered within the time thus fixed unless before such judgment is entered the garnishee has delivered to the clerk of the court such money or property. Property so delivered shall thereafter be treated as if levied upon under writ of attachment in the usual manner.

**History:**1962, PL 7-36.

**Case Notes:**

The court found that a corporation was the alter ego of an individual and its assets subject to garnishment when the totality of the circumstances showed that this individual dominated and controlled the corporation and was its real owner. A.S.C.A. § 43.1811(a). *Amerika Samoa Bank v. Adams*, 22 A.S.R.2d 38 (1992).

**43.1812          Defendant to receive notice of proceedings before judgment.**

Judgment against the garnishee may not be entered until the principal defendant has had 7 days' written notice of the garnishment proceedings, of which notice a return by the

marshal shall be required.

**History:** 1962, PL 7-36.

**43.1813 Judgment conclusive.**

A judgment in the garnishment action condemning the property or debt in the hands of the garnishee to the satisfaction of the plaintiff's demand shall be conclusive between the garnishee and defendant.

**History:** 1962, PL 7-36.

**43.1814 Suspension of execution when debt is not due.**

If the debt of the garnishee to the defendant is not due, execution shall be suspended until its maturity.

**History:** 1962, PL 7-36.

**43.1815 Garnishee's liability on debt due by negotiable paper.**

The garnishee may not be made liable on a debt due by negotiable paper unless such paper is delivered, or the garnishee completely exonerated or indemnified from all liability thereon after he may have satisfied the judgment.

**History:** 1962, PL 7-36.

## **Chapter 19**

### **UNIFORM FOREIGN MONEY JUDGMENTS RECOGNITION ACT**

**Sections:**

- 43.1901 Definitions.**
- 43.1902 Applicability.**
- 43.1903 Recognition and enforcement.**
- 43.1904 Grounds for non-recognition.**
- 43.1905 Personal jurisdiction.**
- 43.1906 Stay in case of appeal.**
- 43.1907 Saving clause.**
- 43.1908 Uniformity of interpretation.**
- 43.1909 Short title.**
- 43.1910 Application to judgment in effect on effective date.**

**43.1901 Definitions.**

As used in this chapter:

(a) "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands.

(b) "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

**History:** 2000, PL 26-29.

**43.1902      Applicability.**

This chapter applies to any foreign judgment that is final and conclusive and enforceable after the appeal is taken.

**History:** 2000, PL 26-29.

**43.1903      Recognition and enforcement.**

Except as provided in 43.1904, a foreign judgment meeting the requirements of 43.1902 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state or territory of the United States which is entitled to full faith and credit.

**History:** 2000, PL 26-29.

**43.1904      Grounds for non-recognition.**

- (a) A foreign judgment is not conclusive if:
  - (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
  - (2) the foreign court did not have personal jurisdiction over the defendant; or
  - (3) the foreign court did not have jurisdiction over the subject matter.
- (b) A foreign judgment need not be recognized if:
  - (1) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend:
    - (2) the judgment was obtained by fraud;
    - (3) the claim for relief on which the judgment is based is repugnant to the public policy of this state;
    - (4) the judgment conflicts with another final and conclusive judgment;
    - (5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or
  - (6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

**History:** 2000, PL 26-29.

**43.1905      Personal jurisdiction.**

- (a) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if:
  - (1) the defendant was served personally in the foreign state;
  - (2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
  - (3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the court over him;
  - (4) the defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was

incorporated, or had otherwise acquired corporate status, in the foreign state the defendant had a business office in the foreign state and the proceedings in the foreign court involved a claim for relief arising out of business done by the defendant through that office in the foreign state; or

(5) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a claim for relief arising out of such operation.

(b) The courts of this state may recognize other bases of jurisdiction.

**History:** 2000, PL 26-29.

#### **43.1906 Stay in case of appeal.**

If the defendant proves to the court that either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

**History:** 2000, PL 26-29.

#### **43.1907 Saving clause.**

This chapter does not prevent the recognition of a foreign judgment in situations not covered by this chapter.

**History:** 2000, PL 26-29.

#### **43.1908 Uniformity of interpretation.**

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** 2000, PL 26-29.

#### **43.1909 Short title.**

This chapter may be cited as the Uniform Foreign Money Judgments Recognition Act.

**History:** 2000, PL 26-29.

#### **43.1910 Application to judgments in effect on effective date.**

This chapter shall apply to all foreign judgments in effect on the date this chapter becomes effective as well as all judgments rendered after such date.

**History:** 2000, PL 26-29.

### **Chapters 20-49**

**(RESERVED)**

### **Chapter 50**

### **REMEDIES**

**Sections:**

- 43.5001 Wrongful death action against estate.**
- 43.5002 Survival of actions-Continuance of actions or proceedings.**
- 43.5051 Timber-Trespass-Damages.**

**43.5001 Wrongful death action against estate.**

(a) When the death of a person is caused by wrongful act, neglect, or default, such as would have entitled the party injured to maintain an action or recover damages in respect thereof, if death had not ensued, the corporation which, or the person who would have been liable if death had not ensued, or the administrator or executor of the estate of such person as such administrator or executor, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances which in law make it murder in the first or second degree or manslaughter. When the action is against such administrator or executor the damages recovered shall be a valid claim against the estate of such deceased person. When death is caused by wrongful act, neglect or default in another state, territory or foreign country, for which a right to maintain an action and recover damages in respect thereof is given by a statute at such other state, territory or foreign country, such right of action may be enforced in the Territory of American Samoa. Every such action so brought shall be commenced within the time prescribed for the commencement of such actions by the statute of such other state, territory or foreign country.

(b) An action for wrongful death must be brought on behalf of the surviving spouse, parents, children or other next of kin, if any, of the decedent as the court may direct, except that the deceased's legal representatives may recover, on behalf of the estate, the reasonable expenses of the deceased's last illness and burial

(c) The trial court may give damages as it considers fair and just compensation, with reference to the pecuniary injury and loss of love and affection, including:

- (1) loss of society, companionship, comfort, consortium, or protection;
- (2) loss of marital care, attention, advice, or counsel;
- (3) loss of filial care or attention; and

(4) loss of parental care, training, guidance, or education, suffered as a result of the death of the person by the surviving spouse, children, father, mother, or by a person wholly or partly dependent upon the deceased person. The court shall allocate the damages to the persons entitled in its verdict or judgment, and damages recovered under this section, except for reasonable expenses of last illness and burial, do not constitute a part of the estate of the deceased.

(d) Except as otherwise provided, every such action shall be commenced within 2 years after the death of the wronged decedent. The personal representative of the wronged decedent, if he was appointed in the Territory of American Samoa, with the consent of the court making such appointment, may, at any time before or after the commencement of the suit, settle with the defendant the amount to be paid.

**History:** 1967, PL 10-3; 1970, PL 11-109; 1972, PL 12-53 § 1; and 1981, PL 17-26 § 1.

**Case Notes:**

Estate of deceased injured part is not a statutory beneficiary. *Lamisi v. Continental Ins. Co.*, ASR (1978).

Wrongful death; applicable statute of limitations. *Tauanuu v. Hartford Fire Ins. Co.*, ASR (1976).

Applicable to deaths on waters between the islands of American Samoa. *Tasligo v. Steffany*, ASR (1976).

“Personal representative” may be selected using criteria set forth in guardianship statute. *Tailigo v.*

Steffany, ASR (1976).

“Pecuniary injury” defined as losses for which a monetary amount can be readily attached; excludes as damages loss of consortium and damages suffered by deceased. *Tailigo v. Steffany*, ASR (1976).

At least for purposes of the wrongful death statute, the court has consistently applied the common law rule to determine who was next of kin. A.S.C.A. § 43.5001 et seq. *Utu v. American Samoa Government*, 20 A.S.R.2d 53 (1992).

Wrongful death action seeks recovery for damages suffered by others when a person dies; survival action seeks recovery on behalf of the estate of whatever the deceased could have recovered had the accident not been fatal. A.S.C.A. §§ 43.5001, 43.5002. *Fa'avae v. American Samoa Power Authority*, 5 A.S.R.2d 53 (1987).

The personal representative in a wrongful-death action shall be the named plaintiff, but the action shall be brought on behalf of the surviving spouse, parents, children or other next of kin, as the court may direct. A.S.C.A. § 43.5001(b). *Saufo`i v. American Samoa Government*, 16 A.S.R.2d 71 (1990).

Where Court noticed after trial in wrongful death action that plaintiffs had never petitioned the Court for designation as "next of kin" as required by wrongful death statute, and where plaintiffs were not the only near relatives of the decedent, the court would withhold entry of judgment pending receipt of the required petition. A.S.C.A. § 43.5001. *Saufo`i v. American Samoa Government (Mem.)*, 14 A.S.R.2d 51 (1990).

Practice under wrongful death statute has been to include brothers and sisters along with parents as plaintiffs in actions where the decedent has left no surviving spouse or descendants. A.S.C.A. § 43.5001. *Saufo`i v. American Samoa Government (Mem.)*, 14 A.S.R.2d 51 (1990).

Court could not approve proposed final accounting and order of distribution of decedent's estate where the sole asset listed in the accounting was an amount received in settlement of a wrongful death claim, and the administrator of the estate had not requested judicial approval of the settlement as required by statute; in the absence of judicial approval of the settlement, it affirmatively appeared on the record that the estate had no assets. A.S.C.A. § 43.5001. *In re Estate of Ah Mai (Mem.)*, 14 A.S.R.2d 55 (1990).

An application for designation as the proper parties in a wrongful death action has been the practice in the High Court, and such designation also appears to be statutorily required, at least in the absence of a prior designation of a personal representative (administrator or executor) of an estate. A.S.C.A. § 43.5001(b). *Saufo`i v. American Samoa Government*, 16 A.S.R.2d 71 (1990).

When plaintiffs' pleadings asked for damages for the death of their child in terms of "emotional distress," the trial division properly treated the suit as an action for wrongful death. A.S.C.A. §§ 43.5001 et seq. *Saufo`i v. American Samoa Gov't*, 19 A.S.R.2d 54 (1991).

Under territorial wrongful death statute, damages for loss of society, companionship, comfort, protection, and related damages, as well as any pecuniary loss suffered on account of the decedent's death, are recoverable not by decedent's estate but by the surviving spouse, parents, children, or other next of kin, if any, as the court may direct. A.S.C.A. § 43.5001(b). *In re Estate of Ah Mai (Mem.)*, 14 A.S.R.2d 32 (1990).

"Next of kin" in wrongful death statute does not designate only those persons who are first in line to inherit the decedent's real or personal property; whether or not a person's brothers and sisters are as closely related to him as his parents for inheritance purposes, they have frequently been allowed to recover along with parents in wrongful death actions. A.S.C.A. § 43.5001(b). *In re Estate of Ah Mai (Mem.)*, 14 A.S.R.2d 32 (1990).

Parents, as personal representatives of their child's estate, were entitled to recover for the child's pain and suffering and for medical and funeral expenses. A.S.C.A. §§ 43.5001, 43.5002. *Galo v. American Samoa Government*, 10 A.S.R. 2d 94 (1989).

Under the wrongful death statute, siblings with requisite injury may recover along with their parents. A.S.C.A. §§ 43.5001 et seq. *Utu v. American Samoa Government*, 20 A.S.R.2d 53 (1992).

Under territorial statutes governing wrongful death and the survival of actions, decedent's estate is entitled to recover only the reasonable expenses of the decedent's last illness and burial and compensation for injuries suffered by the decedent prior to his death. A.S.C.A. §§ 43.5001(b), 43.5002. *In re Estate of Ah Mai (Mem.)*, 14 A.S.R.2d 32 (1990).

### **43.5002 Survival of actions-Continuance of actions or proceedings.**

An action or cause of action, or defense, shall not abate by death, or other disability of a party, or by the transfer of any interest therein, but shall in all cases, where a cause of action or defense arose in favor of such party prior to his death or other disability, or transfer of interest therein, survive, and be maintained by his representatives or

successors in interest; and in case such action has not been begun or defense interposed, the action may be begun or defense set up in the name of his representatives or successors in interest; and in case the action has been begun or defense set up, the court shall on motion allow the action or proceeding to be continued by or against his representatives or successors in interest. In case of any transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

**History:**1978, PL 15-95.

**Case Notes:**

Wrongful death action seeks recovery for damages suffered by others when a person dies; survival action seeks recovery on behalf of the estate of whatever the deceased could have recovered had the accident not been fatal. A.S.C.A. §§ 43.5001, 43.5002. *Fa'avae v. American Samoa Power Authority*, 5 A.S.R.2d 53 (1987).

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**43.5051 Timber-Trespass-Damages.**

A person who cuts, kills, destroys, girdles, chops, injures, or otherwise damages or removes timber, young tree growth, or products of tree growth on land of another person, or on the street or highway fronting another person's house or village, or cultivated grounds; or on common public grounds of a village, or on the street or highway fronting that village, without lawful authority or permission, is liable to the owner of the land, or to the village, for treble the amount of damages which may be assessed in a civil action, in the district court or High Court, depending on the amount of damages.

**History:**1981, PL 17-29 § 1.

## Chapter 51

### NEGLIGENCE

**Sections:**

**43.5101 Contributory negligence no bar-Comparative negligence.**

**43.5101 Contributory negligence no bar-Comparative negligence.**

In all actions hereafter brought for personal injuries, or where the injuries have resulted in death, or for injury to property, the fact that the person injured, or the owner of the property, or person having control over the property may have been guilty of contributory negligence shall not bar a recovery, but damages shall be diminished by the court in proportion to the amount of negligence attributable to the person injured, or the owner of the property, or the person having control over the property.

**History:**1977, PL 15-21.

**Case Notes:**

Under A.S.C.A. § 43.5101, contributory negligence does not bar recovery, but damages are reduced in proportion to the extent of negligence attributable to the injured person. *Alofipo v. Va*, 20 A.S.R.2d 119 (1992).

American Samoa's comparative-negligence statute does not alter the common-law rule of joint and several liability in a personal-injury case and does not require apportionment of negligent conduct by a defendant and a non-party so as to reduce a defendant's liability. A.S.C.A. § 43.5101. *Euta v. Etimani*, 24 A.S.R.2d 139 (1993).

Pedestrian, a minor, was comparatively negligent in crossing the road into the unavoidable path of a vehicle and in failing to yield the right-of-way to vehicles when crossing at a point other than a crosswalk. A.S.C.A. §§ 22.0401(c)-(d), 43.5101. *Sciascia v. Lutali*, 23 A.S.R.2d 38 (1992).

## **Chapter 52**

### **DEFAMATION**

#### **Sections:**

- 43.5201 Defamation.**
- 43.5202 Privileged publication.**
- 43.5203 Radio station and television facility-Liability.**
- 43.5204 Media management to be given opportunity to publish correction prior to action for libel or slander.**
- 43.5205 Content of correction.**
- 43.5206 Extent to which a correction is a defense upon trial.**

#### **43.5201 Defamation.**

Defamation is effected by:

(1) libel which is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation.

(2) slander which is a false and unprivileged publication other than libel which:

(A) charges any person with crime or with having been indicted, convicted, or punished for crime;

(B) imputes in him the present existency of an infectious, contagious, or loathsome disease;

(C) tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit;

(D) imputes to him impotence or want of chastity; or

(E) by natural consequence causes actual damage.

**History:** 1980, PL 16-64 § 1.

#### **43.5202 Privileged publication.**

A privileged publication is one made:

(1) in the proper discharge of an official duty;

(2) in any legislative or judicial proceeding or in any other official proceeding authorized by law;

(3) in a communication without malice to a person interested therein by one who is

also interested or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent or who is requested by the person interested to give the information;

(4) by a fair and true report without malice of a judicial, legislative, or other public official proceeding or of anything said in the course thereof.

**History:** 1980, PL 16-64 § 2.

#### **43.5203 Radio station and television facility-Liability.**

(a) No person, firm, or corporation owning or operating a radio broadcasting station or TV facility is liable under the law of defamation on account of having made its broadcasting facilities available to any person, whether a candidate for public office or any other person, for discussion of controversial or any other subjects in the absence of proof of actual malice on the part of such owner or operator.

(b) This section may not be construed to relieve any person broadcasting over a radio station or TV facility from liability under the law of defamation.

(c) This section may not be construed to relieve any person, firm, or corporation owning or operating a radio broadcasting station or TV facility from liability under the law of defamation on account of any broadcast prepared or made by any such person, firm, or corporation or by any officer or employee thereof in the course of his employment.

**History:**1980, PL 16-64 § 3.

#### **43.5204 Media management to be given opportunity to publish correction prior to action for libel or slander.**

(a) Before any civil action may be commenced on account of any defamatory publication in any newspaper, periodical, or radio or television station, the libeled person shall first give those alleged to be responsible or liable for the publication a reasonable opportunity to correct the libelous or defamatory matter. The opportunity must be given by notice in writing specifying the article and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty.

(b) One week following receipt of notice is within a reasonable time for correction.

**History:**1980, PL 16-64 § 4.

#### **43.5205 Content of correction.**

To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction constitutes a correction. Otherwise the publication of the libeled person's statement of the true facts or so much thereof as would not be libelous of another, scurrilous, or otherwise improper for publication, published as his statement, constitutes a correction.

**History:**1980, PL 16-64 § 5.

#### **43.5206 Extent to which a correction is a defense upon trial.**

If it appears upon trial that the publication was made under honest mistake or

misapprehension, then a correction timely published without comment in a position and type as prominent as the alleged libel or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration shall constitute a defense against the recovery of any damages except actual damages, as well as being competent and material in mitigation of actual damages to the extent the correction published does so mitigate them.

**History:** 1980, PL 16-64 § 6.

## CHAPTER 53

### Y-2K COMPLIANCE

- 43.5301 Definitions.**
- 43.5302 Applicability.**
- 43.5303 Blanket protections.**
- 43.5304 Limitation of actions.**
- 43.5305 Error dispute resolution requirement.**
- 43.5306 Limitation of liability.**
- 43.5307 Effect on insurance.**
- 43.5308 No intent to create causes of action.**
- 43.5309 Remedial intent.**
- 43.5310 Severability.**
- 43.5311 Preemption.**

#### **43.5301 Definitions.**

As used in this chapter, unless the context clearly requires otherwise:

(1) “Y-2K error” is the failure of a computer-based system to accurately store, display, transmit, receive, process, calculate, compare, or sequence date and time data from , into, or between the twentieth and twenty-first centuries, the years 1999 and 2000 and beyond, and leap year calculations.

(2) “Computer-based system” includes any computer or other information technology system, and any electronic device that controls, operates, monitors, or assists in the operation or functioning of equipment, machinery, plant, or a device using an embedded or installed microprocessor or chip.

(3) “Consumer” means a natural person who, primarily for personal, family, or household purposes, purchases, attempts to purchase, or is solicited to purchase goods or services.

(4) “Core activities” means those business activities of a person which are supported by computer-based systems and which have been identified by the person, based on reasonable internal criteria, as being central to the continued operation of the business.

(5) “Remediation steps” for a person addressing potential Y-2K errors generally consist of awareness, assessment, renovation, validation, and implementation. The reasonableness of those steps will be determined by the circumstances, including the sophistication of and resources available to the person carrying them out.

(A) The awareness step generally includes providing supervisory personnel with information about the Y-2K problem and the designation of personnel to deal with the potential for Y-2K errors.

(B) The assessment phase generally includes a determination of the impact of

potential Y-2K errors on the person (including those caused by computer-based systems controlled by the person and those controlled others), identification of core activities, a physical inventory of potentially affected computer-based systems supporting core activities, prioritization of items with potential Y-2K errors to create a remediation schedule, determining whether the item records dates or processes date information, identifying and obtaining resources to address potential Y-2K errors, the development of a remediation strategy for each item with the potential for Y-2K errors, and the development of a recovery plan to handle those Y-2K errors which are reasonably likely to occur.

(C) The renovation step generally includes the conversion, upgrade, replacement, or elimination of computer-based systems supporting core activities which are subject to Y-2K errors.

(D) The validation step generally includes validating existing, converted, or replaced computer-based systems supporting core activities, “validating” means:

(i) Testing the item to actually simulate the transition from December 31, 1999 to January 1, 2000, the processing of other date data which may reasonably be expected to trigger a Y-2K error, and a determination that no Y-2K error occurs; and

(ii) Where the item has been renovated to correct known or suspected Y-2K errors, testing to assure that the item continues to properly perform its functions without error. This testing is not reasonably possible, the validation step consists of securing documentation from the developer or vendor of a computer-based system supporting core activities that it is free of potential Y-2K errors. This includes vendors of core business functions, services, or supplies to understand the risk posed by the person’s supply chain.

(E) The implementation step generally includes the placing of renovated or replaced computer-based systems into production use. Where a computer-based system cannot reasonably be renovated, the implementation step generally includes the implementation of a work-around designed to avoid the effect of the potential Y-2K errors. Additionally, this step includes the implementation of contingency or recovery plans for those Y-2K errors which are reasonably likely to occur. Where applicable, the person’s highest level of management should determine what efforts are to be made and what resources are to be used in carrying out the remediation steps, and monitoring the progress of the remediation steps.

(6) “Claimant” is the plaintiff in a lawsuit or a person otherwise asserting a claim.

(7) “Respondent” is the defendant in a lawsuit or a person otherwise defending against a claim, and includes those persons who are liable on a claim, but who were not made a party to the lawsuit or other assertion of the claim.

(8) “Board” means any agency, board, commission, authority, or committee of the American Samoa Government or its political subdivisions that is created by constitution, statute, rule, or executive order to have supervision, control, jurisdiction, or advisory power over specific matters.

(9) “Government employee” includes an officer or employee of the ASG, or board, including a person acting on behalf of a board in an official capacity, temporarily or permanently, whether with or without compensation.

(10) “Joint tort-feasors” refers to two or more persons jointly or severally liable in tort for the same injury to person or property.

**History:** 1999 PL 26-15.

**43.5302      Applicability.**

(a) The following claims shall be excluded from the error dispute resolution process and the limitations on liability provisions contained in sections 43.5303 and 43.5304: Claims properly filed by consumers in the small claims division of the District Court.

(b) The following claims shall be excluded from the error dispute resolution process provisions contained in section 43.5305: Claims alleging physical injury as the direct and proximate result of a Y-2K error.

(c) The provisions in this chapter shall not apply to claims asserted by or against the American Samoa Government, a board, or a government employee, arising out or relating to a Y-2K error produced, calculated, or generated by a government computer system or other computer-based system, regardless of the cause for the Y-2K error, provided that nothing in this subsection shall be deemed to apply to any claim asserted against a government employee to enforce a mortgage obligation or other similar personal obligation of the government employee which is unrelated to the government employee's employment.

(d) The provisions in sections 43.5303 and 43.5304 may be modified or waived by express agreement. Any such modification or waiver shall be explicit, and no intent to modify or waive these protections shall be inferred.

**History:** 1999 PL 26-15.

#### **43.5303 Blanket protections.**

(a) No punitive or exemplary damages, and no statutory minimum or treble damages shall be awarded under any theory of recovery, including contract and tort law, for claims arising out of a Y-2K error unless one of the following is found to have occurred in addition to the other facts necessary for the award of such damages:

(1) The Y-2K error was intentionally created by the respondent with the intent to cause damage or injury:

(2) The respondent had entered into an agreement to discover or remedy Y-2K errors with the intent to defraud the claimant; or

(3) The damage or injury was caused by the dissemination of corrupted data to recipients:

(A) With actual knowledge that errors were occurring;

(B) Without reasonable efforts at warning; and

(C) Without reasonable efforts to correct the cause of the errors.

(b) Noneconomic damages (including, but not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses) shall not be awarded under any theory of recovery for any claim arising out of a Y-2K error except for physical injury directly and proximately caused by a Y-2K error. In any physical injury claim, the amount recoverable for noneconomic damages shall be limited to a maximum award of \$375,000.

(c) Joint tortfeasors shall not be held jointly and severally liable under any theory of recovery for any claim arising out of a Y-2K error.

**History:** 1999 PL 26-15.

#### **43.5304 Limitation of actions.**

Any other provision of law notwithstanding, all claims arising out of a Y-2K error

shall be brought no later than two years after the claimant discovers, or through the use of reasonable diligence should have discovered, the damage or injury, but in any event not more than four years after the date of the alleged Y-2K error.

**History:** 1999 PL 26-15.

**43.5305 Error dispute resolution requirement.**

(a) Arbitration of disputes. At the request of any party, any dispute in which a Y-2K error is alleged in good faith as a claim or a defense shall be submitted to nonbinding arbitration. Unless otherwise agreed by the parties, the arbitrator shall be bound by the substantive and procedural provisions of this chapter, but shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the American Samoa rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties.

(b) Determination of unsuitability. At any time within twenty days of being served with a written demand for arbitration, any party so served may apply to the High Court for a determination that the subject matter of the dispute is unsuitable for disposition by arbitration. In determining whether the subject matter of a dispute is unsuitable for disposition by arbitration, a court may consider:

- (1) The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute;
- (2) Claims where court regulated discovery is necessary;
- (3) The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by or related to this chapter;
- (4) The fact that the matter to be arbitrated is only part of a dispute involving other parties or issues which are not subject to arbitration; or
- (5) Any matters of dispute where disposition by arbitration would not afford substantial justice to one or more of the parties.

(c) Any such application to the High Court shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. If the application is denied, the prevailing party shall be awarded its attorneys' fees and costs in an amount not to exceed \$750.

(d) Selection of arbitrator:

(1) Once the parties have agreed to suitability or suitability has otherwise been determined, the parties shall proceed to select one arbitrator to hear the case. If the parties cannot agree on an arbitrator, they shall make a request in writing to the High Court of American Samoa shall appoint an arbitrator. The parties and court shall endeavor to select the best qualified arbitrator for the issues to be tried, which arbitrator need not be an attorney. The parties may also select an administering agency such as the American Arbitration Association, at the discretion of the parties.

(2) Once selected, the arbitrator and parties shall cooperate to process the arbitration expeditiously and as informally as possible so that the arbitration hearing commences within six months after selection of the arbitrator. The arbitrator shall have the power and authority to sanction any party who does not so cooperate.

(3) The parties shall deposit the estimated fee and expenses of the arbitrator prior to the commencement of the arbitration hearing in equal pro rata amounts.

(e) Award; confirming award; attorney's fees and costs:

(1) Within seven days after the conclusion of the arbitration hearing, the arbitrator shall serve copies of the award on the parties or their attorneys of record. Awards shall be in writing and signed by the arbitrator. The arbitrator shall determine all issues raised by the pleadings that are subject to arbitration under this chapter, including a determination of comparative fault, if any, damages, if any, and costs. Findings of fact and conclusions of law are not required. After an award is made, the arbitrator shall return all exhibits to the parties who offered them during the hearing.

(2) The award of any costs of arbitration, expenses, and legal fees shall be in the sole discretion of the arbitrator, and the determination of costs, expenses and legal fees shall be binding upon all parties.

(f) Judgment on award. If no party has served a written request for a trial de novo within ten days after the award is served upon all parties, any party may apply under Title 43 to have a judgment entered on the award. Once a judgment is so entered, it shall have the same force and effect as a final judgment, but may not be appealed.

(g) Trial de novo:

(1) The submission of any dispute to arbitration shall in no way limit or abridge the right of any party to a trial de novo.

(2) Written demand for a trial de novo by any party desiring a trial de novo shall be made upon the other parties within ten days after service of the arbitration award upon all parties.

(3) All discovery permitted during the course of the arbitration proceedings shall be admissible in the trial de novo subject to all applicable rules of civil procedure and evidence.

(4) The award of arbitration shall not be made known to the court at a trial de novo, except that the award shall be made available to the court by the clerk of court upon the rendering of judgment by the trier of fact for the purpose of determining whether the party which demanded trial de novo must pay costs, expenses, and fees under paragraph 6.

(5) No arbitration award shall be admitted into evidence in any subsequent trial, nor shall any party to the arbitration, or the counsel or other representative of such party, refer to or comment on the award or any statement or testimony made in the course of the arbitration hearing in an opening statement, an argument, or at any other time, to the court or jury.

(6) In any trial de novo, if the party demanding a trial de novo does not improve its position by thirty per cent or more, the party demanding the trial de novo shall be charged with all reasonable costs, expenses, and attorneys' fees of the trial. When there is more than one party on one or both sides of an action, or more than one issue in dispute, the court shall allocate its award of costs, expenses, and attorneys' fees among the prevailing parties and tax such fees against those losing parties who demanded a trial de novo in accordance with the principles of equity.

**History:** 1999 PL 26-15.

#### **43.5306            Limitation of liability.**

(a) Determination of commercially reasonable efforts by claimant and respondent. All arbitration awards and all judgments in a court proceeding which award damages on a claim arising out of a Y-2K error shall state whether the claimant and the respondent engaged in commercially reasonable efforts to avoid the impact of Y-2K errors.

(b) The trier of fact shall make an independent determination that the actions taken by a claimant or respondent constitute commercially reasonable efforts, based on the totality of the circumstances, and notwithstanding that the party's efforts failed to avoid all Y-2K errors affecting its computer-based systems. In making the determination, the trier of fact shall examine the party's efforts as a whole, and shall take into consideration the sophistication of any resources available to the party. The burden of proof shall be on the party claiming that it engaged in commercially reasonable efforts, and the standard of proof shall be a preponderance of the evidence.

(c) A claimant or respondent shall be presumed to have undertaken commercially reasonable efforts if it has, at minimum:

(1) Implemented the remediation steps; and

(2) Complied with any data formats established by a government regulation, a governing body (such as the National Automated Clearing House Association for certain financial transactions) or reasonably requested by the other party where the parties exchange electronic information which was impacted by the alleged Y-2K error.

(d) Effect of finding. Except for claims where physical injury was directly and proximately caused by a Y-2K error, upon a finding that either:

(1) A claimant did not engage in commercially reasonable efforts; or

(2) The respondent engaged in commercially reasonable efforts, the respondent's liability will be limited to recovery of the claimant's actual out-of-pocket damages directly caused by the Y-2K error, and no consequential damages, such as loss of business opportunities or loss of profits, or other special damages shall be awarded under any theory of recovery.

(e) Allocation of liability based on exercise of commercially reasonable efforts. The amount awarded to any claimant will be reduced to the extent that the claimant's failure to engage in commercially reasonable efforts contributed in whole or part to the damages sustained. Where two or more respondents are found liable for the claimant's damages, the proportion of liability assessed against each respondent will be proportionately adjusted based on the extent to which it engaged in commercially reasonable efforts.

**History:** 1999 PL 26-15.

#### **43.5307 Effect on insurance.**

Nothing in this act is intended to affect the indemnity and defense coverage rights and obligations under any contract of insurance.

**History:** 1999 PL 26-15.

#### **43.5308 No intent to create causes of action.**

This act shall not be deemed to impose any increased obligation, duty, or standard of care than is otherwise applicable under federal or American Samoa law. It is not intended to create any new cause of action or remedy.

**History:** 1999 PL 26-15.

#### **43.5309 Remedial intent**

The intention of this act is to protect the people of American Samoa against harm which is pervasive and which was generally unknown to businesses and consumers. For that reason, its provisions are remedial, and shall be read to provide the greatest level of

protection.

**History:** 1999 PL 26-15.

**43.5310 Severability.**

If any provision of this act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**History:** 1999 PL 26-15.

**43.5311 Preemption.**

If any portion of this act is found to be preempted by federal law or regulation, the remainder shall remain in full force and effect to the fullest extent consistent with the preemption.

**History:** 1999 PL 26-15.