AMERICAN SAMOA DIGEST

2008 Edition

Covering Opinions
From Divisions of the
High Court of
American Samoa
as Reported in the
American Samoa Reports
(through 7 A.S.R.3d)

Published by the High Court of American Samoa
Pago Pago, American Samoa 96799

Edited by Sean Coletti, Michael Weaver, Thad Brady & Julia A.H. Harty
Law Clerks

Preface

In 1900, the Samoan Islands of Tutuila and Aunu'u were ceded to the United States, and the Territory of American Samoa came into being. The High Court of American Samoa was established in that year and since then has been the court of highest jurisdiction in the Territory, and the only court which regularly writes opinions. The Court's first published decision appears at 1 A.S.R. 15.

In 1977, the first volume of the American Samoa Reports, covering decisions from 1900-1938 was published. This was followed in quick succession by the publication of Volumes 2, 3 and 4 of the Reports, which include decisions of the High Court through 1975.

In 1983, the Court began publication of American Samoa Reports, second edition. Since then, thirty-one volumes of A.S.R.2d have been published, coverning decisions from 1978-1997.

In 2006, Volume 1 of the third edition of the American Samoa Reports was published. This volume begins where 31 A.S.R.2d left off, with court decisions beginning in 1997 through the present.

Each of these published decisions are printed with headnotes coverning the legal points made by the decisions. The 2008 American Samoa Digest categorizes all of the headnotes in the decisions published in American Samoa Reports, American Samoa Reports, second edition, and published cases for the American Samoa Reports, third edition. Each headnote is placed in one or more of 29 different topics. Each major topic is broken down into subtopics, each of which is further broken down to more narrowly pinpoint the law in the headnote. The Digest is best used by locating a headnote one is interested in, referring to the American Samoa Reports appearing at the end of the headnote, and comparing the wording of the headnote in the Digest with the wording of the headnotes at the beginning of the case to determine where the Court discusses the legal point of interest in the case.

Digest Topics

Administrative Law	**28**	**Family Law**	**347**
Admiralty	**41**	**Immigration**	**365**
Agency and Principal	**56**	**Insurance**	**370**
American Samoa Government	**60**	**International Law**	**381**
Bankruptcy	**86**	**Legal Profession**	**384**
Civil Procedure	**88**	**Matai Title Disputes**	**393**
Constitutional Law	**188**	**Real Property**	**422**
Contracts	**209**	**Religion**	**509**
Corporation and Partnership	**237**	**Samoan Customs**	**510**
Criminal Law	**246**	**Secured Transactions**	**517**
Criminal Procedure	**255**	**Taxation**	**527**
Elections	**317**	**Torts**	**535**
Employment Law	**324**	**Wills, Trusts & Estates**	**569**
Environmental Law	**332**	**Worker's Compensation**	**578**
Evidence	**333**		

The Judiciary

Listed below are the names and dates of service of the Justices of the High Court of American Samoa during the period covered by this volume of the Digest. The list commences with the first true, permanent justices, and does not include the early justices, who were primarily officers of the United States Navy, pressed into temporary service as justices.

Harry P. Wood, Chief Justice, 1921-1937

Arthur A. Morrow, Chief Justice, 1937-1966

V.G. Roel, Associate Justice, 1963-1966

Joseph W. Goss, Associate Justice, 1966-1970

H. Edward Hydon, Chief Justice, 1966-1968

Donald C. Crothers, Chief Justice, 1968-1972

Leslie N. Jochimsen, Associate Justice, 1971-1975
Chief Justice, 1975-1976

William J. McKnight, III, Chief Justice, 1972-1975

K. William O'Connor, Associate Justice, 1976-1977
Chief Justice, 1977-1978

Richard I. Miyamoto, Associate Justice, 1976-1978
Chief Justice, 1978-1981

Robert Gardner, Chief Justice, 1981-1986

Thomas Murphy, Associate Justice, 1980-1987

Grover Joseph Rees, III, Chief Justice, 1986-1988
Associate Justice, 1988-1991

F. Michael Kruse, Associate Justice, 1987-1988
Chief Justice, 1988-present

Lyle L. Richmond, Associate Justice, 1991-present

TABLE OF CONTENTS

ADMINISTRATIVE LAW

§ 1 General Provisions
2 Administrative Agencies, Officers and Agents
3 Separation of Administrative and other Powers
4 Powers & Proceedings of Administrative Agencies, Officer & Agents
4(1) —General Provisions
4(2) —Due Process
4(3) —Rules and Regulations
4(4) —Agency Interpretation of Rules & Regulations
4(5) —Hearings and Adjudications
5 Judicial Review of Administrative Decisions
5(1) —Finality and Exhaustion
5(2) —Procedure
5(3) —Scope of Review
5(4) —Disposition
5(5) —Limitations on Review

ADMIRALTY

§ 1 Jurisdiction and Procedure
2 In Personam and In Rem Actions
3 Preferred Ship Mortgages & Maritime Liens
4 Maritime Contracts
4(1) —General Provisions
4(2) —Leases
4(3) —Employment Contracts
4(4) —Carriage of Goods by Sea
5 Maritime Torts
5(1) —General Principles
5(2) —Negligence
5(3) —Unseaworthiness
5(4) —Maintenance & Cure
5(5) —Limits on Liability
5(6) —Damages
5(6) —Compensation & Recovery

AGENCY AND PRINCIPAL

§ 1 Agency Relationship
1(1) —General Principles
1(2) —Creation
1(3) —Existence
1(4) —Termination
2 Authority of Agent
2(1) —General Provisions
2(2) —Express Authority
2(3) —Implied Authority
2(4) —Apparent Authority
3 Rights, Duties, and Liabilities

3(1) —Between Principal and Agent
3(2) —Between Principal and Third Person
3(3) —Between Principal and Independent Contractor
3(4) —Between Agent and Third Person
4 Powers of Attorney

AMERICAN SAMOA GOVERNMENT

§ 1 The Federal Government, Constitution, & Laws of American Samoa
1(1) —General Principles
1(2) —Territorial Status
1(3) —Applicable Laws
1(4) —Treaties
2 Separation of Powers
3 The Legislature
3(1) —Power and Authority
3(1)(a) —Generally
3(1)(b) —Law-making Powers
3(1)(c) —Duty to Protect Land & Customs
3(1)(d) —Appropriation of Funds
3(1)(e) —Internal Procedural Powers
3(2) —Committees
3(3) —Legislation
4 The Executive
4(1) —The Governor
4(2) —Power and Authority
4(3) —Agencies
4(4) —Administrative Procedures Act
5 The Judiciary
5(1) — Power and Authority
5(2) —Administration of Court
5(3) —Disqualification – Recusal
5(4) —Precedence and Stare Decisis
5(5) —Supervision of Proceedings and Litigation
5(6) —Supervision of Judgments and Settlements
5(7) —Contempt
5(8) —Statutory Construction
6 Sovereign Rights
7 Public Records
8 Government Employees

BANKRUPTCY

§ 1 General Provisions
2 Stay of Proceedings

CIVIL PROCEDURE

§ 1 Jurisdiction
1(1) —General Provisions
1(2) —Personal Jurisdiction
1(3) —Subject Matter Jurisdiction

1(4) —Issues Related to Federal Jurisdiction
1(5) —Bankruptcy
1(6) —Admiralty
1(7) —Right of Action
1(8) —Cause of Action
1(9) —Rules of Civil Procedure Generally
1(10) —Affidavits
2 Service of Process
2(1) —General Provisions
2(2) —By Publication
2(3) —By Posting
2(4) —Under the JIFSA
3 Pleadings
3(1) —General Provisions
3(2) —Liberal Construction
3(3) —Amending Pleadings
3(4) —Rule 11 Sanctions
4 Pretrial Motions
4(1) —Motion to Dismiss
4(1)(a) —General Provisions
4(1)(b) —Failure to State a Claim – 12(b)(6) Motion
4(1)(c) —Court's Discretion
4(1)(d) —Compared to Summary Judgment Motion
4(1)(e) —Time for Filing Motion
4(2) —Motion for Judgment on the Pleadings
4(2)(a) —Generally
4(2)(b) —Compared to Summary Judgment Motion
4(3) —Motion for More Definite Statement
4(4) —Motion to Strike
4(4)(a) —Generally
4(4)(b) —Relation to Controversy
4(4)(c) —Unduly Prejudicial
4(5) —Dismissal of Actions
4(5)(a) —Generally
4(5)(b) —Voluntary Dismissal by Plaintiff
4(5)(c) —Voluntary Dismissal by Court
4(5)(d) — Failure to Prosecute
4(5)(e) —Time for Filing Motion
4(5)(f) —Costs of Previously Dismissed Action
4(6) —Continuances
5 Parties & Claims
5(1) —General Provisions
5(2) —Joinder
5(3) —Class Actions
5(4) —Substitution of Parties
5(5) —Interpleader
5(6) —Intervention
5(7) —Consolidation
5(8) —Counterclaims
5(9) —Cross-claims
5(10) —Third Party Practice
5(11) —Bifurcated Proceedings
6 Discovery
6(1) —General Provisions
6(2) —Depositions
6(3) —Interrogatories
6(4) —Productions of Documents & Things

6(5) —Physical and Mental Examinations
6(6) —Requests for Admission
6(7) —Protective Orders
6(8) —Sanctions
7 Summary Judgment
7(1) —Standard
7(2) —Opposition to Motion
7(3) —Compared to 12(b)(6) Motion to Dismiss
7(4) —Compared to Motion for Default Judgment
7(5) —Compared to Motion for Partial Summary Judgment
7(6) —Within Court's Discretion
7(7) —By Affidavit
7(8) —Notice and Hearing
7(9) —Summary Judgment Denied
7(10) —Summary Judgment Granted
7(11) —Appropriate Issues for Summary Judgment
7(12) —Standard of Review
7(13) —Grounds for Appeal
8 Injunctions
8(1) —General Provisions
8(2) —Preliminary Injunctions
8(3) —Injunctions Granted
8(4) —Injunctions Denied
8(5) —Substantial Likelihood of Success
8(6) —Irreparable Injury
8(7) —Permanent Injunctions
8(8) —Compared to Stay Pending Appeal
9 Equitable Remedies
9(1) —General Provisions
9(2) —Estoppel, Unclean Hands
9(3) —Laches
9(4) —Tolling
9(5) —Subrogation
9(6) —Constructive Trusts
10 Judgments
10(1) —Enforcement of Judgments
10(2) —Validity of Judgments
10(3) —Orders in Aid of Judgment
10(4) —Declaratory Judgments
10(5) —Default Judgments
10(6) —Interlocutory & Collateral Orders
10(7) —Res Judicata & Collateral Estoppel
10(8) —Merger
11 Post Judgment Motions & Appeals
11(1) —Motion for New Trial or Reconsideration
11(1)(a) —General Provisions
11(1)(b) —Time for Filing
11(1)(c) —Particularity Requirement
11(1)(d) —Grounds for New Trial or Reconsideration
11(2) —Relief from Judgment or Order - Rule 60 Motion
11(3) —Stay of Proceedings
11(3)(a) —General Provisions
11(3)(b) —Likelihood of Appellate Success
11(3)(c) —Irreparable Harm/Balance of Equities
11(3)(d) —Public Interest
11(4) —Appellate Jurisdiction

11(5) —Petition for Rehearing
11(6) —Appellate Procedures
11(6)(a) —Generally
11(6)(b) —Notice of Appeal
11(6)(c) —Appellate Briefs
11(6)(d) —Appellate Motions
11(6)(e) —Failure to Raise Issue Below
11(6)(f) —Transcripts
11(7) —Costs of Appeal
11(8) —Findings of Law – De Novo Review
11(9) —Findings of Fact – Clearly Erroneous
11(10) —Credibility of Evidence and Witnesses
11(11) —Administrative Agency Decisions
11(12) —Abuse of Discretion
11(13) —Harmless and Reversible Error
12 Conflict of Laws
12(1) —Law of the Forum
12(2) —Foreign Courts and Judgments
13 Writs
13(1) —General Provisions
13(2) —Procedural Details
13(3) —Elements
13(3)(a) —Generally
13(3)(b) —Plaintiff's Specific Legal Right
13(3)(c) —Defendant's Indisputable Duty
13(3)(d) —Other Avenues of Relief Exhausted
14 Garnishment
15 Alternative Dispute Resolution
15(1) —Mediation
15(2) —Voluntary Arbitration
15(3) —Compulsory Arbitration
15(4) —Condemnation Proceedings
15(5) —Appeal of Arbitrator's Decision

CONSTITUTIONAL LAW

§ 1 Judicial Review
2 Justiciable Case or Controversy
2(1) —Standing
2(2) —Ripeness
2(3) —Mootness
2(4) —Political Questions
2(5) —Advisory Opinions
3 Constitutional and Statutory Interpretation
3(1) —General Provisions
3(2) —Legislative Intent
3(3) —Statutory Construction
3(4) —Conflict of Laws
4 Separation of Powers
5 Full Faith and Credit
6 Due Process
7 Individual Rights
7(1) —Generally
7(2) —Equal Protection
7(3) —Freedom of Speech, Press, and Religion

7(4) —Takings and Just Compensation
7(5) —Cruel and Unusual Punishment
7(6) —Discrimination
8 Contracts
9 Habeas Corpus

CONTRACTS

§ 1 Contract Formation
1(1) —Meeting of the Minds
1(2) —Consideration
1(3) —Offer and Acceptance
1(4) —Requirement of a Writing: The Statute of Frauds
1(5) —Quasi Contract
1(6) —Conditions Precedent and Subsequent
2 Responsibilities and Authority of Parties Forming a Contract
2(1) —Authority
2(2) —Requirement of Capacity
2(3) —Duties of Parties
2(4) —Third Party Beneficiaries
2(5) —Assignment of Rights
2(6) —Delegation of Duties
2(7) —Fiduciary Duties
2(8) —Warranties
3 Unenforceability
3(1) —Public Policy
3(2) —Fraud
3(3) —Unfairness and Unconscionability
3(4) —Mistake and Impossibility
3(5) —Misrepresentation
3(6) —Illegality
3(7) —Impossibility
3(8) —Impracticability
3(9) —Frustration of Purpose
3(10) —Voidable Contracts
3(11) —Void Contracts
3(12) —Undue Influence
4 Contract Modification
4(1) —General Principles
4(2) —Oral Modification
4(3) —Written Modification
4(4) —Ratification
4(5) —Novation
4(6) —Mutual Rescission
4(7) —Waiver
4(8) —Repudiation
4(9) —Cancellation
4(10) —Acquiescence
5 Contract Interpretation
5(1) —General Provisions
5(2) —The Uniform Commercial Code
5(3) —The Parole Evidence Rule
5(4) —Plain Meaning Rule
5(5) —Ambiguous Terms
5(6) —Custom & Usage

5(7) —Additional Terms
5(8) —Different Terms
5(9) —CIF Contract Terms
5(10) —Choice of Law Provisions
6 Performance and Breach
6(1) —Breach Generally
6(2) —Material Breach
6(3) —Substantial Performance
6(4) —Partial Performance
6(5) —Divisible Contracts
6(6) —Anticipatory Repudiation
6(7) —Accord & Satisfaction
6(8) —Duty to Mitigate
7 Remedies
7(1) —Statute of Limitations
7(2) —Specific Performance and Injunctions
7(3) —General Measure of Damages
7(4) —Quantum Meruit
7(5) —Liquidated Damages
7(6) —Exemplary Damages
7(7) —Reformation
7(8) —Promissory Estoppel
7(9) —Punitive Damages
7(10) —Attorney Fees
8 Types of Contracts
8(1) —Oral Agreements
8(2) —Bailment Contracts
8(3) —Consignment Contracts
8(4) —Written Contracts

CORPORATION AND PARTNERSHIP

§ 1 Formation of Corporations
1(1) —Generally
1(2) —Distinct Corporate Name
1(3) —Who May Incorporate
1(4) —Fees Required for Incorporation
1(5) —Organizational Meeting
2 Preincorporation Transactions
3 Limited Liability & the Corporate Entity
3(1) —Generally
3(2) —Piercing the Corporate Veil
4 Corporate Financial Structure
4(1) —Generally
4(2) —Books & Accounts
4(3) —Shares
4(4) —Dividends
5 Corporate Management Structure
5(1) —Generally
5(2) —Incorporators
5(3) —Shareholders
5(4) —Officers & Directors
5(5) —Duties of Management
5(6) —Business Judgment Rule
5(7) —Management Compensation

5(8) —Shareholders Meetings
5(9) —Board Meetings
5(10) —Election/Voting Procedures
5(11) —Dissenters & Their Rights
5(12) —Corporate Counsel
6 Types of Corporations
6(1) —Generally
6(2) —Closely Held Corporation
6(3) —Public Corporation
6(4) —Foreign Corporations
6(5) —Eleemosynary Corporations
6(6) —Cooperative Corporations
7 Corporate Powers & Prohibitions
7(1) —General Provisions
7(2) —Powers
7(3) —Transfers of Land
7(4) —Prohibitions
8 The Corporation & Litigation
8(1) —Generally
8(2) —Shareholder Suits
8(3) —Third Party Suits
9 Organic Changes: Amendments, Mergers and Dissolution
9(1) —General Provisions
9(2) —Amending Formative Documents
9(3) —Merger
9(4) —Dissolution of the Corporation
10 Partnerships
10(1) —General Provisions
10(2) —Formation
10(3) —Service on a Partnership
10(4) —Dissolution of Partnership
10(5) —Liability for Partnership Debts

CRIMINAL LAW

§ 1 General Provisions
2 Liability
2(1) —Mens Rea (Intent)
2(2) —Actus Reus
2(3) —Causation
3 Defenses
3(1) —Generally
3(2) —Insanity
3(3) —Provocation
3(4) —Self-Defense
3(5) —Justification
4 Specific Crimes
4(1) —Inchoate Offenses
4(2) —Offenses Against the Person
4(3) —Sexual Offenses
4(4) —Prostitution
4(5) —Offenses Against the Family
4(6) —Abortion
4(7) —Robbery, Arson, Burglary and Related Offenses

4(8) —Stealing and Related Offenses
4(9) —Weapons
4(10) —Gambling
4(11) —Pornography and Related Offenses
4(12) —Offenses Against Public Order
4(13) —Offenses Against the Administration of Justice
4(14) —Offenses Affecting Government
4(15) —Traffic Offenses
4(16) —Drug Offenses
4(17) —Miscellaneous Offenses

CRIMINAL PROCEDURE

§ 1 Rules of Criminal Procedure
1(1) —Generally
1(2) —Jurisdiction
1(3) —Prosecutorial Discretion
2 Criminal Complaints, Indictments and Bills of Information
2(1) —Generally
2(2) —Indictments
2(3) —Amending Information
2(4) —Sufficiency of Information
2(5) —Arguments Inconsistent with Information
2(6) —Bill of Particulars
2(7) —Probable Cause Determination
2(8) —Multiplicitous Charging
2(9) —Pro Se Pleadings
3 Pleas
3(1) —Generally
3(2) —Court's Duties
3(3) —Sufficient Factual Basis
3(4) —Voluntarily Made
3(5) —Interpretation of Plea Agreements
3(6) —Breach of Plea Agreements
3(7) —Withdrawal of Pleas
4 Parties & Procedure
4(1) —Bifurcated Proceedings
4(2) —Severance of Charges or Defendants
4(3) —Joinder of Offenses
4(4) —Joinder of Defendants
5 Pre-Trial Matters
5(1) —Generally
5(2) —Initial Appearance
5(3) —Continuances
5(4) —Competence to Stand Trial
5(5) —Motions to Suppress Evidence
5(6) —Pre-Trial Conferences
5(7) —Notice of Alibi
5(8) —Defense Based on Mental Condition
5(9) —Notice of Intent to Use Evidence
5(10) —Release from Custody
5(11) —Discovery Generally
5(12) —Depositions
5(13) —Disclosure of Information & Witnesses
5(14) —Witness Identifications

5(15) —Subpoena of Witnesses
5(16) —Juveniles
5(17) —Collateral Estoppel
5(18) —Failure to Prosecute
5(19) —Immunity from Prosecution
5(20) —Change of Venue
6 Trial
6(1) —Bifurcated Proceedings
6(2) —Due Process of Law
6(3) —Equal Protection
6(4) —Double Jeopardy
6(5) —Self Incrimination
6(6) —Right to a Speedy Trial
6(7) —Trial by Jury
6(8) —Right to a Public Trial
6(9) —Opening and Closing Arguments
6(10) —Motion for Judgment of Acquittal
6(11) —Mistrial
6(12) —Jury Instructions
6(13) —Sufficiency of the Evidence
6(14) —Record of Proceedings
7 Punishment and Sentencing
7(1) —General Provisions
7(2) —Cruel & Unusual Punishment
7(3) —Constitutional Restrictions on Prisons
7(4) —Deportation
7(5) —Probation
7(5)(a) —Generally
7(5)(b) —Terms of Probation
7(5)(c) —Conditions of Probation
7(6) —Parole
7(7) —Parole Revocation
7(8) —Conditions upon Release
7(9) —Work Release
8 Post-Verdict Motions
8(1) — Motion for New Trial
8(2) —Motion for Arrest of Judgment
8(3) —Motion to Vacate Sentence
8(4) —Motion to Correct or Reduce Sentence
8(5) —Stays of Proceedings
8(6) —Habeas Corpus & Conditions of Confinement
8(7) —Miscellaneous Motions
9 Appeals
9(1) —Generally
9(2) —Power of Appellate Court
9(3) —Time for Appeal
9(4) —Appellate Jurisdiction
9(5) —Good Faith
9(6) —Right to Appeal
9(7) —Appellate Standards of Review
10 Interrogation and Miranda
10(1) —Generally
10(2) —Custody
10(3) —Interrogation
10(4) —Waiver of Rights
10(5) — Invoking Miranda Rights
10(6) —Evidence Obtained in Violation of Miranda

11 Searches & Seizures
11(1) —Generally
11(2) —Privacy Expectations
11(3) —Probable Cause for Search Warrant
11(4) —Execution of Search Warrant
11(5) —Knock and Announce Rule
11(6) —Warrantless Searches
11(7) —Terry Stops
11(8) —Vehicle and Inventory Searches
11(9) —Border and Custom Searches
11(10) —Consensual Searches
11(11) —Search Incident to Arrest
11(12) —Plain View Doctrine
11(13) —Open Fields Doctrine & Curtilage
11(14) —Application of Exclusionary Rule
11(15) —Arrests
11(16) —Detention of Foreign Nationals
12 Counsel
12(1) —General Provisions
12(2) —Right to Counsel
12(3) —Effective Assistance of Counsel
12(4) —Prosecutorial Misconduct
13 Extradition
13(1) —General Provisions
13(2) —Extradition Proceedings
13(3) —of Witneses
13(4) —Evidence

ELECTIONS

§ 1 General Provisions
1(1) —Election Commissioner
2 Registration
2(1) —Generally
2(2) —Appeals
3 Issues – Candidates
3(1) —Nomination of Candidates
3(2) —Challenging of Candidates
3(3) —Certification of Winning Candidate
3(4) —Appeal to High Court
5 Voting Procedures
4(1) —General Provisions
4(2) —Illiterate & Disabled
6 Election Contests
5(1) —Tie Vote
5(2) —Contests for Cause – Generally
5(3) —Contests for Cause – Filing Complaint
6 Elections Offenses
7 Senate Elections
7(1) —Election Procedures
7(2) —Appeal to High Court

EMPLOYMENT LAW

§ 1 General Provisions

2 Hiring And Firing
2(1) — "At Will" Employment
2(2) —Just Cause Termination
2(3) —Wrongful Termination
3 Independent Contractors
4 Government Employees
5 National Labor Relations Board
6 Wages
7 Workmen's Compensation
8 Fair Labor Standards Act
8(1) —Generally
8(2) —Right of Action
8(3) —Applicability of the FLSA
8(4) —"Opting In" Under the FLSA
8(5) —Rights Provided
8(5)(a) —Generally
8(5)(b) —Rate of Pay
8(5)(c) —Relating to Involvement in Suit
8(6) —Remedies Under the FLSA
9 Remedies

ENVIRONMENTAL LAW

§ 1 General Provisions
2 Standing & Jurisdictional Requirements
3 Coasts & Waters
3(1) —General Provisions
3(2) —Water Quality
3(3) —Coastal Rules & Regulations

EVIDENCE

§ 1 General Provisions
2 Judicial Notice
3 Presumptions
3(1) —General Civil Actions
3(2) —Land & Titles Division
3(3) —Matai
3(4) —Criminal Cases
3(5) —Extradition Proceedings
4 Relevance
4(1) —General Definition
4(2) —Admissibility
4(3) —Exclusion of Relevant Evidence
4(4) —Inadmissible Character Evidence
4(5) —Methods of Proving Character
4(6) —Habit; Routine Practice
4(7) —Subsequent Remedial Measures
4(8) —Compromise and Offers to Compromise
4(9) —Payment of Expenses
4(10) —Pleas, Plea Discussions
4(11) —Liability Insurance
4(12) —Victim Behavior in Rape Cases

5 Privileges
5(1) —Generally
5(2) —Marital Communications
5(3) —Lawyer-Client Communications
5(4) —Physician-Patient Relationship
5(5) —Governmental Secrets
6 Witnesses
6(1) —General Rule of Competency
6(2) —Credibility and Impeachment
6(3) —Form of Direct Examination
6(4) —Cross Examination
6(5) —Written Document to Refresh Memory
6(6) —Prior Statements of Witnesses
6(7) —Exclusion of Witnesses
6(8) —Witness Fees
7 Opinions and Expert Testimony
7(1) —Generally
7(2) —Opinions by Lay Witnesses
7(3) —Expert Testimony
7(4) —Bases of Expert Testimony
8 Hearsay
8(1) —General Rule
8(2) —Exceptions When Declarant Available
8(2)(a) —General Provisions
8(2)(b) —Present Sense Impression
8(2)(c) —Excited Utterance
8(2)(d) —Then Existing Condition
8(2)(e) —Statements for Medical Purposes
8(2)(f) —Past Recollection Recorded
8(2)(g) —Records of Regularly Conducted Activity
8(2)(h) —Public Records & Reports
8(2)(i) —Vital Statistic Records
8(2)(j) —Religious Organization Records
8(2)(k) —Marriage & Baptismal Certificates
8(2)(l) —Family Records
8(2)(m) —Records Affecting an Interest in Property
8(2)(n) —Ancient Documents
8(2)(o) —Market Reports & Compilations
8(2)(p) —Learned Treatises
8(2)(q) —Reputation of Family History
8(2)(r) —Reputation of Boundaries
8(2)(s) —Reputation of Character
8(2)(t) —Judgment of Prior Conviction
8(2)(u) —Judgment as to History
8(3) —Exceptions When Declarant Unavailable
8(3)(a) —General Provisions
8(3)(b) —Former Testimony
8(3)(c) —Dying Declaration
8(3)(d) —Statement Against Interest
8(3)(e) —Statement of Personal, Family History
8(4) —Hearsay Within Hearsay
9 Authentication and Identification
9(1) —General Rule
9(2) —Self-Authentication
10 Contents of Writings, Recordings & Photographs
10(1) —Generally

10(2) —Best Evidence Rule
10(3) —Duplicates
10(4) —Other Evidence of Lost, Unobtainable, or Other Documents
10(5) —Public Records
10(6) —Summaries
10(7) —Admission of Party

FAMILY LAW

§ 1 Marriage
1(1) —Validity
1(2) —Annulment
2 Divorce
2(1) —Grounds
2(2) —Property Distribution
2(3) —Child Custody
2(3)(a) —General Provisions
2(3)(b) —Jurisdiction
2(3)(c) —Considerations in Awarding Custody
2(4) —Child Support
2(5) —Service of Process
2(6) —Residency Requirement
3 Children & Minors
3(1) —General Provisions
3(2) —Involuntary Relinquishment of Parental Rights - Termination
3(2)(a) —General Provisions
3(2)(b) —Protections for Parents
3(2)(c) —Best Interests of the Child
3(3) —Voluntary Relinquishment of Parental Rights – Adoption
3(3)(a) —General Provisions
3(3)(b) —Samoan Custom Adoptions
3(3)(c) —Protections for Parents
3(3)(d) —Best Interests of the Child
3(3)(e) —Legal Status After Adoption
3(4) —Guardianships
3(5) —Rights in Court
4 Legitimacy & Inheritance
5 Family Purpose Doctrine
6 Records

IMMIGRATION

§ 1 General Provisions
2 Immigration Board
3 Exclusion
4 Deportation
4(1) —General Provisions
4(2) —Procedures
4(3) —Grounds
4(4) —Stay of Order
5 Sponsors

INSURANCE

§ 1 Insurance Commissioner & General Insurer Requirements
1(1) —Generally
1(2) —Commissioner's Authority & Duties
1(3) —Certificates to Transact Insurance
1(4) —Statutory Deposits
1(5) —Orders of the Commissioner
1(6) —Withdrawal from American Samoa
1(7) —Agents & Brokers
1(8) —Bailees as Insurers
2 Policy as a Contract
2(1) —Generally
2(2) —Warranties
2(3) —Interpretation
2(4) —Modification
2(5) —Termination
2(6) —Cancellation
2(7) —Warranties
2(8) —Misrepresentation
2(9) —Applicable Law
3 Parties & Interests
3(1) —General Provisions
3(2) —Role & Authority of Agent
3(3) —Insured's Duties
3(4) —Insurer's Duties
3(4)(a) —Generally
3(4)(b) —Duty to Pay
3(4)(c) —Good Faith Attempt to Resolve Dispute
3(4)(d) —Duty to Act on Application
3(5) —Insurer's Right of Subrogation
3(6) —Beneficiaries
3(7) —Insurable Interests
3(8) —Transfer of Insured Property
3(9) —Reinsurance
3(10) —Double Insurance
3(11) —Stacking Benefits
3(12) —Statutory Right to Sue
4 Coverage
4(1) —Policy Terms & Limitations
4(2) —Proof of Loss
4(3) —Measure of Recovery
4(4) —Exclusions & Exceptions
4(5) —Public Policy Prevent Recovery
5 Automobile Insurance
5(1) —General Provisions
5(2) —Liability
5(3) —Permission by Owner
5(4) —Uninsured & Underinsured Motorists
6 Liability Insurance
7 Property Insurance

INTERNATIONAL LAW

§ 1 General Provisions
1(1) —Generally
1(2) —Comity
1(3) —Jurisdictional Immunities for Foreign States Act
2 Air Transportation
2(1) —Generally
2(2) —Applicability
2(3) —Baggage Claims
3 International Banking
4 Customs
4(1) —General Principles
4(2) —Applicable Law
4(3) —Searches & Seizures

LEGAL PROFESSION

§ 1 The Office of Attorney
1(1) —Generally
1(2) —Public Service
1(3) —Special Role of Prosecutor
2 Scope of Representation
3 Duty to Client
3(1) —General Provisions
3(2) —Conflict of Interest
3(3) —Malpractice
3(4) —Ineffective Assistance of Counsel
4 Duty to Court
4(1) —General Provisions
4(2) —Sanctions
4(3) —Contempt of Court
5 Compensation
5(1) —Compensation From Client
5(2) —Litigation Expenses
6 Practice of Law Without a License

MATAI TITLE DISPUTES

§ 1 Territorial Registrar Procedures
2 Procedural Rules
2(1) —General Provisions
2(2) —Exempt from Rules of Civil Procedure
2(3) —Judges & Justices
2(4) —Family Meeting Requirement
2(5) —Counterclaims
2(6) —Retrials
2(7) —Stays of Proceedings
3 Appellate Review
4 Traditional Determination of Matai
4(1) —General Provisions
4(2) —Split Titles
4(3) —Joint Title Holders
4(4) —Holding Two Titles
5 Initial Qualifications for Title
6 Statutory Qualifications for Title

6(1) —General Provisions
6(2) —Best Hereditary Right
6(3) —Clan Support
6(4) —Forcefulness, Character & Personality, Knowledge of Customs
6(5) —Value to Family, Village and County
7 Priority of Statutory Criteria
8 Determination of Prevailing Candidate
9 Enforcement of Matai Title Decisions
10 Removal of Matai

REAL PROPERTY

§ 1 Public Lands
1(1) —Generally
1(2) —Cession
1(3) —Eminent Domain
1(3)(a) —Generally
1(3)(b) —Notice and Hearing
1(3)(c) —Arbitrated Condemnation Proceedings
1(4) —Leases
2 Communal Lands
2(1) —Public Policy
2(2) —Evidence of Communal Ownership
2(3) —Role of Matai
2(4) —Assignment of Land to Family Members
2(4)(a) —Generally
2(4)(b) —Occupation, Cultivation & Use
2(4)(c) —Evictions & Revocation of Assignments
2(4)(d) —Registration Rights
2(4)(e) —Injunctions
2(4)(f) —Tautua (service) Obligation
2(5) —Separation-of-Structure Agreement
2(6) —Leases
2(7) —Conveyance
2(8) —Relinquishment of Land
2(9) —Mediation Requirement
3 Individually Owned Land
4 Evidence of Ownership
4(1) —Generally
4(2) —First Occupancy Claims
4(3) —Clearing and Planting
4(4) —Possession and Use
4(5) —Family Tradition and Reputation
4(6) —Records and Documents
4(7) —Hearsay
5 Adverse Possession
5(1) —General Provisions
5(2) —Elements
2(2)(a) —Generally
2(2)(b) —Actual Possession
2(2)(c) —Open & Notorious Possession
2(2)(d) —Exclusive Possession
2(2)(e) —Hostile Possession
2(2)(f) —Duration Requirement
2(2)(g) —Continuous & Uninterrupted Possession

5(3) —Tacking
6 Quieting Title
6(1) —Generally
6(2) —Burden of Proof
7 Alienation of Land
7(1) —Protective Policy
7(2) —Relation to Mortgages & Creditors
7(3) —Oral Conveyances
7(4) —Void Conveyances
7(5) —Dedication of Land
7(6) —Gifts
7(7) —Requirement of a Writing
8 Registration of Land
8(1) —General Provisions
8(2) —Land & Titles Division
8(3) —Statutory Requirements - Announcements and Notice
8(4) —Burden of Proof
8(5) —Survey and Description Requirements
8(6) —Objection to Registration
8(7) —Finality of Judgments
9 License to Use Land
9(1) —Generally
9(2) —Creation of License
9(3) —Rights Created by License
9(4) —Mortgages
9(5) —Termination
10 Easements
10(1) —General Provisions
10(2) —Prescriptive Easements
10(3) —Implied Easements
10(4) —Servitudes
11 Covenants
12 Encroachments & Encumbrances
13 Boundaries
13(1) —General Provisions
13(2) —Monuments & Markers
13(3) —Evidence
13(4) —Ambiguous Deeds
14 Property Torts
14(1) —Trespass
14(2) —Damages for Trespass
14(3) —Negligence
15 Equitable Claims
15(1) —Equitable Title
15(2) —Injunctions
15(3) —Good Faith Possessor
15(4) —Estoppel
15(5) —Constructive Trusts
16 Rights of Co-Owners
16(1) —Possession and Use of Common Estate
16(2) —Partition
17 Landlord-Tenant
17(1) —Generally
17(2) —Terms and Conditions of Lease
17(3) —Modification of Lease
17(4) —Assignment of Lease
17(5) —Responsibilities of Landlord

17(6) —Responsibilities of Tenant
17(7) —Rescission or Cancellation
17(8) —Eviction
17(9) —Authority to Lease
17(10) —Damages for Breach
17(11) —Tenants at Will
17(12) —Improvements
17(13) —Abandonment
17(14) —Fixtures
18 Zoning
18(1) —Zoning Variance
18(2) —Zoning Board
19 Riparian Rights
20 National Park of American Samoa

RELIGION

§ **1 Church Governance**
2 Congregational Church
3 Constitutional Issues
4 Dedication of Land

SAMOAN CUSTOMS

§ **1 Impact on American Samoa Laws**
2 Criminal Law
3 Family Law
3(1) —Family Membership
3(2) —Adoption
3(3) —Burial Grounds
4 Property Rights
5 Ceremonies
6 Samoan Language
7 Village Councils
8 Matai
8(1) —General Provisions
8(2) —General Pule or Authority
8(3) —Pule over Communal Land
8(4) —Family's Obligation of Service
8(5) —Removal
9 Elections

SECURED TRANSACTIONS

§ **1 Common Law**
1(1) —General Provisions
1(2) —Common Law Pledge
2 Security Interests & Priority of Claims
3 Election of Remedies Rule
4 Debtor Default
4(1) —General Provisions
4(2) —Acceleration Clause

4(3) —Debtor Fraud
4(4) —Debtor Defenses
5 Repossession of Property
5(1) —General Provisions
5(2) —Creditor's Retention of Repossessed Collateral
6 Creditor Sale
7 Garnishment of Funds
8 Guaranty
9 Third Party Debtor
10 Letter of Credit Transactions
11 Mortgages
12 Uniform Customs and Practice for Documentary Credits
13 Banking and Loans
13(1) —In General
13(2) —Suits Against Bank
13(3) —Student Loans
14 National Credit Union Administration Board

TAXATION

§ 1 Incorporation of Federal Tax Law
2 Procedural Issues
2(1) —General Provisions
2(2) —Statutes of Limitations
2(3) —Jurisdiction
2(4) —Taxpayer Interviews
3 Specific Taxes
3(1) —Estate Taxes
3(2) —Excise Taxes
3(3) —Gift Taxes
3(4) —Income Tax
3(5) —Property Taxes
3(6) —Taxation of Awards or Settlements
4 Collection
5 Refunds & Credits
5(1) —Refunds
5(2) —Credits
6 Power of Levy, Distraint & Tax Liens
7 Marital Deduction
8 Sovereign Immunity
8(1) —Prohibited Suits
8(2) —Permitted Suits
8(3) —Required Procedure
9 Taxpayer Offenses
9(1) — Failure to File
9(2) — Failure to Pay
9(3) — Taxpayer Omissions
9(4) —Reliance on Professional Advice
10 Deficiency Proceedings
10(1) —Notice Requirement
11 Industrial Incentive Act
11(1) —Tax Exemption Policy Generally
11(2) —Authority of Governor, Board
11(3) —Proof of Public Interest
11(4) —Constitutionality

TORTS

§ 1 Negligence
1(1) —Duty
1(2) —Breach
1(3) —Causation
1(4) —Negligence Per Se
1(5) —Res Ipsa Loquitur
2 Intentional Torts
2(1) —General Provisions
2(2) —Defamation
2(3) —Trespass
2(4) —Malicious Prosecution
2(5) —Conversion
2(6) —Intentional Infliction of Emotional Distress
3 Strict Liability
4 Nuisance
5 Attractive Nuisance
6 Liability for Animals
7 Malpractice
7(1) —General Provisions
7(2) —Legal Profession
7(3) —Architects
7(4) —Medical Profession
8 Vicarious Liability
8(1) —Vehicle Owners
8(2) —Family Purpose Doctrine
8(3) —Compulsory Insurance Act
8(4) —Employers
9 Common Carrier Liability
10 Government Tort Liability Act
10(1) —General Provisions
10(2) —Relation to Government Employee Suit
10(3) —Statute of Limitations
10(4) —Administrative Claim Requirement
11 Wrongful Death
12 Loss of Filial Consortium
13 Bailments
13(1) —Rights, Duties & Liabilities Between Bailor and Bailee
13(2) —Rights and Duties Between Bailor or Bailee & Third Person
13(3) —Conversion of Subject Matter
14 Comparative & Contributory Negligence
15 Joint and Several Liability
15(1) —General Provisions
15(2) —Effect of Release of One Tortfeasor
15(3) —Determining Liability
15(4) —Compensation by One Defendant
16 Indemnity
17 Subrogation
18 Damages
18(1) —General Provisions
18(2) —Pain and Suffering
18(3) —Medical Expenses
18(4) —Lost Wages and Profits

18(5) —Damages to Personal Property
18(6) —Mitigation of Damages
18(7) —Punitive, Exemplary, or Special Damages
18(8) —Interest
18(9) —Collateral Source Rule
18(10) —Effect of Preexisting Conditions
18(11) —Compensatory Damages
18(12) —Nominal Damages
18(13) —Restoration Cost Damages
18(14) —Treble Damages
18(15) —Attorney Fees
19 Statutes of Limitations
19(1) —General Provisions
19(2) —Accrual of Cause of Action
19(3) —Personal Injuries
19(4) —Minors and Insane Persons
20 Burden of Proof
21 Act of God

WILLS, TRUSTS AND ESTATES

§ 1 Execution
1(1) —General Provisions
1(2) —Lost Wills
2 Interpretation
3 Procedural Issues
4 Modification or Change
4(1) —General Provisions
4(2) —Ademption
4(3) —Dependent Relative Revocation
5 Inheritance
5(1) —General Provisions
5(2) —Intestate Succession
5(3) —Adopted Children
5(4) —Marital Inheritance
6 Inter Vivos Conveyance or Gift
7 General Legacies and Devises
7(1) —General Provisions
7(2) —Conditions and Restrictions on Legacies and Devises
8 Individually-Owned Property
9 Administration
9(1) —General Provisions
9(2) —Letters of Administration
9(3) —Trustees & Beneficiaries
10 Taxation
11 Fiduciaries
11(1) —General Provisions
11(2) —Fiduciaries for Minors
11(3) —Related to Trusts
12 Small Estates
13 Future Interests & Rule Against Perpetuities

14 Wrongful Death
15 Power of Attorney

WORKER'S COMPENSATION

§ **1 Purpose and Origin**
2 Commission Procedure
3 Injury
3(1) —Date of Injury
3(2) —Type of Injury
4 Compensation Award
4(1) —General Provisions
4(2) —Wages
4(3) —Exclusive Remedy
5 Burden of Proof
6 Employer Liability
6(1) —General Provisions
6(2) —Employer Subrogation
6(3) —Settlement Agreements
6(4) —Release
7 Medical Care
8 Judicial Review
9 Beneficiaries
10 Costs in a Worker's Compensation Proceeding

ADMINISTRATIVE LAW

§ 1 General Provisions
2 Administrative Agencies, Officers and Agents
3 Separation of Administrative and other Powers
4 Powers & Proceedings of Administrative Agencies, Officers & Agents
4(1) —General Provisions
4(2) —Due Process
4(3) —Rules and Regulations
4(4) —Agency Interpretation of Rules & Regulations
4(5) —Hearings and Adjudications
5 Judicial Review of Administrative Decisions
5(1) —Finality and Exhaustion
5(2) —Procedure
5(3) —Scope of Review
5(4) —Disposition
5(5) —Limitations on Review

§ 1 General Provisions

Because the Governor has general supervision and control of all executive departments, agencies and instrumentalities of the Government, personnel decisions are subject to his direction as long as his actions are in accordance with applicable territorial and federal laws and rules. Rev. Const. Am. Samoa Art. II, § 7; A.S.C.A. § 7.0110; A.S.A.C. §§ 4.0102, 4.0111(b). Sala v. American Samoa Gov't, 21 A.S.R.2d 14.

When the government makes rules to govern the conduct of its affairs, it must abide by those rules and act within its authority. Sala v. American Samoa Gov't, 21 A.S.R.2d 14.

Constitutional statutory authority is always paramount to administrative rule authority. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

The authority, powers, and duties of the Administrative Law Judge are administrative in nature and limited to legitimate Executive branch functions. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 2 Administrative Agencies, Officers and Agents

SEE AMERICAN SAMOA GOVERNMENT § 4(3) – AGENCIES

An agency's head may only reassign an employee involuntarily with the concurrence of the Director of Human Resources and with a finding that the reassignment be in the best interests of the government; failure to follow the regulatory standard is arbitrary and an error of law. A.S.C.A. § 4.1044(6); A.S.A.C. § 4.0804(b). Leiato v. Personnel Advisory Board, 21 A.S.R.2d 25.

If done within the scope and by the apparent authority of a de jure public officer, a de facto public officer's acts are binding on third parties; it is as if the de facto public officer were legally selected, qualified and in possession of the office. Toilolo v. Poti, 24 A.S.R.2d 1.

Under A.S.C.A. §§ 12.0205 and 12.0206 the Legislature created the office of procurement and the position of chief procurement officer, and specified certain credentials for such officer, who is appointed by the governor and confirmed by the Legislature. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

The Administrative Law Judge Act of 1998 transferred the final administrative agency hearing authority of the Personnel Advisory Board to the Administrative Law Judge. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 3 Separation of Administrative and other Powers

SEE AMERICAN SAMOA GOVERNMENT § 2 – SEPARATION OF POWERS

Administrative board, given statutory authority to advise agency and to perform such duties as governor assigns, had no authority to issue binding personnel decisions absent explicit grant, especially when Code sets forth hiring and termination procedures that do not involve board. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

As adequate safeguards exist to inform the Director of Administrative Services of the natural "termination" of insurance policies by expiration of the policy period, the legislature did not intend the statute requiring an insurer to notify the Director at least ten days prior to "cancellation" of a policy to apply to "terminations." A.S.C.A. § 22.2013. Pu`u v. Lepule, 8 A.S.R.2d 68.

Under statute providing that blank forms for petitions required of candidates for elective office should be distributed by election officer, and also providing that eligibility of candidates should be determined after they had filed the required petitions, election officer had no authority to withhold blank forms from a prospective candidate whom he did not did not believe to be eligible for election. A.S.C.A. §§ 6.0301(b),(d). Siofele v. Shimasaki, 8 A.S.R.2d 81.

Under territorial immigration statute, the immigration board determines only whether an alien is deportable; the decision actually to deport a deportable alien is within the discretion of the attorney general. A.S.C.A. § 41.0616. Leti v. Immigration Board, 8 A.S.R.2d 107.

Order of deportation must be made by the Attorney General. A.S.C.A. § 41.0616. Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

The Attorney General's Office may not simultaneously act as both counsel and legal advisor to a government agency. A.S.C.A. § 4.1034. Leiato v. Personnel Advisory Board, 21 A.S.R.2d 25.

The American Samoa Procurement Act of 1983, A.S.C.A. §§ 12.0201-.0219, carefully proscribes a system of government purchasing so as to ensure predictability and fairness, and the integrity of this system is disturbed when the Governor acts as chief procurement officer. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

Where the Governor commingles the powers of separate offices, he exceeds the scope of his constitutional and legislatively granted powers, to the prejudice of substantial rights of an affected party, and a decision by the Governor acting as chief procurement officer to award a contract must be reversed. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

§ 4 Powers and Proceedings of Administrative Agencies, Officers and Agents

§ 4(1) —General Provisions

Agency jurisdiction is generally the power granted to a particular department, board or commission of government to effectively administer the laws enacted by the Legislature under that agency's authority. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The Administrative Procedures Act of 1969 (A.S.C.A. § 4.1001 et seq) establishes the general procedures which all A.S.G. departments, boards, and commissions must follow when empowered to act as agencies with rule-making or contested case decision making authority. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

According to A.S.C.A. § 4.1032(5), administrative hearings are conducted by a "hearings officer", otherwise known as an "administrative law judge". Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The Administrative Procedures Act affords an aggrieved party the right, upon exhausting the administrative decision making process, to limited judicial review of an agency's final decision by the Appellate Division of the High Court. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The Administrative Law Judge Act of 1998 transferred the final administrative agency hearing authority of the Personnel Advisory Board to the Administrative Law Judge. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Although the Legislature has the limited, constitutional authority to replace certain judicial proceedings with administrative contested case proceedings, it may not invest an administrative hearings officer with more than quasi-judicial authority. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

An A.L.J. cannot conduct an original contested case proceeding under the A.P.A. by conducting a "trial de novo" under judicial branch rules and procedures. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

A "trial de novo" can only be conducted by the A.L.J. where there was a prior administrative decision or hearing and the A.L.J. has been specifically authorized by constitutionally enacted legislation to conduct and decide a final administrative hearing on a contested case. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

If compatible with the rules and statutes creating or implementing the agency, the A.L.J. may, as allowed under § 4.0602(a) of the Act, hear and decide contested cases in original proceedings. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

If the Legislature has directed by statute the final agency decision-making power to be exercised only by a superior agency officer, such as its director, or by its governing board, commission or chief officer thereof, the A.L.J. is allowed only to hear and recommend a decision in a contested case with the agency director, board, etc. so that the agency head can make a final, informed, agency decision as mandated by law. Nat'l

Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The A.L.J. Act confers authority to the O.A.L.J. to conduct de novo hearings in those limited situations where the A.L.J. has been clearly designated by the Legislature as the final administrative agency decision maker. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

In contested matters brought before an agency having subject matter administrative jurisdiction over the dispute, where the Administrative Law Judge has not been designated by the Legislature as the final administrative agency decision maker, the A.L.J. functions as an agency hearings officer and conducts hearings under the A.P.A. or such special statutes or rules which apply to that particular agency. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The authority, powers, and duties of the Administrative Law Judge are administrative in nature and limited to legitimate Executive branch functions. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 4(2) —Due Process

SEE CONSTITUTIONAL LAW § 7(1) – DUE PROCESS

Argument that license was "revoked" without procedural due process was unfounded where evidence shows license was never granted. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

In order to have a cognizable claim for deprivation of procedural due process, one must first possess a "liberty" or "property" interest in the government action complained of. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Procedural due process requirements are not fixed, but vary with circumstances and particular demands of the case; however, some sort of notice and hearing is required before an individual is finally deprived of a property interest. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Notice and hearing afforded to satisfy procedural due process need not be full judicial hearing. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

To satisfy requirement of procedural due process, opportunity to be heard must be granted at a meaningful time and in a meaningful manner, but need not always be granted prior to the initial deprivation of property. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Ordinarily, due process is satisfied by proceedings less than a full evidentiary hearing prior to adverse administrative action, and the sufficiency of such proceedings is to be determined in light of 1) the private interest that will be affected by the official action, 2) the risk of an erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and 3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would impose. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Procedural due process is satisfied by piecemeal proceedings wherein parties were advised of the required showing, the proofs were considered promptly by the regulating agency, parties were advised of the agency's findings of insufficiency, parties submitted further proofs, agency considered proofs and again advised parties that such proof was insufficient, agency did not issue a denial and remained open to further submission of proofs. Am. Sam. Const. art. I § 2. Ferstle v. V. American Samoa Gov't, 7 A.S.R.2d 26.

Due process requirements of notice and opportunity to be heard are not triggered until adverse administrative action constituting a "final" deprivation of property has taken place. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Recurring and intentionally dilatory tactics by agency may constitute "final" action sufficient to trigger due process requirements of notice and hearing. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

The expected benefit of a license which issues subject to articulated standards of qualification is a property interest giving rise to due process protection, although not to the full range of pre-deprivation procedural protections applicable to entitlements that are less contingent than the expectation of a license. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Because in most cases licensing will be a straightforward process, quasi-judicial evidentiary hearing in all licensing proceedings would needlessly increase government expenditures and such hearings are required only where the proposed action on a license application will be final. Am. Sam. Const. art. I § 2., A.S.C.A. § 31.1508. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Both the territorial Administrative Procedure Act and the Department of Public Safety's Standard Operating Procedure, a statement of internal management not defined as an administrative rule under the APA, afford a person under investigation the basic due-process rights of notice of the hearing, including a concise statement of allegations, and a right to a hearing at which there is an opportunity to respond and present evidence and argument on all issues involved, and conduct cross-examination. A.S.C.A §§ 4.1025, 4.1026; SOP

§§ 4.1.3, 4.1.4. Sala v. American Samoa Gov't, 21 A.S.R.2d 50.

As long as the claimant has notice and an opportunity to be heard, the claimant has been afforded adequate procedural due process. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Where employee was not given advance notice of the charges against him such that he could gather evidence and solicit witness testimony to present defense, such procedure did not substantially comport with the requirements of procedural due process. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Under the Administrative Procedures Act, hearings are to be conducted under minimal due process requirements and relaxed rules of procedure and evidence, which are set forth in A.S.C.A. §§ 4.2025-4.1037. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 4(3) —Rules and Regulations

Administrative code provision purporting to free territorial utility from liability for any damages attributable to the presence of the utility's property on consumer's premises, was inconsistent with statute providing that utility could be sued, especially in light of public policy that provisions purporting to absolve the drafting party from liability for its own negligence should be strictly construed. A.S.A.C. § 12.0207(b). Fa'avae v. American Samoa Power Authority, 5 A.S.R.2d 53.

Administrative rule allowing rejection of bids on account of ambiguities in the solicitation, if construed to allow rejection of a bid which was clearly the low one on account of an ambiguity in the solicitation that had been cured by the bids themselves, would violate competitive bidding statute prohibiting changes prejudicial to fair competition. A.S.A.C. § 10.0232; A.S.C.A. § 12.0211. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

ASG regulations which set out those situations in which non-competitive procedures are applicable do not supersede the mandatory statutory requirement relating to the utilization of an applicant supply-file system for the hiring and promotion of government employees. A.S.C.A. §§ 7.0204(b), 7.0205(b), 7.0206; A.S.A.C. § 4.0303(b). Leiato v. Personnel Advisory Board, 21 A.S.R.2d 25.

Existing coastal management rules and regulations were not nullified by the Development Planning Office's failure to formally promulgate new, statutorily required rules for administering the American Samoa Coastal Management Program. A.S.C.A. § 24.0506(a)-(b); A.S.A.C. §§ 26.0201 et seq. Le Vaomatua v. American Samoa Gov't, 23 A.S.R.2d 11.

An administrative rule adopted pursuant to the rulemaking process in the Administrative Procedure Act has the force and effect of law. A.S.C.A. §§ 1.0201(3), 4.1001-4.1010. Bryant v. Southwest Marine of Samoa, Inc., 23 A.S.R.2d 55.

The Department of Public Safety's rules governing early release programs are "rules" within the meaning of the Administrative Procedures Act ("APA"), and, therefore, must comport with the rulemaking procedures of the APA. A.S.G. v. Ki, 31 A.S.R.2d 118.

Rulemaking under the APA requires several steps, including giving meaningful advance notice of the terms or substance of the proposed action; providing interested persons reasonable opportunity to submit "data, views, and arguments, orally or in writing;" filing the rule with the Secretary of American Samoa, with the Clerk of the House of Representatives, and with the Secretary of the Senate; and making the rule available for public inspection. A.S.C.A. §§ 4.1004, 4.1005, 4.1008, 4.1010, 4.1020(a). A.S.G. v. Ki, 31 A.S.R.2d 118.

Rulemaking under the Administrative Procedures Act requires several procedural steps, including: 1) the rule-making agency must give at least 20 days notice of adoption, amendment, or repeal of any non-emergency rule, A.S.C.A. §§ 4.1004 and 4.1010, which must include statutorily required information, and be mailed to interested persons or publicized in all ASG operated broadcasting media, A.S.C.A. § 4.1004; 2) the agency must give all interested persons reasonable opportunity to submit "data, views, and arguments, orally or in writing," either at a public or other suitable means, and consider those submissions before the rule is adopted, amended, or repealed, A.S.C.A. § 4.1005; 3) the agency must file the rule with the Secretary of American Samoa, and with the Clerk of the House of Representatives and the Secretary of the Senate of the Legislature, A.S.C.A. § 4.1008 (the rule become effective 20 days after the filing is complete, or later if required by statute or rule, A.S.C.A. § 4.1009(c)(1)); and 4) the agency must make the rule available for public inspection. A.S.C.A. § 4.1020(a). Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

Except as to any person who has actual knowledge of a rule, no agency rule is valid or effective until the public inspection requirement, A.S.C.A. § 4.1020(a), has been met. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

The court will accept an agency's letter and printed rule as demonstrating substantial compliance with all applicable procedures, including a public hearing and public inspection, except the requisite filing. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

Despite procedural deficiencies, administrative rules are valid and enforceable against persons who have actual knowledge of the rules. A.S.C.A. § 1009(b). Congressional Church of

Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

When a plaintiff files a tort claim with the Attorney General at any time within the two-year period provided by § 43.1204, the running of the two-year period is stayed and the statute is tolled for such time as the Attorney General takes to act upon the claim or until such time as the claim is denied by default. Bradcock v. American Samoa Gov't, 1 A.S.R.3d 42 (App. Div. 1997).

Administrative rules must not only be consistent with the statute under which they are promulgated, but also within the scope of the legislative delegation. Lauvao v. American Samoa Gov't, 1 A.S.R.3d 224 (Land & Titles Div. 1997).

The administrative rules contained in Title 10, Chapter 2 of the American Samoa Administrative Code were promulgated by the Chief Procurement Officer pursuant to statutory authority so as to advance a particular government purpose: to maximize integrity in the procurement of construction, goods, and services. See A.S.C.A. § 12.0214; A.S.C.A. § 10.0202. A.S.C.A. § 10.0292(h)(2)(B) does not regulate government employee ethics outside the context of procurement. Lauvao v. American Samoa Gov't, 1 A.S.R.3d 224 (Land & Titles Div. 1997).

A quasi-judicial proceeding where a panel appointed by the governor reviews the decision of an administrative agency is governed by criteria of fair play under the Administrative Procedures Act, A.S.C.A. §4.1044, and is not governed by the standards of law, procedural rules, and evidentiary rules reserved for appellate review of judicial decisions. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 1 (App. Div. 1998).

An administrative rule adopted under the Administrative Procedures Act, A.S.C.A. §§ 4.1001-.1044 has the full force and effect of law. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

Under the Administrative Procedures Act, hearings are to be conducted under minimal due process requirements and relaxed rules of procedure and evidence, which are set forth in A.S.C.A. §§ 4.2025-4.1037. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

A.S.C.A. § 4.0607, which requires a "trial de novo" in all proceedings before the A.L.J. is limited in application to sections 1-5 of the Administrative Law Judge Act. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 4(4) —Agency Interpretation of Rules & Regulations

Considerable deference is given to administrative decisions involving an agency's construction of its governing statute and regulations only where the interpretation is consistent with the statutory mandate and does not frustrate legislative policy; administrative rules cannot supersede existing statutory authority where they directly conflict. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

Administrative decisions involving the construction of an agency's governing statute and regulations are given considerable deference where it appears that agency's decision is based on a permissible construction of the statute. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

§ 4(5) —Hearings and Adjudications

Procedural due process requirements are not fixed, but vary with circumstances and particular demands of the case; however, some sort of notice and hearing is required before an individual is finally deprived of a property interest. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Notice and hearing afforded to satisfy procedural due process need not be full judicial hearing. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Ordinarily, due process is satisfied by proceedings less than a full evidentiary hearing prior to adverse administrative action, and the sufficiency of such proceedings is to be determined in light of 1) the private interest that will be affected by the official action, 2) the risk of an erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and 3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would impose. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Procedural due process is satisfied by piecemeal proceedings wherein parties were advised of the required showing, the proofs were considered promptly by the regulating agency, parties were advised of the agency's findings of insufficiency, parties submitted further proofs, agency considered proofs and again advised parties that such proof was insufficient, agency did not issue a denial and remained open to further submission of proofs. Am. Sam. Const. art. I § 2. Ferstle v. V. American Samoa Gov't, 7 A.S.R.2d 26.

Because in most cases licensing will be a straightforward process, quasi-judicial evidentiary hearing in all licensing proceedings would needlessly increase government expenditures and such hearings are required only where the proposed action on a license application will be final. Am. Sam. Const. art. I § 2., A.S.C.A. § 31.1508. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Appellant's claim that the trial court failed to apply certain evidentiary presumptions was without merit, as in

administrative proceedings the agency rather than the court is to weigh the evidence and find facts; evidentiary presumptions used to facilitate fact-finding should be applied at the agency level and not at the level of judicial review. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

In an administrative proceeding a fact need not be proved beyond a reasonable doubt or even by clear and compelling evidence in order to be proved conclusively; the applicable standard is, rather, whether the fact appears from the evidence to be more probably true than not. Solomona v. Governor of American Samoa, 18 A.S.R.2d 14.

Regarding proposed land transfers, for which the Land Commission must provide the government with recommendations, the Land Commission should hold public hearings and must give reasonable notice of its deliberations to interested persons, regardless of the forum selected to "study" proposed transactions. Vaimaona v. Tuitasi, 22 A.S.R.2d 1.

Plaintiffs carry a legal duty to file administrative claims within a reasonable time or they will be barred by the doctrine of laches. Bradcock v. American Samoa Gov't, 28 A.S.R.2d 66.

The statute of limitations may begin to run before the filing of an administrative claim if the prospective plaintiff unreasonably delays the administrative filing. Bradcock v. American Samoa Gov't, 28 A.S.R.2d 182.

A government tort administrative claim filed with the ASG Attorney General pursuant to A.S.C.A. § 43.1205 is deemed effectively denied if three months elapse after the filing of the claim with no reply by the Attorney General. Bradcock v. American Samoa Gov't, 1 A.S.R.3d 42 (App. Div. 1997).

Under A.S.C.A. § 4.1041(b) a stay of an administrative decision may be issued on appropriate terms without an evidentiary hearing. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 1 (App. Div. 1998).

Judicial review of a procurement decision lies in the first instance before the Office of the Administrative Law Judge. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

Where complaint went beyond alleging of noncompliance with administrative regulations to state intentional racial discrimination, it did not belong at the administrative level. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

In aid of its jurisdiction, the Land and Titles Division of the High Court may invoke the procedural flexibility permitted by A.S.C.A. § 3.0242(b) where it finds it most consistent with natural justice and convenience to continue the case and remand it to the Land Commission. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

§ 5 Judicial Review of Administrative Decisions

SEE CIVIL PROCEDURE § 11(11) – ADMINISTRATIVE AGENCY DECISIONS

§ 5(1) —Finality and Exhaustion

Approach to question whether administrative decision is final and therefore appealable is essentially pragmatic concern for just, speedy, and inexpensive determination of every action. French v. Fa'alevao, 1 A.S.R.2d 44 (App. Div. 1980).

Where statute provided for appeal to board of registration from a denial of voter registration by election officer, and for judicial review of an adverse decision of the board of registration, court would not issue writ of mandamus to election officer ordering him to register prospective voter who had not yet appealed to board of registration. A.S.C.A. §§ 6.0224, 6.0230. Siofele v. Shimasaki, 8 A.S.R.2d 81.

One who challenges the right of another person to be registered or to vote as a qualified elector must exhaust administrative remedies before submitting the matter to court. A.S.C.A. §§ 6.0230 et seq. Election Office v. Tuika, 9 A.S.R.2d 1.

Court would not exercise its power to render a declaratory judgment where the party seeking the judgment had not exhausted his administrative remedies. Election Office v. Tuika, 9 A.S.R.2d 1.

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.

Requirement that a claimant against a government agency must exhaust administrative remedies before bringing suit comprises both waiveable and non-waiveable elements. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Laws prescribing detailed procedures for presenting claims to an agency, designed to give the agency a fair chance to review and respond to the claim before being hauled into court, may be waived by the agency. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Neither administrative agency nor court may dispense with requirements designed to ensure that case admits of judicial resolution: that there be a genuine dispute between the claimant and the agency on at least one specific and identifiable question of law and fact. Pago Petroleum

Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Jurisdictional requirement that an agency decision be final before claimant challenges it in court may not be waived. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Insofar as territorial statute prescribing final decision by administrative agency as prerequisite to judicial review simply gave the agency the right to insist on exhaustion of its internal review procedures, it was waiveable by the agency, but insofar as it incorporated the rule that courts should decide real controversies it could not be waived. A.S.C.A. § 4.1040(a). Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Administrative agency decision to issue a new invitation for bids for fuel supply contract was a final decision rejecting bidder's contention that it had a right to the contract as a result of being the low bidder in the original bidding procedure. A.S.C.A. § 4.1040(a). Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Whether an administrative agency decision was lawful and whether it was final are separate questions; a decision may be substantively illegal and yet be the real and settled position of the agency. A.S.C.A. § 4.1040(a). Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Administrative agency decision is final, for the limited purpose of giving rise to a justiciable controversy, even if there were procedural defects in the process by which it was made, provided that it is meant to reflect the settled position of the agency and leaves the parties genuinely adverse. A.S.C.A. § 4.1040(a). Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Decision by board of directors of administrative agency to reject bidder's claim of entitlement to fuel supply contract was final and gave rise to a justiciable controversy, notwithstanding the absence of a quorum at the board meeting, where (1) agency's chief executive officer implemented the decision by canceling the original award and issuing an invitation for new bids, and (2) in subsequent litigation, agency did not assert its continuing discretion to review the decision but instead sought a judicial order that the new bidding process go forward. A.S.C.A. § 4.1040(a). Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Where a statute or rule of common requires an administrative claim to be presented and prohibits suit until the claim has been rejected or a period for official action has expired, the cause of action does not accrue and the limitation period does not begin to run until the claim is rejected or the stated period expires. Mataipule v. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

Filing of the administrative claim required as a prerequisite to suit under the Government Tort Liability Act may toll the Act's statute of limitations. Mataipule v. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

Cause of action accrues under the Government Tort Liability Act when the administrative remedies under the Act are exhausted, because plaintiff cannot seek judicial relief until then. Mataipule v. Tifaimoana Partnerships, Ltd., 16 A.S.R.2d 48.

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 Gov't, 20 A.S.R.2d 1.

Although a failure to exhaust administrative remedies does not absolutely preclude judicial action, such action is permissible only in exceptional circumstances, including the exception for violations of statutory or constitutional rights. Sala v. American Samoa Gov't, 21 A.S.R.2d 50.

To file suit regarding disciplinary matters, a public employee need not await a final agency decision only if a preliminary agency decision clearly and unambiguously violates a statutory or constitutional right of the employee or if the prescribed administrative process is clearly inadequate to prevent irreparable injury. Sala v. American Samoa Gov't, 21 A.S.R.2d 50.

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.

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.

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.

Being an extraordinary remedy, a preliminary injunction is granted only when clearly warranted and may be denied when administrative remedies have not been exhausted. A.S.C.A. §

4.1040. Le Vaomatua v. American Samoa Gov't, 23 A.S.R.2d 11.

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.

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.

When the issue of the alienation of a parcel of communal land was improperly referred to the Secretary of Samoan Affairs instead of being the subject of a Land Commission hearing, the action was dismissed as being prematurely before the court. Tuioti v. Fonoti, 24 A.S.R.2d 100.

A.S.A.C. § 26.0320(h) requires that "[w]ithin 10 days after receipt of the decision the applicant or any other interested party may file a written motion for reconsideration." McGuire v. Zoning Board, 26 A.S.R.2d 59.

When a statute prescribes administrative remedies, which must be exhausted before judicial review is allowed, these procedures are jurisdictional. McGuire v. Zoning Board, 26 A.S.R.2d 59.

Judicial review is available to a person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case. McGuire v. Zoning Board, 26 A.S.R.2d 59.

Whether compelled by statute or exercised as a matter of judicial discretion, the long settled rule of judicial administration is that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy had been exhausted. McGuire v. Zoning Board, 26 A.S.R.2d 59.

When a statute prescribes administrative remedies, which must be exhausted before judicial review is allowed, these procedures are jurisdictional. McGuire v. Zoning Board, 26 A.S.R.2d 59.

The Zoning Board, and not this court, has the jurisdiction to decide the issues, at the administrative level, where court has already determined that it lacked jurisdiction to decide these issues based on party's failure to exhaust administrative remedy. McGuire v. Zoning Board, 26 A.S.R.2d 59.

Filing a complaint before administrative remedies have been exhausted fails to invoke the court's jurisdiction, but such a filing is sufficient to toll the statute, on the theory that filing an administrative claim constituted the beginning of an action. Randall v. American Samoa Gov't, 28 A.S.R.2d 70.

Courts will not grant declaratory judgments until administrative remedies have been exhausted unless such administrative remedies are inadequate. Moetoto v. Tauileva, 28 A.S.R.2d 144.

It is appropriate to stay proceedings pending completion of the dispute resolution process before the Secretary of Samoan Affairs. Meredith v. Koko, 28 A.S.R.2d 149.

Where prior resort to a mandatory administrative procedure is a prerequisite to filing a claim in court, the running of the limitations period will be tolled during the administrative proceeding. Bradcock v. American Samoa Gov't, 1 A.S.R.3d 42 (App. Div. 1997).

In most declaratory relief actions, exhaustion of administrative remedies is a prerequisite to judicial review. Tauia v. American Samoa Gov't, 1 A.S.R.3d 64 (Trial Div. 1997).

Dismissal of government employment action without prejudice was proper where dispute had not undergone three-part administrative procedure. Tauia v. American Samoa Gov't, 1 A.S.R.3d 64 (Trial Div. 1997).

Under three-part administrative procedure, government employee submits written grievance to supervisor, Director of Manpower Resources conducts an informal hearing and issues a "final decision," after which employee may appeal to Personnel Advisory Board. Tauia v. American Samoa Gov't, 1 A.S.R.3d 64 (Trial Div. 1997).

In order to obtain judicial review of an administrative decision, a potential plaintiff must exhaust all administrative remedies within the agency. McGuire v. Zoning Board, 3 A.S.R.3d 15 (App. Div. 1999).

The administrative remedies available to an individual aggrieved by a decision of the Zoning Board consist of an initial hearing and a procedure for reconsideration of the Board's decision. McGuire v. Zoning Board, 3 A.S.R.3d 15 (App. Div. 1999).

The requirement that a litigant exhaust his or her administrative remedies before bringing suit is an intensely practical one which may be judicially excused when the purposes of the requirement would not be served by requiring adherence. McGuire v. Zoning Board, 3 A.S.R.3d 15 (App. Div. 1999).

Where administrative remedies had been exhausted by entity's representative, not formally appearing on behalf of entity but

appearing for himself, entity was nonetheless entitled to judicial review, as purposes behind exhaustion requirement were met—case was not premature, hearing and reconsideration had taken place, and Board had ample opportunity to review and reverse its decision. McGuire v. Zoning Board, 3 A.S.R.3d 15 (App. Div. 1999).

The court does not have jurisdiction to review a final order of the Chief Procurement Officer (CPO) in the absence of a final decision by the Governor on the administrative appeal of the CPO's decision. Island's Choice, Inc. v. American Samoa Gov't, 3 A.S.R.3d 49 (App. Div. 1999).

Where a party has exhausted all administrative remedies within an agency and is aggrieved by a final (or effectively dispositive) decision in a contested case, the party is entitled to judicial review as prescribed under A.S.C.A. § 4.1040 et seq. Island's Choice, Inc. v. American Samoa Gov't, 3 A.S.R.3d 49 (App. Div. 1999).

A party aggrieved by a preliminary, procedural or intermediate agency action or ruling need not exhaust all administrative remedies prior to filing for judicial review if review of the final agency decision would not provide an adequate remedy. Island's Choice, Inc. v. American Samoa Gov't, 3 A.S.R.3d 49 (App. Div. 1999).

Under the broad legal themes of separation of powers, sovereign immunity, exhaustion of administrative remedies and judicial restraint, immediate review of an administrative decision will be denied where no grounds are demonstrated that remaining administrative remedies are inadequate. Island's Choice, Inc. v. American Samoa Gov't, 3 A.S.R.3d 49 (App. Div. 1999).

The administrative remedies available to an individual under A.S.C.A. § 4.1040, where the disputed procurement award could be adequately remedied by the Governor's reversal and remand of that award at the conclusion of the administrative review proceedings, the court lacks judicial review jurisdiction, and also lacks the authority to exercise its ancillary powers to issue a stay. Island's Choice, Inc. v. American Samoa Gov't, 3 A.S.R.3d 49 (App. Div. 1999).

Where plaintiff properly files administrative claim with Attorney General's office but said office fails to dispose of the claim within the prescribed 90 day time period, the claim is deemed denied and plaintiff has satisfied the prerequisite to exhaust administrative remedies. Afele-Fa`amuli v. Am. Samoa Cmty. Coll., 4 A.S.R.3d 219 (Trial Div. 2000).

Where party had moved for reconsideration or new trial before Administrative Law Judge and had also petitioned for judicial review, motion for new trial needed to be decided before judicial review could take place. Forsgren v. American Samoa Gov't, 5 A.S.R.3d 13 (App. Div. 2001).

With the possible exception of conducting the final administrative hearing in the administrative rule procurement bid dispute process under A.S.C.A. § 4.0604(e), the Administrative Law Judge Act provides no constitutionally permissible authority for the Administrative Law Judge to conduct a "trial de novo" as an "appeal" from the final administrative decision of another agency of government. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Final agency decisions are subject to limited judicial review in most instances before the Appellate Division of the High Court under sections A.S.C.A. §§ 4.1040-4.1044 of the Administrative Procedures Act or as may be particularly provided in the enabling statutes of a particular agency. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 5(2) —Procedure

Appeals of Zoning Board decisions proceed in like manner to appeals under the Administrative Procedures Act, in that the administrative record must be submitted within 30 days and the court is confined to that record, though it may receive evidence to supplement the record. Ala`ilima v. Zoning Board, 25 A.S.R.2d 146.

Appeals to the High Court from the Zoning Board "may be taken in like manner to appeals under the Administrative Procedure Act. McGuire v. Zoning Board, 26 A.S.R.2d 59.

Within 30 days from the service of the petition for appellate review, an agency is to send the court the record of the proceedings in the matter under review. A.S.C.A. § 4.1042; A.C.R. 17(a). McGuire v. Zoning Board, 26 A.S.R.2d 59.

Appellate review is confined to the record. On a party's request, "the court shall receive briefs and hear oral argument"; and the court has the discretion to receive evidence to supplement the record. A.S.C.A. § 4.1043(a). McGuire v. Zoning Board, 26 A.S.R.2d 59.

When reviewing a decision of an administrative agency, the High Court may not consider evidence absent in the administrative record unless the evidence (a) is necessary and (b) supplements or explains the evidence contained in the administrative record. A.S.C.A. § 4.1043(a). Taufete'e v. American Samoa Gov't, 27 A.S.R.2d 80.

A.S.C.A. § 4.1044 provides for a remand where substantial rights of the petitioner have been prejudiced because the arbitrators' decision violates of applicable constitutional or statutory provisions, or if it is made upon unlawful procedure. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

In reviewing an arbitration award, the reviewing Court need not determine the applicable standard of review where it is apparent that the arbitrators failed to follow the specific statutory procedures. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

A.S.C.A. § 43.1010 requires that the arbitration award contain findings or conclusions of the panel; reflecting how the award was determined. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

Where an award does not contain specific, written findings or conclusions of the panel, but merely arrives at amount, the award should be remanded. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

To determine whether a given individual or organization has standing to seek judicial review of a final administrative decision, the petitioner must demonstrate that he, she or it has (a) suffered an "injury in fact" and (b) is arguably within the statute's "zone of interests." McGuire v. Zoning Board, 3 A.S.R.3d 15 (App. Div. 1999).

Under A.S.C.A. § 4.1041, reviewable agency decisions or rulings may be instituted by filing a petition in the appellate division within 30 days, but the mere filing of the petition does not automatically stay the administrative decision to be reviewed. Island's Choice, Inc. v. American Samoa Gov't, 3 A.S.R.3d 49 (App. Div. 1999).

Once a petition for review is filed, either the agency may grant, or the court may order, a stay on appropriate terms. Island's Choice, Inc. v. American Samoa Gov't, 3 A.S.R.3d 49 (App. Div. 1999).

When administrative law matter becomes ripe for review by denial of party's motion for reconsideration or new trial, petitioner should thereafter file entire record of the administrative proceeding, including transcripts of hearings, within 30 days of request to proceed. Forsgren v. American Samoa Gov't, 5 A.S.R.3d 13 (App. Div. 2001).

The Administrative Procedures Act affords an aggrieved party the right, upon exhausting the administrative decision making process, to limited judicial review of an agency's final decision by the Appellate Division of the High Court. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

With the possible exception of conducting the final administrative hearing in the administrative rule procurement bid dispute process under A.S.C.A. § 4.0604(e), the Administrative Law Judge Act provides no constitutionally permissible authority for the Administrative Law Judge to conduct a "trial de novo" as an "appeal" from the final administrative decision of another agency of government. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The Trial Division of the High Court is not bound by an erroneous salary calculation determined by the American Samoa Government Wage and Hour Board. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

§ 5(3) —Scope of Review

Territorial workmen's compensation statute, under which reviewing court could set aside decision of workmen's compensation commission only if it was "not in accordance with the law," precluded court from reversing a finding of fact by the commission for which there was substantial evidence in the record of the commission's proceeding. A.S.C.A. § 32.0652. Continental Insurance Co. v. Workmen's Compensation Commission, 7 A.S.R.2d 105. 5

Court reviewing findings of fact by workmen's compensation would not reverse a finding unless a reasonable person could not have concluded as the commission did from the evidence in the record. A.S.C.A. § 32.0652. Continental Insurance Co. v. Workmen's Compensation Commission, 7 A.S.R.2d 105.

Workmen's compensation commission decision should be overturned on appeal only if it is not in accordance with the law. A.S.C.A. § 32.0652. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 149.

Workmen's compensation commission decision should be upheld by reviewing court if supported by substantial evidence, whether or not the court would have reached the same conclusion from the evidence as the commission did. A.S.C.A. § 32.0652. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 149.

Court will not disturb workmen's compensation commission decision if record contains evidence from which a reasonable person could conclude that the injury and death were work-related and it does not appear that the commission arbitrarily and capriciously disregarded substantial evidence to the contrary. A.S.C.A. §§ 32.0642, 32.0652. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 149.

Court should grant an interlocutory stay of an administrative board decision only if there is a substantial likelihood that the petitioner will prevail on the merits and the petitioner will be greatly or irreparably injured if the stay is not granted. Leti v. Immigration Board, 8 A.S.R.2d 107.

Decision of workmen's compensation commission may be set aside only if the decision was not made in accordance with law. A.S.C.A. § 32.0652. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Finding by workmen's compensation commission that there was an "injury or death arising out of and in the course of employment" must be supported by substantial evidence. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Trial court correctly applied the substantial evidence standard where it upheld a workmen's compensation commission decision "as long as reasonable people could differ on the facts presented to the Commission." Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Substantial evidence test in judicial review of administrative decision is limited to whether a reasoning mind could reasonably have reached the factual conclusion the agency reached, and reviewing court may neither find its own facts nor substitute its own judgment for that of the agency. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Appellant's claim that the trial court failed to apply certain evidentiary presumptions was without merit, as in administrative proceedings the agency rather than the court is to weigh the evidence and find facts; evidentiary presumptions used to facilitate fact-finding should be applied at the agency level and not at the level of judicial review. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Finding of fact based on no evidence is an error of law and thus a workmen's compensation commission award which is not supported by any evidence will be reversed, but where the commission has statutory power to find the facts its findings must be affirmed even if the reviewing court believes the evidence points the other way. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Workmen's compensation commission order should be set aside only if it was based on "whimsy evidence"; order should be affirmed if reasonable people might differ as to the weight of the evidence. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Administrative body's failure to act may be addressed through extraordinary writ proceedings. T.C.R.C.P. Rule 88. Siofele v. Hall, 12 A.S.R.2d 9.

The Workmen's Compensation Commission's findings of fact and inferences derived therefrom are to be upheld by the High Court if supported by "substantial evidence," using a reasonableness standard. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

That the evidence might also have supported a different conclusion is insufficient to warrant reversal of the Workmen's Compensation Commission's conclusions. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

An interlocutory appeal of an agency action or ruling is available only if review of the final agency decision would not provide an adequate remedy. A.S.C.A. § 4.1040(c). Sala v. American Samoa Gov't, 20 A.S.R.2d 80.

A court gives considerable deference to administrative decisions involving an agency's construction of its governing statute and regulations, unless the court deems the interpretation to be inconsistent with a statutory mandate or to frustrate legislative policy. National Pacific Insurance Co. v. Commissioner of the American Samoa Gov't's Workmen's Compensation Commission, 22 A.S.R.2d 15.

If a Workmen's Compensation Commission's statutory interpretation is permissible under the statutes and regulations, the court should defer to the Commission's decision; but if that construction is inconsistent with a statutory mandate, frustrates legislative policy, or renders the statutes ineffective, the court must set aside the decision. A.S.C.A. § 32.0652(a). National Pacific Insurance Co. v. Commissioner of the American Samoa Gov't's Workmen's Compensation Commission, 22 A.S.R.2d 15.

Being an extraordinary remedy, a preliminary injunction is granted only when clearly warranted and may be denied when administrative remedies have not been exhausted. A.S.C.A. § 4.1040. Le Vaomatua v. American Samoa Gov't, 23 A.S.R.2d 11.

If made upon unlawful procedure, a decision of the Immigration Board may be reversed, modified, or remanded for further proceedings by the Appellate Division of the High Court. A.S.C.A. § 41.0212(3). Farapo v. American Samoa Gov't, 23 A.S.R.2d 136.

The fact that this court has held, on one occasion, that substantial compliance with statutory requirements was sufficient, should not yield an expectation that public officials will ordinarily receive judicial recognition of their faulty acts. Tuitasi v. Lauofo, 25 A.S.R.2d 57.

Appellate review is confined to the record. On a party's request, "the court shall receive briefs and hear oral argument"; and the court has the discretion to receive evidence to supplement the record. A.S.C.A. § 4.1043(a). McGuire v. Zoning Board, 26 A.S.R.2d 59.

The court is not to reweigh the evidence on factual questions and is to give "appropriate weight to the agency's experience, technical competence, and specialized knowledge." A.S.C.A. § 4.1043(b). McGuire v. Zoning Board, 26 A.S.R.2d 59.

When reviewing a decision of an administrative agency, the High Court may not consider evidence absent in the

administrative record unless the evidence (a) is necessary and (b) supplements or explains the evidence contained in the administrative record. A.S.C.A. § 4.1043(a). Taufete'e v. American Samoa Gov't, 27 A.S.R.2d 80.

Post hoc rationalizations for an agency decision, which are absent from the administrative record, are not admissible upon judicial review of the decision. A.S.C.A. § 4.1043(a). Taufete'e v. American Samoa Gov't, 27 A.S.R.2d 80.

Where evidence consists of affidavits from individuals who were neither employees of the administrative decisionmaking body nor involved in the administrative proceedings, and the affidavits do not purport to clarify or explain evidence from the existing record, the evidence is not supplemental to the administrative record and is not admissible upon judicial review of the decision. A.S.C.A. § 4.1043(a). Taufete'e v. American Samoa Gov't, 27 A.S.R.2d 80.

Courts will not grant declaratory judgments until administrative remedies have been exhausted unless such administrative remedies are inadequate. Moetoto v. Tauileva, 28 A.S.R.2d 144.

A.S.C.A. § 4.1040 provides for appellate review of a final administrative decision in a "contested case." In such cases, the Appellate Division may reverse or modify an agency decision if it is contrary to law or based on factual findings which are "clearly erroneous," or if it is otherwise arbitrary, capricious or abusive of discretion. A.S.C.A. § 4.1043-44. Pen v. Lavata`i, 30 A.S.R.2d 10.

Certain administrative functions, such as the determination of whether an alien should be deported according to existing immigration and probably the determination of whether an alienation of land is improvident within the meaning of A.S.C.A. § 37.0203(c), are beyond the reach of any judicial review because they are committed to agency discretion by law. Pen v. Lavata`i, 30 A.S.R.2d 10.

An administrative decision does not concern a contested case under A.S.C.A § 4.1040 when a party was not represented at Land Commission hearings and could not contest the lease. Pen v. Lavata`i, 30 A.S.R.2d 10.

Appellate courts lack subject matter jurisdiction to consider issues that were not presented to the administrative agency. Pen v. Lavata`i, 30 A.S.R.2d 10.

There is a strong presumption in favor of judicial review of agency action, which can be overcome only by clear and convincing evidence that the Fono intended to cut off review above the agency level. The court is not convinced that the Fono intended the Territorial Correctional Facility to conduct prison affairs beyond the purview of the High Court. A.S.G. v. Ki, 31 A.S.R.2d 118.

Under A.S.C.A. § 4.1044, the court may reverse, modify or remand the decision of an agency if substantial rights of a petitioner have been prejudiced by an agency's improper or unlawful decision under this statute. Kruse v. Personnel Advisory Bd., 2 A.S.R.3d 3 (App. Div. 1998).

Under A.S.C.A. §§ 3.0208(c), 4.1040-.1044 and 10.0282, the court has authority to review administrative decisions in the procurement process; the review is confined to the record, and to questions of law, not fact. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

Under the Administrative Procedures Act, the High Court must, in most instances confine its review of administrative decisions to the record and decision as developed and issued by the agency. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Under the Administrative Procedures Act, the Court may not substitute its judgment on the weight of the facts for that of the agency and the Court is required to give appropriate weight to the agency's experience, technical competence and specialized knowledge. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

When reviewing an administrative decision, the High Court must first determine if substantial rights of the aggrieved party have been prejudiced by the agency's decision, but even with such a finding, the Court may only reverse, modify or remand the agency's decision if it finds the decision was unlawful, clearly erroneous, or arbitrary, capricious or characterized by an abuse of discretion. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Compensation orders issued by the Workmen's Compensation Commission are immediately reviewable through injunctive proceedings against the Commissioner brought before the Trial Division of the High Court. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Immigration Board decisions receive expedited limited judicial review under appeals before the Appellate Division of the High Court in which the Board is the named respondent. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The effective scope of any legislative act is limited to the subject embraced in its title and matters properly connected thereto. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Review of a final administrative decision for errors of law is a matter ordinarily within the exclusive jurisdiction of the Appellate Division of the High Court. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

§ 5(4) —Disposition

Court would not exercise its power to render a declaratory judgment where the only relief it could grant would require the court to assume a supervisory role over administrative processes. Election Office v. Tuika, 9 A.S.R.2d 1.

Chief election officer did not act arbitrarily or capriciously in denying petitioner's eligibility for election where, although petitioner supplied all the information requested on candidacy forms, he refused reasonable requests by the chief election officer for further information relevant to his eligibility. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Court could grant review by mandamus of chief election officer's determination that petitioner was ineligible to run for elective office, where statutory scheme was silent as to appeals procedure and circumstances appeared to render any alternative review procedures inadequate. T.C.R.C.P. Rules 87, 88. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Court would not compel chief election officer to find the petitioner a bona fide resident where petitioner was not on the current voter registration lists, was not present in the territory during the period at issue, refused to supply additional information requested by the chief election officer, and was identified as a registered voter in another jurisdiction during the period at issue. Siofele v. Shimasaki, 9 A.S.R.2d 3.

An agency's head may only reassign an employee involuntarily with the concurrence of the Director of Human Resources and with a finding that the reassignment be in the best interests of the government; failure to follow the regulatory standard is arbitrary and an error of law. A.S.C.A. § 4.1044(6); A.S.A.C. § 4.0804(b). Leiato v. Personnel Advisory Board, 21 A.S.R.2d 25.

The Workmen's Compensation Commission's decision that the hospital's off-island medical-referral procedure does not apply to those covered by the workmen's compensation statute is a permissible interpretation of applicable statutes and regulations, so the court will defer to that decision. A.S.C.A. § 11.0312. National Pacific Insurance Co. v. Commissioner of the American Samoa Gov't's Workmen's Compensation Commission, 22 A.S.R.2d 15.

A preliminary injunction is unwarranted when an environmental organization fails to plead specific harm to itself or its members and when it did not seek a stop order from the territorial Development Planning Office. A.S.C.A. §§ 4.1040, 24.0505(c). Le Vaomatua v. American Samoa Gov't, 23 A.S.R.2d 11.

Courts reviewing federal agency actions under the Administrative Procedures Act are limited to compelling agency actions or holding actions unlawful. Courts cannot grant monetary relief. Island’s Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

In American Samoa, pecuniary relief is not available in judicial review of administrative proceedings. Island’s Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

If a disappointed bidder wishes for monetary relief, the proper course of action is not through appellate review of administrative proceedings, but rather through such means as a trial de novo. Island’s Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

§ 5(5) —Limitations on Review

Judicial review of administrative action is limited by the requirement that there be an actual, live controversy to adjudicate. Island’s Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

A “trial de novo” can only be conducted by the A.L.J. where there was a prior administrative decision or hearing and the A.L.J. has been specifically authorized by constitutionally enacted legislation to conduct and decide a final administrative hearing on a contested case. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

ADMIRALTY

§ 1 Jurisdiction and Procedure
2 In Personam and In Rem Actions
3 Preferred Ship Mortgages & Maritime Liens
4 Maritime Contracts
4(1) —General Provisions
4(2) —Leases
4(3) —Employment Contracts
4(4) —Carriage of Goods by Sea
5 Maritime Torts
5(1) —General Principles
5(2) —Negligence
5(3) —Unseaworthiness
5(4) —Maintenance & Cure
5(5) —Limits on Liability
5(6) —Damages
5(7) —Compensation & Recovery

§ 1 Jurisdiction and Procedure

SEE CIVIL PROCEDURE § 1(6) – ADMIRALTY

Congress can vest admiralty jurisdiction in courts created by territorial legislature. Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

Adoption of Federal Admiralty Rules which allow in rem jurisdiction does not extend jurisdiction of High Court absent legislative of constitutional grant of such jurisdiction. 11 A.S.C. § 801. Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

Unless conferred by Constitution of American Samoa, admiralty jurisdiction in rem must be conferred on Trial Division by territorial legislature. Rev. Const. Am. Samoa, art. II, § 1; 5 A.S.C. §§ 1, 402, 801, 803; 11 A.S.C. § 2001. Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

High Court could have in rem admiralty jurisdiction, if Fono, subject to veto by Secretary of Interior, as sub-sub-sub delegatee of Congressional power, chose to enact statutory authorization therefor. Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

Statute authorizing High Court to issue all writs not inconsistent with law does not extend its jurisdiction to in rem admiralty proceedings. 5 A.S.C. § 403. Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

High Court may exercise in personam jurisdiction over admiralty cases pursuant to legislative grant, and may, if due process allows, attach or execute upon vessel, as in any other case. 5 A.S.C. § 3; 11 A.S.C. §§ 6201–6220. Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

Single ship refloating transaction does not constitute doing business within meaning of statute requiring permit. Am. Samoa Gov't v. Salvage Pacific, 1 A.S.R.2d 98 (Trial Div. 1983).

High Court of American Samoa has jurisdiction over in rem admiralty proceedings so long as American Samoa remains without the jurisdiction of a United States District Court; Court has corresponding discretion to transfer and receive causes to and from other courts of the United States the same as any federal court where to do so would join a timely complaint and a perfected service of process. Great American Ins. Co. v. Pacific Princess, 1 A.S.R.2d 64 (Trial Div. 1982).

Because the courts of American Samoa are not U.S. District Courts, they do not have the power implied by 46 U.S.C. § 185 to enjoin "all other claims and proceedings" against the owner of a ship. In re M/V Pearl, 2 A.S.R.2d 76 (App. Div. 1986).

Neither A.S.C.A. § 3.0208(a)(3) nor procedural rules can confer jurisdiction on the High Court to the full extent given a U.S. district court by 46 U.S.C. § 185. In re M/V Pearl, 2 A.S.R.2d 76 (App. Div. 1986).

When the Fono enacted A.S.C.A. §3.0208(a)(3) conferring admiralty jurisdiction on the High Court, it included within that jurisdiction the substantive principle of admiralty law

limiting a ship owner's liability to its interest in the vessel and its freight. In re M/V Pearl, 2 A.S.R.2d 76 (App. Div. 1986).

Neither the Fono nor the High Court can extend the jurisdiction of the High Court to encompass proceedings in other jurisdictions. In re M/V Pearl, 2 A.S.R.2d 76 (App. Div. 1986).

High Court of American Samoa is not a "district Court of the United States" within meaning of provision of the Ship Mortgage Act granting exclusive jurisdiction to preferred ship mortgages. 46 U.S.C. § 951. Star-Kist Samoa, Inc. v. The Conquest, 3 A.S.R.2d 25.

The High Court of American Samoa has in rem admiralty jurisdiction. A.S.C.A. § 3.0208(a)(3). Rainwater v. The Sea Encounter, 3 A.S.R.2d 87.

The High Court of American Samoa is not a court "of the states" within the meaning of the federal statute denying admiralty jurisdiction to state courts. 28 U.S.C. § 1333. Rainwater v. The Sea Encounter, 3 A.S.R.2d 87.

High Court, neither an article III district court nor a non-article III district court empowered under the "territorial exception," has no jurisdiction to foreclose mortgage under federal ship mortgage act, enforcement of which is permissible only by "district courts of the United States." 46 U.S.C. §§ 911-84. Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

Local statute granting admiralty jurisdiction to High Court allows Court to apply substantive principles of the maritime common law, even though Congress has never directly and specifically conferred admiralty jurisdiction upon High Court. A.S.C.A. § 3.0208(a)(3). Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

While High Court has no jurisdiction to foreclose mortgage under federal ship mortgage act, it had subject matter jurisdiction over mortgaged vessel situated in the territory and could determine validity of purported mortgage, and therefore properly placed the vessel in custodia legis upon default by mortgagor, thereby nullifying subsequent attempt by mortgagor to create second preferred ship mortgage. Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

High Court, neither an article III district court nor a non-article III district court empowered under the "territorial exception," has no jurisdiction to foreclose mortgage under federal ship mortgage act, enforcement of which is permissible only by "district courts of the United States." 46 U.S.C. §§ 911-84. Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

Admiralty jurisdiction only exists over torts occurring in navigable waters and having a sufficient "martime flavor," which is determined by reference to the parties, the sorts of vessels or other objects involved, the nature and cause of the injury, and the implications for traditional concepts of admiralty law. United Airlines Employee Credit Union v. M/V Sans End, 15 A.S.R.2d 95.

American Samoa's "coastal zone management area" is defined as including the entire island of Tutuila, along with all the other islands and all coastal waters and submerged lands for a distance of three nautical miles seaward. A.S.A.C. § 26.0207. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

The High Court of American Samoa has no authority, statutory or otherwise, to order a stay of admiralty proceedings in a federal district court. Fa'atasiga v. M/V Ocean Pearl, 19 A.S.R.2d 59.

The High Court's general admiralty jurisdiction includes limiting a shipowner's liability to the value of the ship, although lacking the statutory power of federal district courts to enforce this principle by injunction, pending the outcome of the limitation proceeding. Fa'atasiga v. M/V Ocean Pearl, 19 A.S.R.2d 59.

The High Court refused to approve parties' stipulation to lift a stay of an action in federal district court when no such stay was issued because of the lack of statutory authority to do so. Fa'atasiga v. M/V Ocean Pearl, 19 A.S.R.2d 59.

The High Court cannot enjoin proceedings in other jurisdictions in a limitation-of-liability proceeding, because the federal statute restricts jurisdiction to federal district courts and because neither the territorial legislature nor the court's rules can extend the court's jurisdiction to encompass proceedings in other jurisdictions. 46 U.S.C. §§ 145, 181 et seq.; T.C.R.C.P. Rule F(1). In re Complaint of Voyager, Inc., 23 A.S.R.2d 47.

The widely accepted rule of Restatement (Second) of Torts § 402A, which states that an action for recovery under a theory of strict products liability may be entertained by a court sitting in admiralty, is now accepted in American Samoa. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

Under the dead-ship doctrine, a vessel which has been permanently removed from navigation (and so is a "dead" ship) does not attract liens of a maritime nature, and any watercrafts deemed to be "dead" are outside a court's admiralty jurisdiction. Southwest Marine of Samoa, Inc. v. M/V Kwang Myong #71, 24 A.S.R.2d 152.

No maritime lien need be present for admiralty jurisdiction to attach in an action for partition, to try title, for possession of cargo, or by part owners attempting to secure the return of their vessel. T.C.R.C.P. Supp. Rule D. Mobile Marine Limited v. Ninna Marianne, 27 A.S.R.2d 143.

The tort of conversion is a long-standing basis for admiralty jurisdiction. Mobile Marine Limited v. Ninna Marianne, 27 A.S.R.2d 143.

In addition to the power to exercise jurisdiction over the general maritime claims of unseaworthiness and maintenance and cure, the High Court of American Samoa can exercise jurisdiction over a plaintiff's Jones Act claim. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Absent statutory authorization, the prevailing party in an admiralty case is generally not entitled to an award of attorney's fees. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

Absent statutory authorization, a prevailing party in an admiralty case is generally not entitled to an award of attorney fees. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Where Court had both common law general jurisdiction and admiralty jurisdiction, action in rem against defendant vessel to enforce personal judgment could proceed under Supplemental Rule B or C of the Trial Court Rules of Civil Procedure. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Where Court had jurisdiction to proceed under Supplemental Rule B or C for Admiralty and Maritime Claims, Court's discretion to proceed under Rule B did not defeat proper seizure of vessel and did not reflect judicial determination as to Rule C in rem claim or existence of maritime lien. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

The Fono, in explicitly overruling *Swift v. Trial Div.*, 4 A.S.R. 983 (App. Div. 1975), amended the High Court's jurisdictional reach to include *in rem* admiralty and maritime suits. Alves v. M/V Koorale, 7 A.S.R.3d 139 (Trial Div. 2003).

Congress, either deliberately or through benign neglect, has excluded American Samoa from participating equally and fully in the federal scheme of admiralty and maritime jurisdiction. Alves v. M/V Koorale, 7 A.S.R.3d 139 (Trial Div. 2003).

As a result of Congress's exclusion of American Samoa from full participation in the federal scheme for admiralty and maritime jurisdiction, owners of vessels entering Pago Pago harbor have fewer substantive rights than in any other American harbor, and perhaps fewer rights than afforded by Commonwealths having free association compacts with the United States. Alves v. M/V Koorale, 7 A.S.R.3d 139 (Trial Div. 2003).

The Constitution of the United States explicitly grants the federal judiciary the power over all cases of admiralty and maritime jurisdiction. Alves v. M/V Koorale, 7 A.S.R.3d 139 (Trial Div. 2003).

The High Court cannot issue an injunction pursuant to 46 U.S.C. § 185 and halt proceedings in a federal district court of competent jurisdiction, even though it would promote judicial economy and overall convenience. Alves v. M/V Koorale, 7 A.S.R.3d 139 (Trial Div. 2003).

The High Court cannot transfer civil actions to other district courts under 28 U.S.C. § 1404(a), despite the statute's explicit language that transfers are "for the convenience of parties and witnesses, [and] in the interest of justice." Alves v. M/V Koorale, 7 A.S.R.3d 139 (Trial Div. 2003).

The procedures governing the arrest of a vessel are more relaxed than the procedural due process requirements normally required with other pre-judgment seizures of property, including effective notice, meaningful judicial review, and a right to a prompt hearing after the seizure. Alves v. M/V Koorale, 7 A.S.R.3d 139 (Trial Div. 2003).

§ 2 In Personam and In Rem Actions

SEE CIVIL PROCEDURE § 1 – JURISDICTION

While in rem and in personam claims may be joined, res judicata applies from an in personam action against a shipowner to an in rem action against his ship (and vice versa); thus, one may not sue twice on the legal fiction that a ship and her owner are two different parties. Southwest Marine of Samoa, Inc. v. M/V Kwang Myong #71, 23 A.S.R.2d 156.

A Jones Act claim cannot be maintained in rem. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Attorney's fees, in certain limited circumstances, may be awarded as an item of damages in an in rem action, but they are not properly included as custodia legis expenses. Sembawang Maritime Ltd. v. F/V Don Juan, 31 A.S.R.2d 193.

Where Court had both common law general jurisdiction and admiralty jurisdiction, action in rem against defendant vessel to enforce personal judgment could proceed under Supplemental Rule B or C of the Trial Court Rules of Civil Procedure. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Where Court had jurisdiction to proceed under Supplemental Rule B or C for Admiralty and Maritime Claims, Court's discretion to proceed under Rule B did not defeat proper seizure of vessel and did not reflect judicial determination as to Rule C in rem claim or existence of maritime lien. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Although no affidavit accompanied complaint, as is required

for a Rule B attachment, vessel was properly seized pursuant to a Rule C claim in rem and, therefore, was properly before Court for Rule B attachment purposes as well. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Where party filed objection to Court's *in rem* jurisdiction, the Court would not view the objection as equivalent to an answer. To do so would violate Rule C(6) of the T.C.R.C.P. Supplemental Admiralty and Maritime Claims, its meaning and purpose. Eurocompany S.P.A. v. Yurgrettansflot, 7 A.S.R.3d 76 (Trial Div. 2003).

In an *in rem* action, party's motion to intervene is unnecessary where party has asserted ownership of the property at issue and the court has accepted the party's ownership claim. Alves v. M/V Koorale, 7 A.S.R.3d 80 (Trial Div. 2003).

While some courts allow the vessel itself to bring a counterclaim in an *in rem* action, American Samoa courts follow the approach permitting a claimant acting on behalf of the ship to counterclaim. Alves v. M/V Koorale, 7 A.S.R.3d 80 (Trial Div. 2003).

The Fono, in explicitly overruling *Swift v. Trial Div.*, 4 A.S.R. 983 (App. Div. 1975), amended the High Court's jurisdictional reach to include *in rem* admiralty and maritime suits. Alves v. M/V Koorale, 7 A.S.R.3d 139 (Trial Div. 2003).

§ 3 Preferred Ship Mortgages & Maritime Liens

SEE SECURED TRANSACTIONS § 11 – MORTGAGES

Since there is no United States district court in Samoa this court may foreclose a preferred ship mortgage under 46 U.S.C. § 951. Security Pacific National Bank v. M/V Conquest, 2 A.S.R.2d 40 (Trial Div. 1985).

Unification of common law and admiralty procedure was a factor court should consider in determining whether to apply prior rule that maritime liens could only be foreclosed in admiralty and ship mortgages could only be foreclosed in courts of common law or equity. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

Although Ship Mortgage Act was inapplicable in High Court of American Samoa, its provisions could be applied by analogy by court in applying general law of admiralty. 46 U.S.C. §§ 911 et seq. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

Under the general law of admiralty applicable in American Samoa, a ship mortgage, which complied with statutory requirements of a Preferred Ship Mortgage, created a maritime lien enforceable in admiralty, and its priority was the same as it would have been if foreclosed in federal district court. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

To allow lienholder to obtain higher priority by foreclosing in jurisdiction that does not have a federal district court, where Congress apparently intended to create uniform set of priorities and parties contracted accordingly, would give rise to unjust enrichment. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

One who furnishes goods or services to a vessel in custodia legis does not acquire a maritime lien against the vessel for the value of such goods or services. Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

Rule precluding creation of a maritime lien against a vessel in custodia legis does not apply to a vessel purportedly in judicial custody but neither actually nor constructively taken into marshal's possession. Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

Courts sitting in admiralty must show special care for rights of seamen. Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

Judicial seizure of a vessel legally terminates voyage and discharges crew, thus precluding lien for wages for services rendered after seizure. Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

Where vessel undertook a single fishing voyage after seizure and under limited conditions approved by the court, and where vessel was already under arrest when crew was hired, vessel remained in custodia legis during voyage and crew members had no maritime lien for wages earned during the voyage. Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

Although no lien can attach to a vessel already in judicial custody, costs of services or property furnished by court authority to preserve and maintain the vessel for the common benefit of interested parties are "expenses of justice," payable before all preexisting liens. Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

Rule that liens do not accrue on behalf of those supplying goods and services to vessel in custodia legis may not apply to a vessel allowed to ply the harbors in furtherance of its trade without restriction. S.W. California Production Credit Association v. The Vessel Conquistador (Mem.), 11 A.S.R.2d 7.

Stipulated receivership order stating that vessel should be "deemed" in custodia legis, but purporting not to create any ranking or priority of liens other than that which would otherwise exist, would arguably preserve the rights of those who, in the absence of the order, would have obtained liens on the vessel during period of receivership. S.W. California

Production Credit Association v. The Vessel Conquistador (Mem.), 11 A.S.R.2d 7.

It is not clear that court has the power to alter the rank or priority of liens by approving an ex parte stipulation to which the lienholders were not parties. S.W. California Production Credit Association v. The Vessel Conquistador (Mem.), 11 A.S.R.2d 7.

When a vessel is actually or constructively in the possession of the Court, liens do not ordinarily accrue in favor of crewmen or other suppliers of goods and services to the vessel. S.W. California Production Credit Association v. The Vessel Conquistador (Mem.), 11 A.S.R.2d 7.

For the purpose of foreclosing a ship's preferred mortgage lien, the High Court is considered a "district court" and thus has jurisdiction to enforce such a lien. 46 U.S.C. §§ 31301(2)(E), 31325-26. United Airlines Employee Credit Union v. M/V Sans End, 15 A.S.R.2d 95.

Upon judicial sale in a civil action in rem brought to enforce a preferred mortgage lien, the preferred mortgage lien has priority over all claims against the proceeds, except for (1) expenses and fees allowed by the court, (2) costs imposed by the court, and (3) preferred maritime liens, which include those for damages arising out of maritime tort. 46 U.S.C. §§ 31325, 31301(5)(B). United Airlines Employee Credit Union v. M/V Sans End, 15 A.S.R.2d 95.

Claims for costs incurred in securing vessel while it was in custodia legis prior to judicial sale are recoverable from the proceeds of the sale and have priority over the claims of the litigants. 46 U.S.C. § 31326. United Airlines Employee Credit Union v. M/V Sans End, 15 A.S.R.2d 95.

Wharfage charges can give rise to a maritime lien, though a lien does not arise against a vessel "withdrawn from navigation," which includes an abandoned vessel. Southwest Marine of Samoa, Inc. v. M/V Kwang Myong #71, 23 A.S.R.2d 156.

Appropriate reasons to arrest a vessel include guaranteeing safe return of the vessel to the chosen forum and preventing defendants from retaining the proceeds earned by the sale of the cargo. T.C.R.C.P. Supp. Rule D. Mobile Marine Ltd. v. Ninna Marianne, 28 A.S.R.2d 1.

Security for a vessel may be effectuated by a bond provided by the party designated to possess the vessel after its release, to be held by the court. T.C.R.C.P. Supp. Rule E(5)(a). Mobile Marine Ltd. v. Ninna Marianne, 28 A.S.R.2d 1.

A maritime bond cannot exceed the total value of the vessel. T.C.R.C.P. Supp. Rule E(5)(a). Mobile Marine Ltd. v. Ninna Marianne, 28 A.S.R.2d 88.

When a vessel is seized and sold, the costs of holding the vessel in custodia legis are generally given priority over other claims. Pacific N. Marine Fuels, Inc. v. M/V Clover #7, 30 A.S.R.2d 152.

Claims incurred while the vessel is in custodia legis must be proven and supported just as any other claim. Not only must the claims be equitable and reasonable, they must inure to the benefit of all claimants. Pacific N. Marine Fuels, Inc. v. M/V Clover #7, 30 A.S.R.2d 152.

The forfeiture provision of A.S.C.A. § 28.1510 creates a defense for debtors in civil court, not third parties not in privity with the creditor. Pacific N. Marine Fuels, Inc. v. M/V Clover #7, 30 A.S.R.2d 152.

A person furnishing goods or services to a vessel after its arrest (in custodia legis) does not acquire a maritime lien against the vessel for the value of those goods or services. Pacific N. Marine Fuels, Inc. v. M/V Clover #7, 30 A.S.R.2d 152.

Administrative expenses are recoverable when the expenditures inure to the benefit of all claimants, where they contribute to or create an available fund. Pacific N. Marine Fuels, Inc. v. M/V Clover #7, 30 A.S.R.2d 152.

Claims for costs incurred in securing a vessel while it is in custodia legis prior to judicial sale are recoverable from the proceeds of the sale and have priority over the litigants' claims. The principal qualification is that the services or goods for which payment or reimbursement is sought must be necessary for the care and preservation of the vessel and be for the common benefit of all parties who have a claim to the vessel. Sembawang Maritime Ltd. v. F/V Don Juan, 31 A.S.R.2d 193.

Seamen’s liens for wages take priority over all preferred liens except for expenses of justice while the vessel is in custodia legis. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

Party was not an “innocent lienholder” and should have known the applicable law even if industry practice was contrary to the law. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

§ 4 Maritime Contracts

SEE CONTRACTS

§ 4(1) —General Provisions

RESERVED

§ 4(2) —Leases

No writing is necessary to establish valid contract for lease of vessel. Steffany v. Scanlan, 3 A.S.R. 456.

Lessors recognize lease as valid by delivering ship to possession of lessees. Steffany v. Scanlan, 3 A.S.R. 456.

Lessees recognize lease as valid by accepting possession, and such delivery waives alleged condition precedent to execution of lease. Steffany v. Scanlan, 3 A.S.R. 456.

Agreement by lessee to indemnify owner of ship for loss of ship in consideration of owner's withdrawing petition for injunction was supplementary agreement to original lease and not new lease. Steffany v. Scanlan, 3 A.S.R. 456.

Change in lease agreement which would require lessee to procure insurance for leased vessel is modification of original terms and, if without consideration, is invalid, and failure of lessee to procure insurance, even though marine insurance is available, is not breach of contract. Steffany v. Scanlan, 3 A.S.R. 456.

Repudiation of a contract must be unequivocal and absolute, and petition for injunction by lessor to prevent ship from going out to sea before insurance is procured is not such repudiation. Steffany v. Scanlan, 3 A.S.R. 456.

Lessor is under no obligation to accept surrender of lease from lessee, and where lessor refuses to take back leased ship, lessee is still obligated under lease. Steffany v. Scanlan, 3 A.S.R. 456.

Lessors suing for back rent are not entitled to recover for rent accruing after date petition was filed. Steffany v. Scanlan, 3 A.S.R. 456.

Finding of trial court that signature of one of owners of vessel on lease agreement was not necessary to valid lease was not in error. Scanlan v. Steffany, 3 A.S.R. 583.

Evidence supports conclusion that parties did not intend signature of one of owners to be condition precedent to execution of valid lease. Scanlan v. Steffany, 3 A.S.R. 583.

Change of possession of ship is equivalent of delivery, executing lease agreement. Scanlan v. Steffany, 3 A.S.R. 583.

Where lessor acquiesces in lessee's possession of ship for period of months, he waives possible condition precedent in lease, which was not complied with. Scanlan v. Steffany, 3 A.S.R. 583.

Agreement by lessee to indemnify lessor for loss of ship in consideration for lessor's withdrawal of repudiation does not constitute new lease since it does not contain all terms necessary to lease but is supplementary agreement. Scanlan v. Steffany, 3 A.S.R. 583.

Modification of lease to strike condition that insurance should be acquired for vessel by lessees only if available in American Samoa was invalid since there was no consideration for such modification. Scanlan v. Steffany, 3 A.S.R. 583.

Where lessor brings an injunction suit to regain possession of ship, and then withdraws suit in consideration for lessee's promise of indemnification if ship should be lost, this is not repudiation of lease agreement where lessee does not treat it as such and continues to possess ship. Scanlan v. Steffany, 3 A.S.R. 583.

Attempted surrender of lease does not release lessee from obligations unless it is accepted by the lessor. Scanlan v. Steffany, 3 A.S.R. 583.

Circumstantial evidence concerning failure of lessee's business may be weighed by court in considering validity of attempted surrender lease. Scanlan v. Steffany, 3 A.S.R. 583.

Law providing that lease of land in writing constitutes tenancy at will is not applicable to ships nor interest therein. Scanlan v. Steffany, 3 A.S.R. 583.

§ 4(3) —Employment Contracts

Outfitting of vessel for profit-making voyage that was undertaken after seizure of vessel and that would not recognizably enhance its value was not "expense of justice," and crewmembers had no prior claim for wages earned during voyage. Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

The terms of a seaman's contract were adjudicated as being those contained in his payroll form when the contract reflected the parties' negotiations by telephone and when the claimed parol variation would be essentially gratuitous on the captain's part. Zuguin v. M/V Captain M.J. Souza, 23 A.S.R.2d 7.

When a seaman had worked to prepare a vessel for an upcoming voyage before leaving the vessel, he was entitled to compensation on a quantum meruit basis. Zuguin v. M/V Captain M.J. Souza, 23 A.S.R.2d 7.

U.S. law requires that, in certain circumstances, seamen be given written fishing agreements, specifying the period of the agreement, the amount of their compensation, and any other agreed upon terms. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

A seaman retained in violation of the law requiring a written fishing agreement is entitled to compensation for services rendered at the agreed upon rate, or the highest rate of wages at the port in which he was engaged, whichever is higher. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

Even where a written fishing agreement does not exist, the Seaman Protection and Relief Act does not enable a seaman to accept 95% of his agreed upon wages and then, years later, seek to retroactively void his unwritten agreement and claim significantly higher statutory wages. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

The "highest rate of wages" language contained in § 11107 of the Seaman Protection and Relief Act entitles an aggrieved seaman to the highest rate of wages paid a comparable seaman, not any seaman. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

All deckhands are not per se comparable, however, a seaman only need make a prima facie showing of comparability in order to make out a § 11107 claim. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

Where other vessels in same fleet functioned essentially the same, where all vessels in fleet maintained contact with each other and functioned as a group, where crewmembers often serve on different vessels throughout fleet, and where authority of fish captain was consistent throughout fleet it was appropriate to compare wages of crewmembers throughout fleet for purposes of damages under the Seaman Protection and Relief Act. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

A ship's master, or anyone possessing the ship's master's responsibilities, may not recover penalty wages under 46 U.S.C. § 11107 because such individual is charged with the responsibility of securing written fishing agreements with the seamen. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

Although case involved many fishermen who had been originally "engaged" to fish in Croatia, they were subsequently hired on a trip-to-trip basis, originating and concluding in the western Pacific, and had been promised wages consistent with those of the western Pacific tuna fishing industry. Their recovery was therefore not limited to the wages of the highest paid comparable seaman engaged in Croatia, but could be based on wages made by other seaman in same fleet. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

When a seaman performs work for a vessel in reasonable anticipation of a prospective fishing trip, that seaman is entitled to be compensated for his services on a quantum meruit basis. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

It is a common understanding in the fishing industry that a fishing trip is only completed when the catch has been off-loaded to the cannery and the vessel has been cleaned. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

The fundamental purpose of Seaman Protection and Relief Act is not to penalize, but rather to compensate seamen for their wages when a company fails to provide its crew with written fishing agreements. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

As a general principle of maritime law, a seaman who falls ill or is injured during a voyage is entitled to maintenance, cure, and wages for the remainder of the voyage. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Under 46 U.S.C. § 11107, when read in light of the larger statutory scheme, the Seamen Protection and Relief Act, and together with 46 U.S.C. § 10601, ships' masters are not entitled to statutory wages. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Under 46 U.S.C. § 10601 and § 11107, a seaman's statutory wage claim gives rise to a maritime lien having priority over a preferred ship mortgage lien. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 225 (Trial Div. 2000).

The purpose of the portion of statutory wages awarded under 46 U.S.C. § 11107 that is more than what the seaman would have received had his fishing agreement been valid is designed to punish ship owners who illegally engage seamen. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

Historically, the purpose of the requirement of a written shipping articles agreement under 46 U.S.C. § 11107 was to protect seamen from exploitation and mistreatment, while its modern purpose is to avoid disputes about wages and other terms and conditions of employment. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

Statutory wages awarded under 46 U.S.C. § 11107 are not punitive damages since the statute merely substitutes for an oral fishing agreement and calls for the rate of wages that are to be paid. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

Statutory wages awarded under 46 U.S.C. § 11107 give rise to preferred maritime liens that are recoverable in rem and are granted the highest priority after in custodia legis costs. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

In contrast to 46 U.S.C. § 10313(g), 46 U.S.C. § 11107 has no language limiting recovery of penalty wages only as against the vessel's master or owner and therefore permits recovery in rem against the sale proceeds of a fishing vessel. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div.

2003).

Operation of 46 U.S.C. § 11107 is automatic, rendering oral agreements between a crew and the employer void and awarding statutory wages, regardless of whether the employer made partial payment of wages on the agreements' terms. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

A wronged seaman is entitled to recover the higher of either the wages he orally agreed to, or the higher rate of wages that could be earned by a seaman at the port of hire who has the same rating (rank, job classification, duties and ability) as the complainant. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

A court examines the totality of the circumstances in determining whether a seaman has demonstrated that he or she is comparable to another seaman for purposes of 46 U.S.C. § 11107. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

The trial court's finding that crew members, other than ordinary deckhands, were "interchangeable" with crew members of other ships and fleets without reference to their rank, job classification, duties and abilities was clearly erroneous in light of the crew's burden of proving its case by a preponderance of the evidence and the lack of facts that would support such a finding. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

§ 4(4) —Carriage of Goods by Sea

Under the Carriage of Goods by Sea Act, a carrier has an affirmative duty to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried. Salofa v. South Seas Steamship, Inc., 3 A.S.R.3d 130 (Trial Div. 1999).

The plaintiff bears the initial burden of establishing a prima facie case for breach, and does so by establishing that the goods were damaged while in the carrier's custody or by establishing that the goods were delivered to the carrier in good condition but were found to be damaged upon receipt. Salofa v. South Seas Steamship, Inc., 3 A.S.R.3d 130 (Trial Div. 1999).

Under the Carriage of Goods by Sea Act, a carrier's liability is limited to $500 per item, unless the shipper chooses to declare a higher value. Salofa v. South Seas Steamship, Inc., 3 A.S.R.3d 130 (Trial Div. 1999).

The carrier bears the initial burden of offering prima facie evidence of adequate notice of the limit of liability, which is satisfied by showing that the bill of lading advised the shipper of the liability limitation and of the options for increasing that amount, and including such language in the bill of lading puts the shipper on constructive notice of the liability limitation; actual notice is not required. Salofa v. South Seas Steamship, Inc., 3 A.S.R.3d 130 (Trial Div. 1999).

Although a shipper is unaware of the bill of lading and so does not have even constructive notice of his options for coverage, he is nevertheless bound by its terms where he has instructed a car dealership to deliver a car on his behalf. That authorization creates a legal agency relationship between the shipper and the dealership, and the latter, authorized to deliver goods of another to a common carrier for transportation, may be treated as having authority to stipulate for and accept the terms of the contract of carriage, and the owner will be presumed to have full knowledge of the contract and will accordingly be bound by its terms. Salofa v. South Seas Steamship, Inc., 3 A.S.R.3d 130 (Trial Div. 1999).

In the ordinary course of events it is not necessary for the shipper to sign a bill of lading, and he may be bound by its terms and conditions even though he has not signed it. Salofa v. South Seas Steamship, Inc., 3 A.S.R.3d 130 (Trial Div. 1999).

Where the plaintiff offers evidence giving some credence to his claim of damages, the claim is not frivolous, and an award of attorney's fees to the defendant would not be appropriate. Salofa v. South Seas Steamship, Inc., 3 A.S.R.3d 130 (Trial Div. 1999).

§ 4(5) —Remedies & Damages

Punitive damages cannot be recovered against a vessel. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

Statutory wages awarded under 46 U.S.C. § 11107 are not punitive damages since the statute merely substitutes for an oral fishing agreement and calls for the rate of wages that are to be paid. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

The doctrine of quantum meruit awards a plaintiff an amount equal to the value of the benefit he has provided to protect against the unjust enrichment of the beneficiary. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

Under quantum meruit, crew entitled to the value of the benefit they conferred upon their vessel and its owners where crew was instrumental in keeping the vessel in working order even though the imminent voyage never materialized because the vessel maintained a higher price upon judicial sale than would have been realized if the vessel were run-down. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

Calculation of crew's recovery in quantum meruit for maintaining a vessel before a voyage that never occurs is the actual value of the benefit conferred, not the hypothetical benefit that might have accrued had the ship taken the voyage. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

American Samoa law allows in rem recovery against a vessel of a quantum meruit award. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

§ 5 Maritime Torts

SEE TORTS

§ 5(1) —General Principles

A structure may be a vessel or other appropriate maritime object for the purpose of some admiralty rules but not for others. In re M/V Tradition, 6 A.S.R.2d 99.

In admiralty, the defendant has the burden of proving the degree of fault of settling third-parties not present before the court; once the exact percentages of fault are established, liability and assessed damages are calculated on a pro rata basis. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 108.

The equitable alter ego doctrine is applicable in admiralty but will only disregard a corporate entity upon a proper factual showing. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 145.

In the absence of any even minimally probative evidence tending to show that a defendant bore some quantifiable measure of responsibility, the court will decline to arbitrarily guess what that percentage may be. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

§ 5(2) —Negligence

Having been made applicable by statute to actions for personal injury or property damage and so being compatible with the legislature's will, comparative negligence is properly incorporated into admiralty. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

Rejecting "expert user," assumption of risk, and contributory negligence defenses as barring recovery, American Samoa adopts the comparative-negligence approach in admiralty. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

In determining proximate cause for tort cases in admiralty, American Samoa adopts the approach of weighing all of plaintiff's conduct, defendant's liability, and all other factors causing the loss or injury. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

In admiralty it is well settled that fishing vessel owners and commercial fishermen may recover for lost fishing profits under the general maritime law of negligence. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

Where a plaintiff pleads both Jones Act negligence and unseaworthiness, a showing of negligence also establishes unseaworthiness. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

There are two elements which a plaintiff must prove in a Jones Act negligence claim: (1) that there was a negligent act by the defendant, and (2) that there is a but-for causal connection between the act and the injury. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

The Jones Act is to be liberally construed in favor of plaintiffs. The "slight negligence" necessary to support an action under FELA or the Jones Act is defined as a failure to exercise great care, and that burden of proof is much less than the burden required to sustain recovery in ordinary negligence actions. Evidence of even slight negligence is sufficient to find liability under the Jones Act. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

The plaintiff's burden to prove the but-for causation element of a Jones Act negligence claim is minimal. If the employer's negligent act or omission played any part, however slight, in bringing about the injury, the employer is liable. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

A plaintiff, injured from disentangling a net from a vessel's propeller, establishes but-for causation, in that but-for the negligent entanglement of the net in the vessel's propeller, and the plaintiff's cutting of the net away, the plaintiff would not have received his injuries. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

The assumption of risk defense is not a defense to either an unseaworthiness claim or a Jones Act claim. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

The doctrine that a defendant takes the plaintiff as he finds him applies to Jones Act claims. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

A claim of unseaworthiness lies against a vessel's owner. A Jones Act negligence claim, on the other hand, lies against a seaman's employer. A seaman's employer is vicariously liable for the negligence of the vessel's captain and any other employee. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

A Jones Act claim cannot be maintained in rem. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Pre-judgment interest is not allowed on either Jones Act or unseaworthiness claims. However, post-judgment interest

under the Jones Act is allowed from the date of a court's final decree. Interest may also be awarded in general maritime cases at the court's discretion. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

When a moving vessel strikes an anchored vessel, a presumption of negligence on the part of the moving vessel arises. This presumption is even stronger where the moving vessel lurches onto the shore and strikes a dry-docked vessel. Rizzo v. M/V Fotu O Samoa, 30 A.S.R.2d 131.

Persons engaged in the business of navigation are bound to see that the vessel is seaworthy, well manned, and equipped for the business in which it is engaged, and whenever a collision ensues from the defective condition or unfitness of the colliding vessel for the voyage, the vessel and the owner are liable. Rizzo v. M/V Fotu O Samoa, 30 A.S.R.2d 131.

Where a company is aware that fraying is going to occur in a vessel's throttle cables, resulting in navigational difficulties and possible collisions, the failure to take steps to prevent such an occurrence may be grossly negligent, reckless or willful. However, in order to so find, the court requires evidence of the standard of care in the industry, the number of accidents that occur in the same type of situation, the cost of replacement of faulty parts, etc. Rizzo v. M/V Fotu O Samoa, 30 A.S.R.2d 131.

The duty of care that employers owe to seamen under the Jones Act is identical to the duty of care that employers owe to employees under the Federal Employer's Liability Act ("FELA"), 45 U.S.C. Sections 51 et seq. The duty of care employers owe under the FELA is not merely a duty to exercise reasonable care, as in the typical negligence suit, but is rather a duty to exercise "great care". Clifton v. Voyager, 31 A.S.R.2d 12.

Determinations of negligence in admiralty cases are findings of fact which will be given application unless clearly erroneous. In general, fact finding does not require mathematical certainty. Factfinders, whether jurors or judges are supposed to reach their conclusions on the basis of common sense, common understanding and fair beliefs, grounded on evidence consisting of direct statements by witnesses or proof of circumstances from which inferences can fairly be drawn. Clifton v. Voyager, 31 A.S.R.2d 12.

Since the question of but-for causation under the Jones Act is a question of fact, a factfinder's conclusions with respect to causation must stand unless clearly erroneous. Clifton v. Voyager, 31 A.S.R.2d 12.

The foreseeability question restricts the imposition of liability to cases in which the injuries to the plaintiff are the natural and reasonably predictable consequences of a negligent action, or in the case of an unseaworthiness claim, of a ship's unseaworthiness. It is clearly foreseeable that a crewmember must repair a vessel when it is damaged to the point of being dead in the water. Volunteering to assist in such repairs is a normal response to the stimulus of a dangerous situation. Clifton v. Voyager, 31 A.S.R.2d 12.

The Jones Act provides a cause of action to seamen for personal injuries sustained in the course of their employment. Estate of Young v. M/V Diana Lynn, 1 A.S.R.3d 154 (Trial Div. 1997).

In order for an individual to be considered a "seaman" under the Jones Act, (1) the individual's duties must contribute to the function of the vessel or the accomplishment of its mission; and (2) the individual must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in nature and duration. Estate of Young v. M/V Diana Lynn, 1 A.S.R.3d 154 (Trial Div. 1997).

All circumstances of an individual's employment must be weighed to determine whether he/she has a sufficient relationship to the navigation of vessels and the perils attendant thereon. Estate of Young v. M/V Diana Lynn, 1 A.S.R.3d 154 (Trial Div. 1997).

Where vessel had remained in dry dock and tied up at port for at least three years, individuals who had repaired vessel in attempt to ready it for navigation were considered "land-based" employees, not seamen, and were not entitled to relief under the Jones Act. Estate of Young v. M/V Diana Lynn, 1 A.S.R.3d 154 (Trial Div. 1997).

Where port engineer had no authority to hire crewmembers, his statement that Plaintiffs were "crewmembers' carried no weight in determining seaman status. Estate of Young v. M/V Diana Lynn, 1 A.S.R.3d 154 (Trial Div. 1997).

Where workers possessed expectations of becoming seamen in the future, such expectation was insufficient to raise workers to seamen status in present. Estate of Young v. M/V Diana Lynn, 1 A.S.R.3d 154 (Trial Div. 1997).

Requirement that employee's work be done at sea is first basic principle of being a seaman. Estate of Young v. M/V Diana Lynn, 1 A.S.R.3d 154 (Trial Div. 1997).

The Jones Act provides a remedy for seaman injured in the course of their employment as a result of their employer's negligence. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

The Jones Act made the Federal Employers' Liability Act applicable to maritime law, thereby authorizing a right to recovery for seamen injured due to the negligence of their employer, its agents or employees. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Under the Jones Act standard of negligence, a shipowner has an obligation to his seamen that is substantially greater than the obligation of an ordinary employer to employees. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Under the Jones Act, a shipowner has an absolute, nondelegable duty to exercise reasonable care in furnishing his seamen a reasonably safe place to work, a seaworthy ship and safe equipment. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Under the Jones act, a shipowner-employer need not guarantee the safety of the vessel, but must take reasonable precautions to ensure it is safe. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

In order to prove negligence under the Jones Act, a plaintiff must prove actual or constructive knowledge, while the evidentiary showing necessary to establish unseaworthiness is predicated without regard to fault or the use of due care. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Under the Jones Act, there is an absolute, nondelegable duty of the shipowner to maintain a reasonably safe vessel, extending to equipment and appliances used on the vessel. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

A shipowner's financial difficulties may provide an explanation, but do not establish a defense for a breach of the shipowner's duty to maintain the ship and its equipment in reasonably safe and seaworthy condition. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

A shipowner does not have a duty to supply the best, newest, or perfect tools, gear, or appliances, so long as the gear supplied was reasonably safe and suitable. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

A shipowner is not required to provide an accident-proof ship nor the latest and best safety devices, but only to provide a safe place in which to work and safe and seaworthy appliances with which to do the work. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

If the safety equipment that would have prevented the injury or death were impossible to install, then of course a shipowner cannot be held to have breached its duty of reasonable care. However, the failure to provide reasonable and procurable safety equipment, if such failure proximately causes the injury, is grounds for a finding of negligence. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

The standard of causation under the Jones Act is whether an employer's negligence caused, in whole or in part, the seaman's injury. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Liability under the Jones Act is found where the employer's negligence played any part, even the slightest, in producing injury or death. This "slight" standard of causation is often called "featherweight." TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

The right of a seaman to recover under the Jones Act, and his right to maintenance and cure under admiralty law, are independent and cumulative. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Where negligence is found against an employer by a plaintiff seaman under the Jones Act, it supplements but does not supplant further remedies for maintenance and cure. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

The liability of a shipowner for maintenance and cure of a sick or injured seaman exists irrespective of fault or negligence on the part of the shipowner or his agents. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

§ 5(3) —Unseaworthiness

Under general maritime law, an owner or operator of a vessel has an absolute duty to ensure that the vessel is seaworthy. This is a no-fault duty, and no showing of negligence or knowledge is required. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

A seaworthy vessel is one that is reasonably fit and suitable for its intended use. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

To prevail on a claim for unseaworthiness, a plaintiff must show both unseaworthiness and proximate causation. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

The condition of seaworthiness is a relative one. A ship can be unseaworthy as to only one seaman. A condition of unseaworthiness can arise once the ship has set out to sea or from a transitory condition. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

The factfinder determines the question of seaworthiness. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Where a plaintiff pleads both Jones Act negligence and unseaworthiness, a showing of negligence also establishes unseaworthiness. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

The assumption of risk defense is not a defense to either an unseaworthiness claim or a Jones Act claim. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

A claim of unseaworthiness lies against a vessel's owner. A Jones Act negligence claim, on the other hand, lies against a seaman's employer. A seaman's employer is vicariously liable for the negligence of the vessel's captain and any other employee. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Pre-judgment interest is not allowed on either Jones Act or unseaworthiness claims. However, post-judgment interest under the Jones Act is allowed from the date of a court's final decree. Interest may also be awarded in general maritime cases at the court's discretion. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

In unseaworthiness cases, the plaintiff must not only establish cause in fact, but also proximate cause, i.e., that the injury was either a direct result or a reasonably probable consequence of the unseaworthiness. The question of proximate cause examines whether a cause is so attenuated in time or space, or whether an act or actor has intervened in the causal chain, so as to relieve the defendant of liability. Clifton v. Voyager, 31 A.S.R.2d 12.

The foreseeability question restricts the imposition of liability to cases in which the injuries to the plaintiff are the natural and reasonably predictable consequences of a negligent action, or in the case of an unseaworthiness claim, of a ship's unseaworthiness. It is clearly foreseeable that a crewmember must repair a vessel when it is damaged to the point of being dead in the water. Volunteering to assist in such repairs is a normal response to the stimulus of a dangerous situation. Clifton v. Voyager, 31 A.S.R.2d 12.

Under general maritime law, a shipowner is absolutely liable for injuries caused to a seaman if such were received as a result of the unseaworthiness of the ship or failure to supply and keep in order the appliances of the ship. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

The shipowner's liability for personal injuries under the doctrine of unseaworthiness is strict, absolute, and without fault. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

A shipowner has the duty, owed to every seaman employed on board, to maintain a ship's equipment in proper operating condition. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

The failure of a piece of vessel equipment under proper and expected use is sufficient to establish unseaworthiness. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

To prevail on a claim of unseaworthiness. a plaintiff must show both unseaworthiness and proximate causation. The unseaworthy condition must have played a substantial part in bringing about or actually causing the injury, and the injury must be either a direct result or a reasonably probable consequence of the unseaworthy condition. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

§ 5(4) —Maintenance & Cure

The duty of the shipowner to provide for the ill or injured seaman can be traced as far back as the Sea Codes of the Middle Ages. This right, to recover maintenance and cure without regard to fault, is among the most pervasive incidents of the responsibility anciently imposed upon a shipowner. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

Under general maritime law, a shipowner has an obligation to care for a seaman injured during the course of maritime employment. The obligation includes payment for any injury or illness, which manifests itself during employment, regardless of the source of the injury or whether it preexisted the journey. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

To be eligible to claim maintenance and cure against a shipowner, a seaman must be "in the service of his ship" at the time of the injury. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Under maintenance and cure a seaman is entitled to receive food and lodging of a kind and quality received aboard ship, as well as necessary medical services to the point of maximum cure. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

The point of maximum cure is reached on the date that a seaman's physician determines that further treatment is unlikely to result in the betterment of the seaman's condition. This can include a determination that the incapacity is permanent. Doubts are to be resolved in the seaman's favor. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

The court has discretion whether to award interest on unpaid maintenance and cure. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

In a normal case of unpaid maintenance and cure, pre-judgment interest is payable from the date the payment was initially due the plaintiff. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Attorney's fees are allowed for a bad-faith refusal to pay maintenance and cure. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Where negligence is found against an employer by a plaintiff seaman under the Jones Act, it supplements but does not

supplant further remedies for maintenance and cure. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

The liability of a shipowner for maintenance and cure of a sick or injured seaman exists irrespective of fault or negligence on the part of the shipowner or his agents. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Maintenance and cure obligations arise when a seaman becomes disabled through no fault of his own while in service of the ship. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

The only requirement for eligibility under the theory of "maninenance and cure" is that the seaman be "in the service of his ship" at the time of the injury. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Some evidentiary proof must be offered regarding the seaman's actual expenditures or actual liability incurred for maintenance and cure. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Under "maintenance and cure", a vessel's owner is obliged to pay the medical expenses of the seaman until he reaches maximum recovery or until the disease or illness he suffers from is recognized as incurable. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

A seaman's recovery for medical expenses under "maintenance and cure" is limited to the amount actually expended or liability actually incurred. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Maximum cure is achieved when it is probable that further treatment will result in no betterment of the seaman's condition. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

A shipowner's failure to meet his maintenance and cure obligation may result in liability for consequential and incidental damages, including attorney's fees, where the employer is "willful and persistent" in his refusal to pay maintenance and cure. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

A "maintenance and cure" claim may merit an award of punitive damages and attorney's fees, where the shipowner: (1) is lax in investigating a claim; (2) terminates benefits in response to the seaman's retention of counsel or refusal of a settlement offer; and (3) fails to reinstate benefits after diagnosis of an ailment previously not determined medically. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

§ 5(5) —Limits on Liability

The "flotilla rule" governing limitation of liability for accidents involving more than a single vessel states that in "pure tort" cases, in which the parties have no legal relationship to one another, the owner's liability cannot exceed the value of the "offending vessel," while in "consensual" cases, in which the injured party has a contractual relationship to the vessel owner, liability is limited to all commonly owned vessels engaged in the single contractual enterprise. In re M/V Tradition, 6 A.S.R.2d 99.

The "consensual" rule of limitation of maritime liability applies where the injured party is an employee of the vessel owner. In re M/V Tradition, 6 A.S.R.2d 99.

A skiff aboard a fishing boat is not itself a "vessel" for limitation of liability purposes, and an owner seeking to limit his liability for injuries occurring on a skiff lashed to its mother ship would have to tender the aggregate value of both the ship and the skiff. In re M/V Tradition, 6 A.S.R.2d 99.

To prove that an injury was proximately caused by the unseaworthy condition, the unseaworthy condition must have played a substantial part in bringing about or actually causing the injury, and the injury must be either a direct result or a reasonably probable consequence of the unseaworthy condition. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

The right of a seaman to recover under the Jones Act, and his right to maintenance and cure under admiralty law, are independent and cumulative. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

§ 5(6) —Damages

Lost future wages, also called impaired earning capacity, are determined by considering what the plaintiff's income would probably have been, how long it would have lasted, and all the contingencies to which it was liable. To ascertain the amount of lost future wages to be awarded, the court must take four steps: (1) determine whether the worker's earning capacity has been diminished; (2) determine the duration of the loss; (3) determine the value of the worker's loss over this period; and (4) consider reducing the award to present value. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

A defendant has the burden of production and proof on the issue of reducing a plaintiff's award for lost future wages, or impaired earning. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Pre-judgment interest is not allowed on either Jones Act or unseaworthiness claims. However, post-judgment interest under the Jones Act is allowed from the date of a court's final decree. Interest may also be awarded in general maritime cases at the court's discretion. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Damages in vessel collision cases are estimated in the same manner as in other suits of like nature for injuries to personal property. The award should include all losses proximately resulting from the collision, the general rule being that the owner of the vessel is to be placed in the same position he would have occupied had the disaster not occurred. Although the injured party may be entitled to full indemnity, the respondents are not, as a rule, liable for such damages as might have been reasonably avoided by the exercise of ordinary skill and diligence, after the collision on the part of those in charge of the injured ship. Rizzo v. M/V Fotu O Samoa, 30 A.S.R.2d 131.

Where repairs are practicable, the measure of damages is the cost of restoring the injured vessel to the condition in which it was at the time of the collision. Rizzo v. M/V Fotu O Samoa, 30 A.S.R.2d 131.

The court is not required to assess damages with mathematical precision, though it must strive to be as accurate as possible. Rizzo v. M/V Fotu O Samoa, 30 A.S.R.2d 131.

The court must sometimes make damage determinations in areas that require more than layman's skill. In doing so, the court may make judgments on the veracity of experts' statements, such as whether the expert inflated figures. Rizzo v. M/V Fotu O Samoa, 30 A.S.R.2d 131.

A threshold issue in determining damages is whether the injuries sustained by the seaman prevent the seaman from returning to a career in the fishing industry. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

A primary issue involved in computing the expected pay rate for lost earnings regards a seaman's contention that, had he been able to remain in the fishing industry, he would have been elevated to the more profitable position on a vessel. This level of lost earnings will not be recoverable where that claim is entirely improbable. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

In rendering the true value of an award of damages, there exists a clear judicial policy based on fairness and practical logic, of taking present value and inflation into account. This may be done by judicial notice, considered adjudication, or later submission of evidence by the parties. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Under the Jones Act and the law of unseaworthiness, contributory negligence, however gross, does not bar recovery but only mitigates damages. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

§ 5(7) —Compensation & Recovery

Under the collateral source rule, which applies to torts in admiralty and virtually all other tort cases, an injured party's compensation from a source independent of the tortfeasor is not deducted from damages otherwise collectable from the tortfeasor. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 108.

A shipowner has a right of indemnity against a third party tortfeasor for maintenance and cure paid to an injured seaman to the extent occasioned by the third party tortfeasor's fault. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

Admiralty law recognizes that even where a party to a lawsuit settles, it may still bring an indemnity action against a joint tort feasor. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

Even when defendant rejects plaintiff's tender of defense of the personal injury and wrongful death claims, the failure to tender, alone, would not preclude an indemnity claim by plaintiff, if that claim still presented a valid theory of relief. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

The fact the crew themselves contributed to the injury does not preclude an indemnity claim, if they were liable as well. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

The general rule is against recovery of attorney's fees as such, by a party which incurs them in enforcing a claim against another. It is equally well settled, however, that the reasonable expenses incurred by an indemnitee in defending a claim against him may be recovered of his indemnitor--and that these expenses include attorney's fees. This exception applies equally to courts sitting in admiralty. However, the prevailing party in an admiralty case is generally not entitled to an award of attorney's fees, absent statutory authorization. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

In cases where contribution has been allowed for damages, both in admiralty and non-admiralty, courts have generally denied a right to contribution for attorney's fees and expenses incurred in defense of the action brought by the injured party. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

The general rule is to award prejudgment interest, although this award always lies soundly within the court's discretion. However, it is also true that when certain "peculiar" circumstances exist, the discretion to deny prejudgment interest is sustained. These peculiar circumstances have fallen into three categories: (1) "plaintiff's delay in bringing suit," (2) "the existence of a genuine dispute regarding ultimate liability or the complexity of the factual and legal issues to be resolved," and (3) "judgment in an amount substantially less than that claimed. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

The court has wide discretion in allowance of various cost awards in admiralty. Interocean Ships, Inc. v. Samoa Gases, 27 A.S.R.2d 5.

A trial court's allocation of percentages of fault is a finding of fact and will not be disturbed unless clearly erroneous. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Under the primary duty rule, a seaman-employee may not recover from his employer for injuries caused by his own failure to perform a duty imposed on him by his employment. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Where an employee consciously assumes a duty toward a wrongdoer as a term of employment, failure of this duty results in a bar to any recovery under the Jones Act. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

Application of the primary duty rule is limited by three principles: First the "primary duty" rule will not bar a claim of injury arising from the breach of a duty that the plaintiff did not consciously assume as a term of his employment. Second, the rule does not, apply where a seaman is injured by a dangerous condition that he did not create and, in the proper exercise of his employment duties, could not have controlled or eliminated. Third, the rule applies only to a knowing violation of a duty consciously assumed as a term of employment. TCW Special Credits, Inc. v. F/V Cassandra Z, 5 A.S.R.3d 104 (Trial Div. 2001).

AGENCY AND PRINCIPAL

§ 1 Agency Relationship
1(1) —General Principles
1(2) —Creation
1(3) —Existence
1(4) —Termination
2 Authority of Agent
2(1) —General Provisions
2(2) —Express Authority
2(3) —Implied Authority
2(4) —Apparent Authority
3 Rights, Duties, and Liabilities
3(1) —Between Principal and Agent
3(2) —Between Principal and Third Person
3(3) —Between Principal and Independent Contractor
3(4) —Between Agent and Third Person
4 Powers of Attorney

§ 1 Agency Relationship

§ 1(1) —General Principles

RESERVED

§ 1(2) —Creation

Oral agreement by person who negotiated on behalf of purchaser that negotiator would guarantee payment from purchaser created an agency or surety relationship between purchaser and negotiator, and vendor could look to third party for payment. Ryan, Inc., v. Vaka, 5 A.S.R.2d 31.

§ 1(3) —Existence

Court will not presume that agency exists from mere fact that person apparently is acting for another. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Agency relationship exists between owner of vehicle and one who drives the vehicle in furtherance of the owner's interest or enterprise. Sataua v. Himphill, 5 A.S.R.2d 61.

Agency exists where a principal has the right to control the conduct of an agent, and the agent has power to affect the legal relations of the principal. On this basis, a seller named in an invoice is an agent for her or his principal. Joseph D. Seagram & Sons, Inc. v. Comm. Credit Corp. of American Samoa, 29 A.S.R.2d 121.

Whether a master/servant relationship has been established depends on a number of factors, the most important of which is the master's right to control the physical conduct of the servant. Poutoa v. American Samoa Gov't, 31 A.S.R.2d 40.

§ 1(4) —Termination

An agent who abandons the principle or his duties as an agent has terminated the agency relationship. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

§ 2 Authority of Agent

§ 2(1) —General Provisions

Agent may sign contract for principal whether or not principal is present, and alleged erroneous statement of trial court that principal was present was harmless error. Scanlan v. Steffany, 3 A.S.R. 583.

Even under Statute of Frauds, one partner may obligate partnership by signing contract, acting as agent for other partners. Scanlan v. Steffany, 3 A.S.R. 583.

Where bus driver's supervisor submitted affidavit that any use of bus other than transporting children to school was outside the scope of driver's employment, but there is evidence that passengers on school bus may have been government employees who had been working on the bus, whether driver was within scope of employment is a disputed material fact precluding summary judgment. Utu v. National Pacific Insurance Co., 9 A.S.R.2d 88.

When an agent settles a claim on behalf of its principal, which settlement is dependent upon facts known to be doubtful, the

settlement is not voidable when the doubtful facts turn out to be incorrect. Kent Samoa Inc. v. Shimasaki, 29 A.S.R.2d 44.

Servants, in master/servant relationships, are also capable of appointing subservants, who act under the primary control of the servant but who create liabilities for both the servant and the master. Poutoa v. American Samoa Gov't, 31 A.S.R.2d 40.

An agent's knowledge will be imputed to the principal, when the matter is within the scope of the agent's authority and with reference to matters over which the agent's authority extends. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

§ 2(2) —Express/Actual Authority

An agent is not liable for lawful acts done within the scope of his authority for and on behalf of a disclosed principal, and the acts of investigating and terminating an employee are presumed to be acts done within the scope of authority granted by the employer; a principal is solely liable for acts of its agent committed in the course of or within the scope of the agent's employment. Tuika v. American Samoa Dev. Corp., 3 A.S.R.3d 155 (Trial Div. 1999).

§ 2(3) —Implied Authority

Owner's consent to another person's use of a vehicle may be inferred from a past course of conduct or relationship between the parties. Toleafoa v. Sioka, 5 A.S.R.2d 18.

When the driver of a vehicle is a member of the vehicle owner's family or household, it is more likely that the driver has the owner's implied consent to use the vehicle. Toleafoa v. Sioka, 5 A.S.R.2d 18.

Principle that family relationship between driver and vehicle owner suggests owner's implied consent does not apply to Samoan extended communal family. Toleafoa v. Sioka, 5 A.S.R.2d 18.

Implied permission to use a vehicle is inferred from past occasions of acquiescence or absence of objection in circumstances signifying consent on the part of the vehicle owner. Tauiliili v. American Samoa Government, 13 A.S.R.2d 61.

Evidence was contrary to a showing of acquiescence and passive consent by government to personal use of its vehicle by its employee, where written statement of policies forbade any after-hours or weekend use without specific prior approval of manager; the Governor himself had sent out a memorandum with respect to such use; and the employee's manager had raised the Governor's concerns at staff meetings and circulated the Governor's memorandum to the staff. Tauiliili v. American Samoa Government, 13 A.S.R.2d 61.

Inferential in nature, implied permission for a vehicle's use is usually shown by usage and practice of the parties over a sufficient period of time. Leilua v. Ali'itaeao, 23 A.S.R.2d 97.

Although weaker evidence will support a finding of implied permission to use a vehicle if the drivers are blood relatives than if they were strangers or mere acquaintances, the mere existence of a close family relationship does not of itself establish permissive use. Leilua v. Ali'itaeao, 23 A.S.R.2d 97.

An agent to whom the principal gives the appearance of authority may bind the principal regardless of whether actual authority exists. Kent Samoa Inc. v. Shimasaki, 29 A.S.R.2d 44.

Where person who effectuated transfer of assets of insurance company which had deposited trust funds was attorney for first corporation, and director, officer and attorney for second corporation, second corporation is deemed to have known of the nature of the transfer and, by virtue of its affirmative activity, knowledge and acquiescence, will be estopped in equity from claiming those funds. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

§ 2(4) —Apparent Authority

Although Legislature had enacted rules defining members who could contract on its behalf, where circumstances suggested that these "binding officers" were aware that Committee Chairman was contracting on Legislature's behalf and did nothing to inform parties that their approvals were required, binding officers' inaction and acquiescence to the Committee Chairman's conduct caused Plaintiff to rely on agreement and Legislature would be estopped from disavowing contract and would instead be bound by contract under principles of agency law. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

§ 3 Rights, Duties, and Liabilities

§ 3(1) —Between Principal and Agent

Agent of corporation, acting on behalf of corporation, is not personally liable for corporate debts. Jt. Holdings & Tr. Ltd. v. P. J. Brennan, Inc., of Samoa, 4 A.S.R. 812.

In determining whether a business entity believes in good faith that its claim is just for the purpose of determining whether the claim can be consideration for a settlement, the entity is chargeable with the knowledge of its agents who participated in the transactions giving rise to the claim. Development Bank v. Ilalio, 5 A.S.R.2d 110.

An agent is generally not a party to a contract made for a disclosed principal. Ryan, Inc., v. Vaka, 5 A.S.R.2d 149.

An institutional party to litigation is chargeable with the knowledge, and responsible for the actions, of its agents who conduct the transactions that are the subject of the litigation. Bank of Hawaii v. Congregational Christian Church, 9 A.S.R.2d 100.

Government employee who, in the early hours of the morning and while in an intoxicated condition, went to his place of work and picked up his employer's vehicle and then invited friends to go riding in the vehicle, was acting outside the scope of his employment; although he was to have used the vehicle later that day in his employment, his earlier personal use was unauthorized and contrary to written policies and directives governing private use of government vehicles, and he was clearly on a frolic of his own. Tauiliili v. American Samoa Government, 13 A.S.R.2d 61.

Where employee's negligence was clearly related to her performance of her duties but was also clearly related to her agreement with the child's parents, who had reason to know her strengths and weaknesses and the dangers of their entrustment to her of their child's safety, the employer would be vicariously liable for the employee's negligent performance of her duties and the parents would be liable for such negligence as was attributable to the private agreement. Saufo`i v. American Samoa Government, 14 A.S.R.2d 15.

Employer/bailee is also contractually liable for the negligence of his employees in executing the bailment, since he cannot receive money for performing a duty and at the same time escape liability for violating such duty by shifting the responsibility to an employee. Garcia v. Galea`i, 15 A.S.R.2d 14.

A general agent for a disclosed or partially disclosed principal subjects his principal to liability for acts done on his account which usually accompany or are incidental to transactions which the agent is authorized to conduct if, although they are forbidden by the principal, the other party reasonably believes that the agent is authorized to do them and has no notice that he is not so authorized. Poutoa v. American Samoa Gov't, 31 A.S.R.2d 40.

A servant is only bound to obey reasonable orders of the employer. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

§ 3(2) —Between Principal and Third Person

One who delegates his affairs to lawyers, accountants, and others, and who signs the documents his own agents have prepared for him, cannot escape liability to a third party by claiming that the documents are not binding on him because he did not read or understand them. Ralston Purina Co. v. The Louise V, 3 A.S.R.2d 48.

Employer/bailee is also contractually liable for the negligence of his employees in executing the bailment, since he cannot receive money for performing a duty and at the same time escape liability for violating such duty by shifting the responsibility to an employee. Garcia v. Galea`i, 15 A.S.R.2d 14.

Under doctrine of respondeat superior, a bailee employer is vicariously liable for loss or injury with respect to the bailed property which results from the negligence or wrongful acts or omissions of his employees in executing the bailment within the course and scope of their employment. Garcia v. Galea`i, 15 A.S.R.2d 14.

When a servant steps outside of his employment to do some act for himself, not connected with the master's business, the master is not vicariously liable if those acts cause tortious harm. Fa'aola v. Taumua, 27 A.S.R.2d 115.

A party who conducts a transaction with an agent is liable to a disclosed principal to the same extent as if the principal had conducted the transaction. Joseph D. Seagram & Sons, Inc. v. Comm. Credit Corp. of American Samoa, 29 A.S.R.2d 121.

The relationship of master and servant is a species of agency in which the principal may be liable for the torts of the agent. Poutoa v. American Samoa Gov't, 31 A.S.R.2d 40.

Inherent in the power of agency, is the power of the agent to subject the principal to liability for unauthorized conduct. Poutoa v. American Samoa Gov't, 31 A.S.R.2d 40.

A principal will be bound and liable for the acts of his agent performed with actual or apparent authority from the principal, and within the scope of the agent's employment. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 3(3) —Between Principal and Independent Contractor

SEE EMPLOYMENT LAW § 3 – INDEPENDENT CONTRACTORS

SEE TORTS § 8 – VICARIOUS LIABILITY

A garageman who had possession of a vehicle in order to repair it and who was outside the direction or control of the owner was an "independent contractor" for whose negligence the owner could not be held liable under a theory of agency or master/servant liability. Sataua v. Himphill, 5 A.S.R.2d 61.

The employer of an independent contractor is generally not liable for physical harm done by the contractor or the contractor's employees; however, an employer is liable when he knows or has reason to know that, in the ordinary course of doing the work in a usual or prescribed manner, the work is likely to result in trespass. Letuli v. Le'i, 22 A.S.R.2d 77.

As a general rule, the employer of an independent contractor is not liable for harm resulting from that contractor's acts or omissions. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

§ 3(4) —Between Agent and Third Person

SEE TORTS § 8 – VICARIOUS LIABILITY

When a seller conditions his agreement to sell goods on an agent's proffer of his own creditworthiness on behalf of that agent's principal, the agent becomes an accountable party to the sales contract. Ryan, Inc., v. Vaka, 5 A.S.R.2d 149.

A known agent is not liable for the debts of its disclosed principal. Korea Deep Sea Fisheries Assn. v. M/V Corona #1, 27 A.S.R.2d 53.

Under the partially disclosed principal theory of an agent's liability to a third party for actions the agent has taken on behalf of a principal, the third party must establish that the third party was aware of the agency, was without knowledge of the principal's identity, and had formed a valid contract with the agent. Korea Deep Sea Fisheries v. M/V Corona, 27 A.S.R.2d 155.

Under the doctrine of respondeat superior, one expressly promises to incur liability, regardless of his own fault, for the negligent or intentional conduct of his agents or employees. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

§ 4 Powers of Attorney

Where individual relocated to Hawaii, such action constituted a voluntarily abandonment of his authority to act, under power of attorney, for person residing in American Samoa. Such abandonment effectively terminated the power of attorney and such authority could not be restored without execution of new power of attorney. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

AMERICAN SAMOA GOVERNMENT

§ 1 The Federal Government, Constitution, & Laws of American Samoa
- **1(1) —General Principles**
- **1(2) —Territorial Status**
- **1(3) —Applicable Laws**
- **1(4) —Treaties**

2 Separation of Powers

3 The Legislature
- **3(1) —Power and Authority**
- **3(1)(a) —Generally**
- **3(1)(b) —Law-making Powers**
- **3(1)(c) —Duty to Protect Land & Customs**
- **3(1)(d) —Appropriation of Funds**
- **3(1)(e) —Internal Procedural Powers**
- **3(2) —Committees**
- **3(3) —Legislation**

4 The Executive
- **4(1) —The Governor**
- **4(2) —Power and Authority**
- **4(3) —Agencies**

5 The Judiciary
- **5(1) — Power and Authority**
- **5(2) —Administration of Court**
- **5(3) —Disqualification – Recusal**
- **5(4) —Precedence and Stare Decisis**
- **5(5) —Supervision of Proceedings and Litigation**
- **5(6) —Supervision of Judgments and Settlements**
- **5(7) —Contempt**
- **5(8) —Statutory Construction**

6 Sovereign Rights

7 Public Records

8 Government Employees

§ 1 The Federal Government, Constitution, & Laws of American Samoa

SEE CONSTITUTIONAL LAW § 3 – CONSTITUTIONAL AND STATUTORY INTERPRETATION

SEE SAMOAN CUSTOMS § - IMPACT ON AMERICAN SAMOA LAWS

§ 1(1) —General Principles

Government of American Samoa exists solely by the authority of United States, and American Samoa is governed under authority of Congress. Lago v. Mageo, 4 A.S.R. 287.

Congress has delegated all powers of governance of American Samoa, including the power to tax, to the President. Mahoney v. Am. Samoa Gov't, 2 A.S.R.2d 74 (Trial Div. 1985).

Since Congress has entrusted the governance of this Territory to the Department of the Interior, which has approved the Territory's Constitution and all the laws promulgated under it, there is no need for special Congressional authorization of the power to tax. Mahoney v. Am. Samoa Gov't, 2 A.S.R.2d 74 (Trial Div. 1985).

American Samoa's constitution was promulgated under the authority of Congress and the President of the United States, as delegated to the Secretary of the Interior. Revised Const. Of American Samoa, Preamble and art. V, § 11 (1967).

Alamoana Recipe, Inc., v. American Samoa Gov't, 25 A.S.R.2d 97.

The High Court of American Samoa is not a federal court. American Samoa Gov't v. Leiataua, 27 A.S.R.2d 26.

The Cession of Tutuila and Aunu`u (April 17, 1900) and the American Samoa Revised Constitution create a government duty to protect American Samoan land only when it is taken from American Samoans and given to foreigners. Timu v. McMoore, 6 A.S.R.3d 41 (App. Div. 2002).

The federal Constitution applies in American Samoa only insofar as its tenets restate those fundamental limitations in favor of personal rights that are the basis of all free government. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

§ 1(2) —Territorial Status

Although not supreme, independent, or sovereign, American Samoa has a different relationship with the Union than the states, with a number of attendant advantages and disadvantages. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Under its "unorganized and unincorporated" status, American Samoa is not part of the federal system and is not intended for incorporation. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Article IV, Section 3 of the United States Constitution, otherwise known as the territorial clause, provides Congress with plenary powers to legislate for the territories. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

Congress's power to legislate for the territories is limited only by the U.S. Constitution, and not by any laws of the territories themselves. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

Those territorial laws which are inconsistent with applicable United States laws, violate the Territory's Constitution. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

§ 1(3) —Applicable Laws

Portions of common law of England (including such acts of parliament as are applicable) which were in force at time of American Revolution, became part of jurisprudence of United States and have taken effect in American Samoa by provision of Code. Talo v. Poi, 2 A.S.R. 9.

Statute adopts common law of England as applied and modified by U.S. courts at time statute adopted and since construed. R.C.A.S. 1.0101, 3. Tung v. Ah Sam, 4 A.S.R. 764.

Federal constitution would not prohibit American Samoan hiring preference, which is reasonably calculated to alleviate the difficulties that attend a government composed largely of officials with no knowledge of the local language and culture and who generally remain in the territory only temporarily. Banks v. American Samoa Government, 4 A.S.R.2d 113.

In "unincorporated" territories the federal constitution applies only insofar as its tenets restate "those fundamental limitations in favor of personal rights" that are "the basis of all free government" or insofar as Congress expressly extends a particular constitutional provision to the territory. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Although the due process clause of the federal constitution, which implicitly forbids racial discrimination by the federal government, binds the territories in at least some of its applications, it does not necessarily bind the territories in the same ways and to the same extent as in the continental United States. U.S. Const. amdt. 14. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Federal constitutional requirement that "citizens of each state shall be entitled to all privileges and immunities of citizens in the several states" applies to states and not to unincorporated and unorganized territories. U.S. Const. art. IV § 2. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Federal civil rights laws do not operate to extend into territories those applications of the federal constitution that would not apply in the territories under the doctrine of the Insular Cases. 42 U.S.C. § 1983. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Territories are not "states" within meaning of fourteenth amendment, so Congress acted under its constitutional power to regulate territories when it revised civil rights statute to include territories. U.S. Const. art. IV § 3; 42 U.S.C. § 1983. Ferstle v. American Samoa Gov't, 4 A.S.R.2d 160.

Extension of remedial civil rights statute to territories was premised initially on the concept, unjustifiable as applied to modern American Samoa, of territories as "inchoate states". 42 U.S.C. § 1983. Ferstle v. American Samoa Government, 4 A.S.R.2d 160.

Applicability of remedial civil rights statute to American Samoa does not extend application in territory of any federal constitutional provisions that would not otherwise apply under the doctrine of the Insular Cases. 42 U.S.C. § 1983. Ferstle v. American Samoa Gov't, 4 A.S.R.2d 160.

Right to effective assistance of counsel applies in American Samoa. Am. Samoa Rev. Const. art I, § 6; A.S.C.A. §§ 46.0502, 46.1001. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Absent waiver of sovereign immunity or consent to suit, action for damages under civil rights law may not be maintained against any of the several states. 42 U.S.C. § 1983. Ferstle v. American Samoa Gov't, 4 A.S.R.2d 160.

In territories not intended for incorporation into the United States, the federal constitution applies only insofar as its tenets restate fundamental limitations that are the basis of all free government. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

Extent to which the equal protection clause of the Fourteenth Amendment of the U.S. Constitution applies in the territory of American Samoa is unclear. U.S. Const. amdt. 14. Macomber v. American Samoa Gov't, 12 A.S.R.2d 29.

American Samoa is an unorganized, unincorporated territory; accordingly, the federal Constitution applies here only insofar as its tenets restate "those fundamental limitations in favor of personal rights" that are "the basis of all free government," or which have been specifically made applicable by Act of Congress. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

When a conflict arises, Samoan custom must give way to the laws of the United States and American Samoa. A.S.C.A. § 1.0202. Taeleifi v. Willis, 21 A.S.R.2d 118.

Territorial laws which are inconsistent with applicable U.S. laws violate the territorial constitution, which in turn was promulgated under the authority of the U.S. Secretary of the Interior. Rev. Const. Am. Samoa Art. II, § 1(a), Art. V, § 11. Alamoana Recipe Inc. v. American Samoa Gov't, 24 A.S.R.2d 156.

The High Court may interpret territorial statutes differently than federal courts' interpretations of similar, but not identical, federal statutes, but this does not imply that territorial law supersedes federal law. Alamoana Recipe Inc. v. American Samoa Gov't, 24 A.S.R.2d 156.

Federal laws need not be passed by the American Samoa legislature, since Congress has the constitutional power to make rules and regulations for the territories, pursuant to U.S. Const. art. VI, and the federal Constitution and laws are the supreme law of the land, pursuant to U.S. Const. art. IV, § 3. Alamoana Recipe, Inc., v. American Samoa Gov't, 25 A.S.R.2d 97.

Under the Deeds of Cession between the chiefs of Eastern Samoa and the United States, all vestiges of sovereignty passed from former to the latter. Alamoana Recipe, Inc., v. American Samoa Gov't, 25 A.S.R.2d 97.

Federal financial privacy laws contained in 12 U.S.C. §§ 3401 et seq., apply only to agencies and officials of the United States Government. American Samoa Gov't v. Leiataua, 27 A.S.R.2d 26.

To the extent the U.S. Constitution would deprive ASG of the ability to search the luggage of persons entering American Samoa, it is inapplicable in American Samoa. This situation is the kind where rights which may be fundamental in the United States would tend to be destructive to the traditional culture. A.S.G. v. Pu`aa, 31 A.S.R.2d 73.

Those territorial laws which are inconsistent with applicable United States laws, violate the Territory's Constitution. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

§ 1(4) —Treaties

The Supremacy Clause of the U.S. Constitution sometimes requires that courts exclude evidence where such is explicitly commanded by a treaty or an executive agreement. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

Because the Vienna Convention is a ratified treaty, its provisions must be regarded as supreme. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

§ 2 Separation of Powers

SEE CONSTITUTIONAL LAW § 4 – SEPARATION OF POWERS

Since courts favor constitutionality of statutes, courts will construe Industrial Incentive Act as not giving Governor power to grant partial exemptions in which case it is constitutional. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Constitution provides that each house of Legislature shall be judge of qualifications of its members. (Const., Art. 22) Tuia v. Yandall, 4 A.S.R. 559.

Court rule providing for criminal prosecution by petition contravenes statute and usurps discretionary function of executive branch, thereby violating constitutionally mandated separation of powers. Lutali v. Pereira, 1 A.S.R.2d 58 (Trial Div. 1981).

By making it easier for the legislature to supervise the quasi-legislative activities of the executive branch, a territorial statute providing for "legislative veto" enhanced the diffusion of power among the different branches of government. A.S.C.A. § 37.2030. Tuika Tuika v. Governor of American Samoa, 4 A.S.R.2d 85.

Territorial statute providing for a "legislative veto" of leases of government land did not violate American Samoa Constitution. A.S.C.A. § 37.2030; Rev. Const'n of Am. Samoa art. II §§ 9 & 10. Tuika Tuika v. Governor of American Samoa, 4 A.S.R.2d 85.

Where court had ordered that prisoner not be allowed to leave correctional facility without permission of the court except for emergency medical treatment, prison officials had no authority to allow prisoner to appear in court for post conviction motions without requesting permission of court. American Samoa Gov't v. Masaniai, 5 A.S.R.2d 152.

Territorial statute requiring the Governor to submit to the Fono for possible disapproval any lease of land lasting over ten years was not legislation "affecting the powers of the legislature" requiring the prior approval of the Secretary of the Interior. A.S.C.A. § 37.2030. American Samoa Gov't v. Tuika Tuika, 6 A.S.R.2d 58.

Territorial government is bound by court orders in proceedings to which it is a party and should not issue legal opinions that counsel disobedience to such orders. American Samoa Gov't v. Satele, 7 A.S.R.2d 154.

Statute explicitly recognizing power of Chief Justice to make exceptions to rules is clearly not inconsistent with constitutional provision for judicial independence. Rev'd Const. Am. Samoa art. III § 2; A.S.C.A. § 46.0501. American Samoa Gov't v. Tile, 8 A.S.R.2d 120.

Reasonable legislative regulation of judicial procedure does not necessarily conflict with judicial independence. Rev'd Const. Am. Samoa art. III § 2; A.S.C.A. § 46.0501. American Samoa Gov't v. Tile, 8 A.S.R.2d 120.

Since the Fono has declined to adopt the Uniform Commercial Code (UCC), the court should not attempt to do so by judicial fiat. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Even if a statute creates unintended hardships, the responsibility to rewrite a statute belongs to the Legislature and not the High Court. Nelson & Robertson Pty., Ltd. v. Diocese of Pago Pago, 21 A.S.R.2d 6.

The ability of the House or Senate to maintain a suit against the executive branch is, in the proper circumstances, beyond question. Senate v. Lutali, 26 A.S.R.2d 125.

The Executive Branch does not have authority to pay anything in excess of an appropriation without express language granting such action. Senate v. Lutali, 27 A.S.R.2d 126.

The Executive Branch's power to fix employees' salaries is limited by the amount appropriated by the Legislature. Senate v. Lutali, 27 A.S.R.2d 126.

The Revised Constitution and laws are clear that the Executive Branch recommends and proposes an annual budget to the Legislature, and the Legislature in turn has the authority to appropriate public funds to implement that budget as it deems necessary. Senate v. Lutali, 27 A.S.R.2d 126.

The Revised Constitution of American Samoa requires that the land alienation laws be changed by specific political procedures, and not by judicial fiat. REV. CONST. AMER. SAMOA, Art. I, § 3. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

The Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings seems to be an intelligent law, benefiting American Samoa, as well as other states and territories of the United State, should we adopt it as legislation. However, we have not, and this court has stated repeatedly that it will not sit as a legislature. Thus, although the Chief Justice would strongly recommend that the Legislature of American Samoa consider enacting the Uniform Act, he cannot proceed by judicial fiat as if the Legislature has already enacted it. In Re Proceedings to Compel Attendance of May Fitiausi, 29 A.S.R.2d 71.

A court cannot, by injunction or mandamus, control executive branch officials in their legitimate exercise of discretion. A court may, however, enjoin executive action when executive branch officials assume to act in contravention of the constitution or laws applicable in the jurisdiction. The Senate of the Legislature of Am. Samoa v. Lutali, 29 A.S.R.2d 165.

A court's authority extends to restraints on executive branch officials from overspending legislative appropriations. The Senate of the Legislature of Am. Samoa v. Lutali, 29 A.S.R.2d 165.

If an executive branch official has authorized an improper expenditure of public funds, a declaratory judgment is appropriate. If, however, the expenditure is threatened in the future, such as a governor’s announced intention to do business in a manner that would result in a violation of the law, injunctive relief is appropriate. The Senate of the Legislature of Am. Samoa v. Lutali, 29 A.S.R.2d 165.

Separation of powers principles do not prevent the judicial branch from voiding a lease approved by the Governor in violation of due process rights. Pen v. Lavata`i, 30 A.S.R.2d 10.

The object of the tripartite system of government of American Samoa, and of the separation of the legislative, the executive, and the judicial departments, is basic and vital in precluding a commingling of these essentially different powers of government in the same hands. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov’t, 2 A.S.R.3d 10 (App. Div. 1998).

The Revised Constitution of American Samoa contemplates a government patterned after the federal tripartite system and, accordingly, the well-established principle of separation of powers applies. House of Representatives of American Samoa v. Sunia, 3 A.S.R.3d 123 (Trial Div. 1999).

The Legislature of American Samoa, under the principle of separation of powers, has wide discretion in implementing its internal procedures as to employment and termination of employment. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

§ 3 The Legislature

§ 3(1) —Power and Authority

§ 3(1)(a)—Generally

A writ of mandamus may not compel the reversal of a decision of a legislative leader, exercising the proper discretion of his legislative capacity, but where the required act of a legislative leader is purely ministerial, mandamus may lie to compel it. Lutu v. Ale, 28 A.S.R.2d 43.

The government, like everyone else, is bound by court orders in proceedings to which it is a party. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

The standard that free speech is not absolute and may, in certain, narrow situations be regulated, also applies to speech in the legislative process. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

§ 3(1)(b)—Law-making Powers

Under 1960 Constitution, Legislature had power to enact laws governing jurisdiction, operations or procedures of judiciary if enactments were approved by Governor and Secretary of Interior. Fanene v. Government, 4 A.S.R. 957.

American Samoa's constitutional provisions regarding reading and publication of bills does not require that an act of Congress adopted by reference be read and published anew. Incorporated penal provision providing adequate notice of what is prohibited is not unconstitutional. Am. Samoa Gov't v. Ybarra, 1 A.S.R.2d 93 (Trial Div. 1983).

By making it easier for the legislature to supervise the quasi-legislative activities of the executive branch, a territorial statute providing for "legislative veto" enhanced the diffusion of power among the different branches of government. A.S.C.A. § 37.2030. Tuika Tuika v. Governor of American Samoa, 4 A.S.R.2d 85.

Those territorial laws which are inconsistent with applicable United States laws, violate the Territory's Constitution. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

The effective scope of any legislative act is limited to the subject embraced in its title and matters properly connected thereto. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Existing statutes may not be revised by reference to title; the act, section or subsection of law being revised must be set forth at length as amended. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 3(1)(c)—Duty to Protect Land & Culture

Under Constitution of American Samoa the legislature, and particularly the Senate which is composed of traditional chiefs chosen according to Samoan custom, has a peculiar relationship to the preservation of land and culture. Rev. Const'n of Am. Samoa art. I § 3, art. II § 4. Tuika Tuika v. Governor of American Samoa, 4 A.S.R.2d 85.

Any renewal or extension of a lease for a term 10 years or more requires Fono approval. A.S.C.A. § 37.2030. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 28 A.S.R.2d 74.

In light of its constitutional authority to "protect the lands," the Legislature has a legitimate interest in the oversight and regulation of any land development projects by non-Samoans. This interest is legitimately furthered by requiring that detailed plans be submitted and approved by the Governor before a lease arrangement can go forward. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

§ 3(1)(d)—Appropriation of Funds

In general, money appropriated for a particular budgetary purpose, which remains unexpended and unobligated at the expiration of the appropriation legislation, lapses and becomes public revenue under the Legislature's plenary control. The Senate v. Lutali, 27 A.S.R.2d 126.

Under the administrative rules of American Samoa, the authority to spend public funds "is available for obligation only during a specified fiscal year and expires at the end of that time." A.S.A.C. § 5.0103(16)(B)(I). The Senate v. Lutali, 27 A.S.R.2d 126.

Once the Legislature appropriates funds for a budgetary purpose defined in the annual budget acts, the funds are only available for the term stated in the annual act and no longer, unless expressly provided by the Legislature. The Senate v. Lutali, 27 A.S.R.2d 126.

The Revised Constitution and laws are clear that the Executive Branch recommends and proposes an annual budget to the

Legislature, and the Legislature in turn has the authority to appropriate public funds to implement that budget as it deems necessary. The Senate v. Lutali, 27 A.S.R.2d 126.

A Legislator has the right to request work from the Legislative Financial Officer, and the Legislative Financial Officer may not disclose the request or the resulting information to anyone else before the Legislator making the request has an opportunity to review the resulting work product. Lutu v. Ale, 28 A.S.R.2d 43.

An individual Legislator has the authority of the entire Legislature for purposes of gathering information through the Legislative Financial Officer. Lutu v. Ale, 28 A.S.R.2d 43.

The House rule requiring that the Speaker review materials prepared by the Legislative Financial Officer before their submission to the Legislator requesting the work offends the plain language of the statute and exceeds the constitutional power of a single house to make rules of procedure for itself, and is therefore invalid insofar as it purports to countermand statutory mandate. Lutu v. Ale, 28 A.S.R.2d 43.

The office of the Speaker is an agency of government within the meaning of A.S.C.A. § 2.0602, and the Speaker therefore has a plain duty to cooperate with the Legislative Financial Officer by opening records to the Legislative Financial Officer within normal working hours and times. Lutu v. Ale, 28 A.S.R.2d 43.

A.S.C.A. § 10.0603 does not contemplate or give any direction regarding the disclosure of financial records to individual members of either house, and falls well short of creating the "plain duty" and "plain right" required for the issuance of a writ of mandamus. Lutu v. Ale, 28 A.S.R.2d 43.

The American Samoa Legislature is the only branch explicitly granted the power to pass laws appropriating and enabling the expenditure of public funds, and to approve budgets submitted by the Governor. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

In American Samoa, spending authorization power is reserved to the Legislature. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

Any statute purporting to alter the spending authorization power in derogation of the Revised Constitution of American Samoa is a priori null and void. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

§ 3(1)(e)—Internal Procedural Powers

The Legislature of American Samoa, under the principle of separation of powers, has wide discretion in implementing its internal procedures as to employment and termination of employment. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

The primary powers by which legislative bodies preserve their institutional integrity without compromising the principle that citizens may choose their representatives are the powers of the House granted in AM. SAMOA REV. CONST. art. II § 11: the power to determine its rules of procedure, punish members for disorderly behavior and, with the consent of two-thirds of its entire membership, may expel a member, but not a second time for the same offense. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

The power of the legislature to make rules governing its own proceedings would be nugatory unless it was coupled with a power to punish for disorderly behavior. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

Punishment of a legislator for his legislative speech rests squarely within the Legislature and is immune from the Court's review. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

Expulsion requires a two-thirds vote and such procedure ensures a reflective and thoughtful decision by the entire legislative body and not just the triumph, on a whim, of a mere majority. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

Long-term suspension contradicts the purpose and constrictions of the expulsion clause. It allows a simple majority to effectuate an end-around assault on the super-majority requirement of AM. SAMOA REV. CONST. art. II § 11. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

Expulsion of a senator provides another safeguard to the democratic process by allowing a vacant position to be filled, thereby extending continuous representation to the district of the barred representative. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

The power to punish is the primary power by which legislative bodies preserve their institutional integrity without compromising the principle that citizens may choose their representatives. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

The House failed to comport with due process when it: (1) did not give the legislator notice of the hearing where the House voted and debated on his conduct; (2) conducted these meetings in the legislator's absence; and (3) did not allow him the opportunity to be heard, call witnesses or cross-examine his accusers. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

Normally, the courts must refrain from prying into matters that admit of legislative adjudication rather than judicial

resolution, such as disputes dealing solely with internal legislative rules or functions. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

§ 3(2) —Committees

Questions about the disposal of government property were relevant to an inquiry into the causes of a government budget deficit. Senate Select Investigating Committee v. Horning, 3 A.S.R.2d 14.

Committee created by one house of the legislature is a committee "of the legislature" within the meaning of territorial statute authorizing committees to subpoena witnesses. A.S.C.A. § 2.1003 et seq. Senate Select Investigating Committee v. Horning, 3 A.S.R.2d 14.

Territorial statute requiring legislative committees to adopt rules to govern their procedures, and requiring that person served with subpoenas also be served with a copy of the rules, was not satisfied by a committee's decision to adopt as "rules" the provisions of the statute itself. A.S.C.A. § 2.1003 et seq. Senate Select Investigating Committee v. Horning, 3 A.S.R.2d 14.

Committee's failure to comply with a statute requiring it to adopt rules and to serve a copy of these rules on person served with subpoena justified the refusal of a person served with subpoena to testify. A.S.C.A. §§ 2.1006, 2.1011, 2.1018. Senate Select Investigating Committee v. Horning, 3 A.S.R.2d 14.

§ 3(3) —Legislation

Acts of Samoan legislature, if not vetoed by Secretary of Interior, are entitled to as much weight as legislative enactments in an organized territory. Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

Legislative resolution disapproving lease of government land, pursuant to statute giving binding effect to such resolutions, was not a "law" within the meaning of a constitutional provision requiring all laws to be enacted by bill rather than resolution. Rev. Const'n of Am. Samoa art. II § 9. Tuika Tuika v. Governor of American Samoa, 4 A.S.R.2d 85.

Statute drawing a distinction between people whose licenses were suspended for driving under the influence and people whose licenses were suspended for other reasons had a rational basis, since classification was based on conduct rather than status and legislature believed there was a special need to deter and punish drunken driving. A.S.C.A. § 22.0223. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

Legislative inaction in the face of judicial statutory construction strongly suggests agreement with, or at least acquiescence in, the judicial interpretation of those laws. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

When the legislature re-enacts a statute or adopts amendments to it "without a suggestion of disagreement" with a prior judicial construction, a very strong presumption exists that the legislature has adopted the prior construction. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Even if a statute creates unintended hardships, the responsibility to rewrite a statute belongs to the Legislature and not the High Court. Nelson & Robertson Pty., Ltd. v. Diocese of Pago Pago, 21 A.S.R.2d 6.

The requirement that a statute must have a rational basis is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In Re the Matai Title I`aulualo, 25 A.S.R.2d 155.

Whether a statute operates retrospectively or prospectively only is a question of legislative intent. American Samoa Gov't v. Meredith, 28 A.S.R.2d 10.

The Revised Constitution of American Samoa requires that the land alienation laws be changed by specific political procedures, and not by judicial fiat. REV. CONST. AMER. SAMOA, Art. I, § 3. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

Although states and some possessions can enact laws to exempt themselves from the Johnson Act, American Samoa cannot. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

The American Samoa licensing statute, A.S.C.A. § 11.0601 et. seq, is preempted by the Johnson Act, and declared null and void to the extent of its repugnancy to the latter. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

The effective scope of any legislative act is limited to the subject embraced in its title and matters properly connected thereto. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Existing statutes may not be revised by reference to title; the act, section or subsection of law being revised must be set forth at length as amended. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 4 The Executive

SEE TAXATION § 11(2) – AUTHORITY OF GOVERNOR, BOARD

§ 4(1) —The Governor

Since time of cession, authority of Governor is paramount to that of District Governor who is appointed by and holds office at pleasure of Governor. Teo v. Liufau, 1 A.S.R. 628.

When Governor of American Samoa is investigating in his official capacity, statements made to him are privileged, and, as such, cannot form the basis for actionable slander. Dwyer v. McDonald, 1 A.S.R. 652.

Only in extraordinary circumstances will a court compel the testimony of the chief executive of the jurisdiction in which the court sits. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Most information available from chief executive of state or territory can be just as easily obtained from lesser officials. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Party may compel testimony from chief executive of state or territory only if it seems absolutely necessary to make out his case and the party can convince the court that there is some chance the testimony will enable him to prevail. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Before being allowed to compel testimony of territorial Governor regarding alleged scheme to dispose of government property for less than its actual value, party must produce other evidence of Governor's personal involvement in such scheme. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Where incumbent Governor was actively involved in affairs of a corporation before he became Governor and is the only available witness with detailed knowledge of events material to litigation involving the corporation, a party may compel his testimony. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Territorial statute requiring certain transactions to be "approved in writing by the Governor" was not violated when Governor signed a lease document and then authorized members of his staff to make certain revisions to the document before it left his office, even though the Governor did not sign the document a second time after the changes were made. A.S.C.A. § 30.0131. American Samoa Gov't v. Samoa Aviation, Inc., 11 A.S.R.2d 144.

A matai's alienation of land must comply with certain statutory procedures, including the approval of the Governor of American Samoa. A.S.C.A § 37.0204. Alaimalo v. Sivia, 17 A.S.R.2d 25.

The power to expel aliens is a fundamental, sovereign power exercised by the political branches of government. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Because the Governor has general supervision and control of all executive departments, agencies and instrumentalities of the Government, personnel decisions are subject to his direction as long as his actions are in accordance with applicable territorial and federal laws and rules. Rev. Const. Am. Samoa Art. II, § 7; A.S.C.A. § 7.0110; A.S.A.C. §§ 4.0102, 4.0111(b). Sala v. American Samoa Gov't, 21 A.S.R.2d 14.

An application for an order directing the Government of American Samoa to show cause why it should not be held liable for a judgment remains unsupported if it is not accompanied by evidence that the Governor has given prior approval to the garnishment of the Government pursuant to A.S.C.A. § 43.1803(b). Development Bank of American Samoa v. Mau, 25 A.S.R.2d 17.

In light of its constitutional authority to "protect the lands," the Legislature has a legitimate interest in the oversight and regulation of any land development projects by non-Samoans. This interest is legitimately furthered by requiring that detailed plans be submitted and approved by the Governor before a lease arrangement can go forward. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

To become valid, a lease of native land must be approved by the Governor. A.S.C.A. § 37.0221(a). Before the Governor approves any document affecting title to land, it must be reviewed by the Land Commission for recommendations. A.S.C.A. § 37.0203(a). Moetoto v. Tauileva, 28 A.S.R.2d 144.

The Director of Manpower Resources, not the Governor, has the statutory authority to administer the personnel laws of American Samoa. Rakshan v. American Samoa Gov't, 28 A.S.R.2d 151.

Although the governor may voluntarily choose to grant audiences to anyone who seeks to maintain an at-will periodic tenancy or who proposes to lease government land, due process does not mandate that the governor must conduct formal administrative hearings whenever he exercises his discretion to terminate an at-will periodic tenancy or acts on a proposal to lease government land. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

A decision regarding the lease of government land is a matter solely within the governor’s discretion. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

The power to protect American Samoa's borders is vested in both the executive and legislative branches and the Governor's authority over immigration matters is limited by the statutory grant of the Legislature. Vaella’a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

Simply naming a program an "amnesty" program does not bring it within the scope of the Governor's pardoning power. Vaella’a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

The Governor's pardoning power is limited to granting reprieves for past offenses and can only be exercised after an individual has been convicted. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

Although Governor may grant pardons, or amnesty, after convictions for immigration violations, he isn't empowered to change a particular undocumented alien's immigration status. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

The governor's constitutional pardoning power is expressly limited to pardons, even if that term is broadly construed to include amnesty grants, bestowed after convictions for criminal offenses. Even when the governor properly applies his pardoning power, the grantee's immigration status must still be approved in compliance with the immigration laws of American Samoa. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

The Governor is without authority to grant amnesty to undocumented aliens under his constitutional pardoning power or by other means. The governor can be empowered with that authority only by constitutional amendment or by legislative enactment. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

The Governor is without authority to grant amnesty to undocumented aliens, who have not been convicted of any criminal offense related to their illegal presence in American Samoa, in the absence of an effective constitutional amendment or legislation authorizing the governor to grant amnesty to undocumented aliens. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

§ 4(2) —Power and Authority

Powers of pardon and parole granted to executive by statutes and constitution do not give the executive carte blanche to ignore court orders and sentences. American Samoa Gov't v. Dole, 3 A.S.R.2d 63.

Release of prisoner within two weeks after court had sentenced him to a year of detention as condition of probation, whether called a furlough, work release, reward for good behavior, compassionate leave, or by another label, violated statutes and court order. American Samoa Gov't v. Dole, 3 A.S.R.2d 63.

Territorial government is bound by court orders in proceedings to which it is a party and should not issue legal opinions that counsel disobedience to such orders. American Samoa Gov't v. Satele, 7 A.S.R.2d 154.

Statute allowing court to impose detention as a condition of probation did not violate the constitutional provision allowing governor to grant pardons, since any prisoner pardoned by the governor could no longer be incarcerated. Rev. Const. Am. Samoa art. IV § 9; A.S.C.A. § 46.2206. Atuatasi v. Moaali`itele, 8 A.S.R.2d 53.

When it acts in a sovereign capacity, the government is generally not subject to estoppel. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

Estoppel may be applied against the government if, in addition to other factors necessary to give rise to an estoppel, the government's wrongful conduct threatens to work a serious injustice, and the public interest would not be unduly damaged by the estoppel. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

Order of deportation must be made by the Attorney General. A.S.C.A. § 41.0616. Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

The executive branch has the statutory authority to preserve and administer government lands. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

Inherent, executive authority exists to suspend an employee before his removal is effective under circumstances which would make continued performance of regular duties detrimental to the territorial government's interests; however, this action may not be arbitrary or capricious. A.S.C.A. § 7.0802; A.S.A.C. §§ 4.0801, 4.0802(e). Sala v. American Samoa Gov't, 21 A.S.R.2d 14.

If a serious condition exists, ASG may place plaintiff on annual leave, reassign him to duties in which the condition does not exist, place him on excused absence, or suspend him with or without pay pending removal, provided the action is taken in compliance with all applicable laws and rules and is based on substantive and documented justification. A.S.A.C. § 4.0802(e). Sala v. American Samoa Gov't, 21 A.S.R.2d 14.

When the government makes rules to govern the conduct of its affairs, it must abide by those rules and act within its authority. Sala v. American Samoa Gov't, 21 A.S.R.2d 14.

If done within the scope and by the apparent authority of a de jure public officer, a de facto public officer's acts are binding on third parties; it is as if the de facto public officer were legally selected, qualified and in possession of the office. Toilolo v. Poti, 24 A.S.R.2d 1.

In American Samoa, program managers are given some flexibility to deal with contingencies that were not anticipated during the regular budget development process but this flexibility must be dealt with prudently and in consideration of the policymakers' and the people's wishes. A.S.A.C. § 5.0134(b). The Senate v. Lutali, 27 A.S.R.2d 126.

The Executive Branch does not have authority to pay anything in excess of an appropriation without express language granting such action. The Senate v. Lutali, 27 A.S.R.2d 126.

The Executive Branch's power to fix employees' salaries is limited by the amount appropriated by the Legislature. The Senate v. Lutali, 27 A.S.R.2d 126.

If appropriated funds are available for payment of a particular vendor contract and are properly obligated under the procurement process before the end of the current fiscal year, the obligated funds will carry forward until the obligation is paid rather than revert to the general fund. Otherwise, the Executive Branch has no legal authority to disperse public funds to pay past due debts to vendors incurred in a prior fiscal year without a current fiscal year appropriation for such purposes and timely completion of the procurement process. A.S.A.C. § 5.0103(13)(A). The Senate v. Lutali, 27 A.S.R.2d 126.

The Revised Constitution and laws are clear that the Executive Branch recommends and proposes an annual budget to the Legislature, and the Legislature in turn has the authority to appropriate public funds to implement that budget as it deems necessary. The Senate v. Lutali, 27 A.S.R.2d 126.

The American Samoa Government does not have a legal obligation to pay step increments to its employees for past fiscal years. A.S.C.A. § 7.1001. The Senate v. Lutali, 27 A.S.R.2d 126.

A contract entered into by a government official lacking authority, or failing to follow proper procedures, is void. Rakshan v. American Samoa Gov't, 28 A.S.R.2d 151.

The petitioner will fail the second prong of the test for issuing an alternative writ of mandamus unless he/she establishes that the duty of respondent is purely "ministerial." A duty is ministerial only if it is clearly proscribed and does not involve an exercise of judgment or discretion. Porter v. Registrar of Vital Statistics, 28 A.S.R.2d 175.

It is a violation of both constitutional and statutory provisions for the Governor to act as chief procurement officer. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

The governor has the powers, duties and responsibilities as delegated under A.S.C.A. § 4.0111 in addition to those powers conferred by article IV of the Revised Constitution of American Samoa, and the laws for which the governor is responsible for faithful execution of are established by the legislative branch. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

The governor does not possess the power to make appointments to public office unless it is expressly conferred by the constitution or statutes, and neither allows him to appoint himself as chief procurement officer. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

The general supervisory power over the executive department given to the governor by Article IV, section 7 of the Revised Constitution of American Samoa does not include the power of appointment. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

Article IV, section 11 of the Revised Constitution of American Samoa gives the governor specifically limited power to appoint officials who are not otherwise provided for, and the chief procurement officer is otherwise provided for. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

Under A.S.C.A. § 12.0213, the Governor has the power to make procurements himself only in an emergency as defined under A.S.C.A. 26.0105(d), and such procurement must be as competitive as possible and be accompanied by a written determination of the basis for the emergency. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

Under Rev. Const. Am. Samoa art. IV § 12, the Governor may not unilaterally expand the power of appointment granted to him by constitutional and statutory provisions, and is not at liberty to ignore or suspend the operation of such statutes. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 10 (App. Div. 1998).

Confirmation of appointments made by the Governor is not an inherent legislative power; it is a specific attribute of the executive power of appointment which, in most cases, is constitutionally delegated to the legislative branch. House of Representatives of American Samoa v. Sunia, 3 A.S.R.3d 123 (Trial Div. 1999).

The Appropriations clause of the U.S. Constitution was intended as a restriction on the disbursing authority of the Executive department. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

Under the Revised Constitution of American Samoa, the executive branch's role in the appropriations process is limited to preparation of the preliminary budget plans. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

A.S.C.A. § 37.2010 does not provide the Executive branch with unfettered discretion to spend public funds on the government's behalf. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

The Revised Constitution of American Samoa mandates that the Executive Branch may not obligate public funds in any manner without an appropriation by the Legislature. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

The Revised Constitution and laws of American Samoa are

silent as to whether the Executive Branch may form public corporations. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

Although the Legislature has the limited, constitutional authority to replace certain judicial proceedings with administrative contested case proceedings, it may not invest an administrative hearings officer with more than quasi-judicial authority. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The statute creating a state agency or state office may authorize, expressly or implicitly, engagement of counsel other than Attorney General. RDL., Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 101 (Trial Div. 2002).

§ 4(3) —Agencies

In order for a government subdivision to be a separate entity capable of suing or being sued in its own name, such status must bestow by statute or constitution. Aga v. American Samoa Gov't, 3 A.S.R.2d 130.

Administrative board, given statutory authority to advise agency and to perform such duties as governor assigns, had no authority to issue binding personnel decisions absent explicit grant, especially when Code sets forth hiring and termination procedures that do not involve board. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Under territorial statutes providing that the registrar should not record any instrument appearing to be illegal, but that any person aggrieved by any official action of the register could apply to the court "at any time" for direction or redress, a lessor would not prevail in an action for eviction based on non-recordation of a lease where (1) the lease was initially recorded by the registrar's office; (2) an acting registrar later attempted retroactively to reject the lease, citing certain alleged illegalities; (3) upon trial of the eviction action, defendant invoked its right to judicial review of the registrar's action and the court found that the lease was not illegal and was therefore properly accepted for recordation. A.S.C.A. §§ 4.1104, 4.1106. American Samoa Government v. Samoa Aviation, Inc., 11 A.S.R.2d 144.

Assuming that deputy territorial registrar had the power to cancel the prior recordation of a lease had there been something genuinely wrong with it, an aggrieved party would have the right at any time to apply to the court for direction or redress, and the aggrieved party could exercise such right by alleging and proving in an action for eviction that the substantive bases for the cancellation were without merit. A.S.C.A. § 4.1106. American Samoa Government v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

For purposes of 12 U.S.C. § 3407, the American Samoa Government is not a federal agency. American Samoa Gov't v. Leiataua, 27 A.S.R.2d 26.

The office of the Speaker is an agency of government within the meaning of A.S.C.A. § 2.0602, and the Speaker therefore has a plain duty to cooperate with the Legislative Financial Officer by opening records to the Legislative Financial Officer within normal working hours and times. Lutu v. Ale, 28 A.S.R.2d 43.

The Director of Manpower Resources, not the Governor, has the statutory authority to administer the personnel laws of American Samoa. Rakshan v. American Samoa Gov't, 28 A.S.R.2d 151.

Although the ASG's Parks and Recreation Commission is a statutory agency of the ASG's Executive Branch, it is not a "commission . . . authorized by law to make rules or to determine contested cases." A.S.C.A. § 4.1001(a). Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

This court functions to ensure that the executive branch respects a party's substantive due process rights by determining whether decisions of the governor and his executive agencies were arbitrary and capricious, pretextual, or without a rational basis. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

The Attorney General is charged with the administration and enforcement of the immigration laws except insofar as such laws relate to the powers, functions, and duties of the Immigration Board. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

Attorney General, as head of Department head of Legal Affairs Department and Chief Immigration Officer, as division head of Immigration Office, are responsible for ensuring that subordinates comply with Court's order. Vaela'a v. Sunia, 1 A.S.R.3d 131 (Trial Div. 1997).

A department head's, or division head's, failure to provide full and accurate instructions to subordinates regarding a Court order, where such Court order has direct consequences on the jobs performed by such subordinates, constitutes inexcusable neglect. Vaela'a v. Sunia, 1 A.S.R.3d 131 (Trial Div. 1997).

Where Attorney General and Acting Chief Immigration Officer gave imprecise instructions, resulting in subordinate issuing verifications of immigration status in violation of Court's injunction, the failure to give specific instructions constituted inexcusable neglect and could be punished as contempt. Vaela'a v. Sunia, 1 A.S.R.3d 131 (Trial Div. 1997).

Even assuming the Attorney General has general authority to make original decisions on the immigration issues listed in A.S.C.A. § 41.0303, the Immigration Board remains ultimately responsible under A.S.C.A. § 41.0205(1) for the attorney general's decisions in these matters. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

The Immigration Board does not lose either its authority to make or responsibility for consummated decisions to grant first authorizations to remain simply by delegating any such power to the attorney general. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

Under the provisions of the Revised Constitution of American Samoa, art. IV, § 4, the Secretary of Samoan Affairs is appointed by the Governor, serves at his pleasure, and there is no confirmation role for the Legislature which would limit these powers. House of Representatives of American Samoa v. Sunia, 3 A.S.R.3d 123 (Trial Div. 1999).

The Legislature may not usurp the power of confirmation, and as the Revised Constitution of American Samoa makes no provision for legislative confirmation of gubernatorial appointments to the office of Secretary of Samoan Affairs, that power is attached to the executive power of appointment and is vested solely in the Governor. House of Representatives of American Samoa v. Sunia, 3 A.S.R.3d 123 (Trial Div. 1999).

Because A.S.C.A. § 4.0112, on its face and without constitutional authorization, offers the Legislature, by its confirmation provisions, a critical means of severely limiting the executive power of appointment, it is unconstitutional to the extent that it applies to the Secretary of Samoan Affairs. House of Representatives of American Samoa v. Sunia, 3 A.S.R.3d 123 (Trial Div. 1999).

A public agency's invitation for bids is regarded as a request for offers and no contractual rights arise prior to its acceptance by the agency. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

In public contracts, the bid is the offer, and a contract comes into being upon acceptance by the governmental agency. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Courts will respect statutory language requiring formal execution of a contract in order for contract rights and obligations to vest. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Where arbitrary action or fraudulent intent to injure a complaining party is indicated, courts may interfere with an agency's power to rescind its award. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Where circumstances indicated that backroom negotiations had taken place between government agency and second-lowest bidder that was awarded contract after award rescinded, court would not honor clause shielding agency from liability as it had clearly employed clause arbitrarily and acted in bad faith. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Where public agency granted contractor an extension for filing its bond, but did not clearly specify the length of such extension, court would consider agency's custom of flexibility in determining the limits of the extension. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Agency jurisdiction is generally the power granted to a particular department, board or commission of government to effectively administer the laws enacted by the Legislature under that agency's authority. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Administrative agencies are statutory creations and must adhere strictly to the statutes for their authority. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Although the Legislature has the limited, constitutional authority to replace certain judicial proceedings with administrative contested case proceedings, it may not invest an administrative hearings officer with more than quasi-judicial authority. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

If the Legislature has directed by statute the final agency decision-making power to be exercised only by a superior agency officer, such as its director, or by its governing board, commission or chief officer thereof, the A.L.J. is allowed only to hear and recommend a decision in a contested case with the agency director, board, etc. so that the agency head can make a final, informed, agency decision as mandated by law. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Review of a final administrative decision for errors of law is a matter ordinarily within the exclusive jurisdiction of the Appellate Division of the High Court. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

The American Samoa Community College has the power and responsibility to sue and be sued. RDL., Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 101 (Trial Div. 2002).

The American Samoa Community College has the power to enter into contracts. RDL., Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 101 (Trial Div. 2002).

Governmental agencies are not directly forbidden from employing attorneys other than the Attorney General, and the Attorney General is not anointed as the only option the government has for legal counsel. RDL., Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 101 (Trial Div. 2002).

The statute creating the American Samoa College implies the power to hire outside counsel. RDL., Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 101 (Trial Div. 2002).

§ 5 The Judiciary

§ 5(1) — Power and Authority

SEE CIVIL PROCEDURE § 1 – JURISDICTION

High Court is a court of equity as well as law. Jewett v. McMoore, 1 A.S.R. 611.

Authority of Secretary of Native Affairs over conduct of magistrates and judges of lower courts is ministerial and not judicial, and interpretation of law by such executive officer is not binding upon High Court. Toomata v. Railey, 1 A.S.R. 623.

At conclusion of case, court may make oral decision and is not obliged to render written decision absent request by one of the parties. Dwyer v. McDonald, 1 A.S.R. 652.

Fact decision is unsigned by Judge does not indicate that it is not order of court. Simaile v. Lafoa'i, 2 A.S.R. 170.

A purported decision of the High Court, not signed by judge rendering same has no value as precedent. Atoa v. Meredith, 3 A.S.R. 159.

Court cannot declare one senatorial candidate victor over another, since it lacks jurisdiction to so do, such being the exclusive province of senate. A.S. Const. Art. II, § 22. Meredith v. Mola, 4 A.S.R. 773.

Since A.S. Const. Art. II, § 22 reserves right to legislature to judge qualifications of "members," court will not interfere and decide challenge to election of senator once he has been sworn in as member. 11 A.S.C. § 6671. Tuitasi v. Lualemaga, 4 A.S.R. 798.

Judicial power is vested in High Court, District Courts and such other courts as created by law, and judicial branch is independent of legislative and executive. (Const. Art. III, Sec. 1 and 2.) Fanene v. Government, 4 A.S.R. 957.

The courts of American Samoa are "legislative" rather than "constitutional" courts and are subject to the mandate of Congress or its delegatee, the President, or his delegatee, the Secretary of Interior. Rev. Const. Am. Samoa, Art. III, § 1; Art. II, § 1; Art. IV, § 2. Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

The High Court is a territorial court duly constituted under Article IV of the U.S. Constitution. In re M/V Pearl, 2 A.S.R.2d 76 (App. Div. 1986).

The High Court can exercise at least some authority not specially granted it by Congress. In re M/V Pearl, 2 A.S.R.2d 76 (App. Div. 1986).

Visit by one member of court to land that was the subject of litigation, and subsequent report of that judge to other judges, did not constitute impermissible "testimony" by the judge when both counsel had been present at the viewing of the land and no objection had been made. Vaimaona v. Paleafei, 3 A.S.R.2d 92.

Territorial statute giving court power to suspend procedural rules that would lead to inequitable result does not give court power to suspend rules of substantive law. A.S.C.A. § 3.0242. Ape v. Puagele, 3 A.S.R.2d 109.

Statute prescribing participation in matai title dispute of one law-trained judge, as well as four associate judges who are not lawyers but who are chosen for their familiarity with Samoan custom, did not require that the law-trained judge be present during all deliberations of the associate judges. A.S.C.A. § 3.0240. In re Matai Title La'apui, 4 A.S.R.2d 7.

When court is considering the application of judge-made rules rather than legislation or a constitution, it has the duty to consider whether changed circumstances warrant modification of such rules. Monte Kaho v. Ron Pritchard Ground Services, Inc., 4 A.S.R.2d 40.

When a rule of law has been adopted in an overwhelming majority of the jurisdictions with which forum state has contact, the rule may give rise to changed customs and usages within forum. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

Territorial statute permitting court to subordinate rules of "practice or procedure" to exigencies of justice and convenience does not give the court power to overturn a final judgment in the absence of new evidence, fraud, surprise, or similar circumstances, since res judicata is a rule of substantive law and not of procedure. A.S.C.A. § 3.0242(b); T.C.R.C.P. Rule 60. Willis v. Willis, 4 A.S.R.2d 144.

Territorial courts are established not under Article III of the Constitution, but by Congress pursuant to the general legislative powers granted by article I and the power granted by article IV to make rules and regulations for the territories. U.S. Const. arts. I, III, IV. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The High Court of American Samoa exercises judicial power that can be divested only by an Act of Congress. 48 U.S.C. § 1662a; Rev. Const. Am. Samoa art. III § 1. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The "judicial jurisdiction of the United States" extends to American Samoa. 11 U.S.C. § 101(49). Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

Territorial court is not bound to interpret local rules in strict conformity with federal courts' interpretations of parallel federal rules. Wray v. Wray, 5 A.S.R.2d 34.

Trial court rule that written judgment contain separately stated findings of fact and conclusions of law does not require inflexible format of segregated, numbered, and labeled entries. T.C.R.C.P. Rule 52. Development Bank v. Ilalio, 5 A.S.R.2d 110.

Territorial court would defer as a matter of comity or full faith and credit to the lawful orders of a court of the United States properly exercising its jurisdiction even if there were no federal statute requiring it to do so. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 6 A.S.R.2d 62.

A strong presumption of validity attaches to an order of the High Court signed by a Justice thereof. Satele v. Uiagalelei, 6 A.S.R.2d 143.

Unlike federal rules of criminal procedure promulgated under the authority of Congress and binding on federal courts to the same extent as statutes, territorial rules are made by the Court itself, so that a time limit provided by territorial rule is not as obviously jurisdictional as a similar limit provided by federal rule. Rev'd Const. Am. Samoa art. III § 2; A.S.C.A. § 3.1002(c). American Samoa Gov't v. Tile, 8 A.S.R.2d 120.

Statute explicitly recognizing power of Chief Justice to make exceptions to rules is clearly not inconsistent with constitutional provision for judicial independence. Rev'd Const. Am. Samoa art. III § 2; A.S.C.A. § 46.0501. American Samoa Gov't v. Tile, 8 A.S.R.2d 120.

Reasonable legislative regulation of judicial procedure does not necessarily conflict with judicial independence. Rev'd Const. Am. Samoa art. III § 2; A.S.C.A. § 46.0501. American Samoa Gov't v. Tile, 8 A.S.R.2d 120.

Even if court has authority to disregard or make exceptions to its own rules, it would be imprudent to make such exceptions on an ad hoc basis in order to reach the desired result in a particular case. American Samoa Gov't v. Tile, 8 A.S.R.2d 120.

The court is bound by statute and treaty to recognize freehold grants made by the Land Commission of Samoa, which operated in Apia under the supervision of the then-Supreme Court of Samoa, prior to the United States-established government. Willis v. Fai`ivae, 17 A.S.R.2d 38.

The Court may correct an illegal sentence at any time. T.C.R.Cr.P. 35. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Because the High Court's rules were promulgated solely on its own authority, they must give way to territorial statutes defining the court's jurisdiction, unless the statutes themselves are unconstitutional. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

In imposing conditions of probation, the sentencing judge is well-situated to know whether a particular offender needs to be insulated from his past environment, his associates, his victim, or those who assisted in his prosecution, as well as the best methods to assure such insulation. American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

The High Court refused to approve parties' stipulation to lift a stay of an action in federal district court when no such stay was issued because of the lack of statutory authority to do so. Fa'atasiga v. M/V Ocean Pearl, 19 A.S.R.2d 59.

The Chief Justice's rulemaking authority under A.S.C.A. § 46.0501 does not include the power to amend unambiguous legislative enactments setting out the prerequisites to appeal. Fa'amaoni v. American Samoa Government, 20 A.S.R.2d 127.

A court may compel specific performance of a partially performed, unwritten agreement; the court's power to compel specific performance is expressly recognized in the statute of frauds relating to land transactions. A.S.C.A. § 37.0211. Manoa v. Jennings, 21 A.S.R.2d 23.

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.

Though the Immigration Board's documents are confidential by statute, this statute may not be used to deny constitutionally guaranteed due-process rights, nor does it prohibit the Court from ordering the Attorney General to produce these records when needed. U.S. Constitution Amend. V; Rev. Const. Am. Samoa Art. I, § 2; A.S.C.A. § 41.0307. Farapo v. American Samoa Gov't, 23 A.S.R.2d 136.

The district court is authorized to issue process, and an arrest warrant is a form of process. A.S.C.A. § 3.0304, T.C.R.Cr.P. 4(c)(1). American Samoa Gov't v. Tagaloa, 24 A.S.R.2d 37.

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.

The rules of civil procedure do not limit a court's power to (1) entertain an independent action for relief from a judgment, order, or proceeding, or (2) set aside a judgment for fraud upon the court. Fed. R. Civ. P. 60(b); T.C.R.C.P. 60(b). Rocha v. Rocha, 24 A.S.R.2d 55.

A single justice has the authority to issue an alternative writ, schedule a hearing, and set a briefing schedule; however, resolution of substantive issues, other than in connection with any preliminary or supplementary matter, requires a quorum of two justices and one associate judge. A.S.C.A. §§ 3.0209, 3.0220. In re Complaint of Voyager, Inc., 24 A.S.R.2d 90.

A court may dispose of an entire controversy by granting both equitable relief and damages, in order to avoid a multiplicity of lawsuits. Thompson v. Toluao, 24 A.S.R.2d 127.

The High Court of American Samoa is empowered to enforce a judgment of any United States court or other court entitled to full faith and credit in American Samoa under the Uniform Enforcement of Foreign Judgments Act. A.S.C.A. §§ 43.1701-09. DeStael v. Strasburg, 25 A.S.R.2d 96.

The High Court of American Samoa is not a federal court. American Samoa Gov't v. Leiataua, 27 A.S.R.2d 26.

If a majority of the four associate judges make a decision, the justice need not participate in the four associate judges' deliberations. In Re Matai Title "Tuaolo", 28 A.S.R.2d 137.

The western style court system delivers clearly identifiable winners and losers by providing decisive final decisions and orders that are legally binding and enforceable by the collective force of the community. Litigants who cannot win family support for their views, and decide instead to take their chances in court, should be aware that their interpretations of custom may not be persuasive to the court either. Fanene v. Fanene, 30 A.S.R.2d 115.

The High Court is not bound to accept the definition of misapplication of funds expounded by the federal courts. In fact, federal courts have used varying definitions for misappropriation of funds. American Samoa Gov't v. Leiataua, 30 A.S.R.2d 130.

From the face of the statute, the court does not appear to have discretion in ordering forfeiture of bail if a condition of the bond is violated. T.C.R.Cr.P. 46(e)(1). American Samoa Gov't v. Togialeoli, 30 A.S.R.2d 130.

The court may, on its own motion, clarify its discussion in an opinion and order. Mailo v. Aumavae, 31 A.S.R.2d 6.

The fact that the trial court judge, during in-chambers conference, remarked that if appellant were found guilty, he would be held in custody pending sentencing did not constitute a threat that the judge would penalize appellant for exercising his right to a jury trial. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

One of the inherent powers of a trial court is the power to dismiss a case for want of prosecution. American Samoa Gov't v. Lavata'i, 1 A.S.R.3d 164 (Trial Div. 1997).

The court has discretion to dismiss cases where the plaintiff is guilty of neglect, even in the absence of statute or rule regarding diligent prosecution, because the court has a right and duty to keep the judicial system in efficient operation. American Samoa Gov't v. Lavata'i, 1 A.S.R.3d 164 (Trial Div. 1997).

Under Article III of the Revised Constitution of American Samoa (R.C.A.S.) judicial power is vested in the High Court, District Court and other courts established by law as an independent branch of government, with the Chief Justice and Associate Justices appointed by the U.S. Secretary of the Interior. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

A.S.C.A. §§ 83.0101-.0103 provides for the administration of the independent judicial branch by the Chief Justice, and specifies generally the jurisdiction of the courts. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

Both under the authority of T.C.R.C.P. 41(b) and through its inherent powers, a court may dismiss a case for lack of prosecution. Estate of Pua`auli v. LBJ Tropical Medical Center, 4 A.S.R.3d 103 (Trial Div. 2000).

Judicial power in American Samoa, like the United States, is limited review of presently pending cases or controversies. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

Judicial review of administrative action is limited by the requirement that there be an actual, live controversy to adjudicate. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

Judicial powers can only be exercised by the Judicial Branch of the American Samoa Government under the Revised Constitution of American Samoa. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Judicial power, and the exercise thereof, is constitutionally reserved exclusively for the Judicial Branch by the Courts of Law established under the Revised Constitution of American Samoa. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The High Court has the power to interpret the constitutional provisions governing the exclusion and expulsion of Senators, and whether the Senate's actions conformed to its constitutionally mandated powers. Fa`amausili v. Am. Samoa Gov't, 6 A.S.R.3d 259 (Trial Div. 2002).

If the powers of any branch of the government, and even those of the Legislature in the enactment of laws, have not been exercised in conformity to the Constitution, the Court can properly treat such acts as null and void. Fa`amausili v. Am. Samoa Gov't, 6 A.S.R.3d 259 (Trial Div. 2002).

Normally, the courts must refrain from prying into matters that admit of legislative adjudication rather than judicial resolution, such as disputes dealing solely with internal legislative rules or functions. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

The court has an obligation, however, to review governmental actions or laws that conflict with, or-are limited by, constitutional provisions. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

§ 5(2) —Administration of Court

Governor is authorized to appoint temporary Chief Justice in case of disability, disqualification or absence of Chief Justice. (CAS 168.) Scanlan v. Steffany, 3 A.S.R. 583.

Actual payment of estimated transcript cost coupled with timely request for cost of transcript (although no formal order for transcript) is sufficient to satisfy Rule 55(2) requiring transcript order. 11 A.S.C. 5122(3). In re Matai Title Alalamua, 4 A.S.R. 974.

If counsel is dissatisfied with the interpreter's English translation of a witness's Samoan testimony, his remedy is to object immediately so that any error can be corrected or to ask the witness any questions that may be necessary to eliminate ambiguities in the official record, which is kept in English. Lea'e v. Lea'e (Mem.), 3 A.S.R.2d 56.

Associate Judges of the High Court of American Samoa, who speak both Samoan and English, may correct any inaccuracies they detect in the translation of Samoan testimony into English as soon as such inaccuracies occur. Lea'e v. Lea'e (Mem.), 3 A.S.R.2d 56.

The post-trial and appellate stages of a proceeding, which with a few extraordinary exceptions must be based upon the record made at trial, are not the appropriate forum for counsel to request corrections of English translation of Samoan testimony. Lea'e v. Lea'e (Mem.), 3 A.S.R.2d 56.

Courts of Samoa follow the Federal Rules of Civil Procedure as closely as practical. (CAS 251.) Lualemana v. Magalei, 4 A.S.R. 849.

Criminal procedure in courts of American Samoa shall conform as nearly as may be practical to the Federal Rules of Criminal Procedure. (CAS 3.0606.) Fanene v. Government, 4 A.S.R. 957.

To hold a trial only a few minutes after the filing of the answer, over the objection of a party or under equivalent circumstances would be fundamentally unfair. Diocese of Samoa Pago Pago v. KMST, Inc., 15 A.S.R.2d 20.

High Court opinions between 1978 and 1986 were reported only if they established or altered a rule of law, criticized existing law, or, in the Justices' opinion, "involve[d] a legal issue of continuing public interest." Saufo`i v. American Samoa Gov't, 16 A.S.R.2d 71.

A court reporter is to produce a transcript within a thirty days after receiving an order for it. A.C.R. 11(b). Rocha v. Rocha, 17 A.S.R.2d 15.

Statute providing that the High Court shall have interpreters deals with the method of appointing permanent court employees and does not require Court to find, employ, and compensate special ad hoc officers whenever a litigant demands an interpreter. Kim v. American Samoa Government, 17 A.S.R.2d 193.

When the High Court dismisses cases for want of diligent prosecution, civil actions will be dismissed with prejudice if good cause is not shown to the contrary, but land-and-titles actions will be dismissed without prejudice. Jennings v. Jennings, 19 A.S.R.2d 34.

A damage award to a minor shall be deposited directly into the depositary of the High Court of American Samoa and placed in an interest-bearing account with the minor as beneficiary; disbursements are to be made only on application by the guardian ad litem and with the approval of one of the Justices. Sciascia v. Lutali, 23 A.S.R.2d 38.

Although a defendant is not to be prejudiced because of his indigent circumstances, he is not entitled to a transcript as of right simply upon demand. American Samoa Government v. Suiaunoa, 24 A.S.R.2d 161.

Reasonable costs may be required of litigants. Because litigation costs are borne not only by a plaintiff but also by defendants, taxpayers, and parties in other lawsuits (which may be delayed or receive less attention), even a small filing fee helps a plaintiff to think about the merits of his case. An indigent plaintiff may even be required to pay a partial filing fee. Mckenzie v. Tuimavave, 26 A.S.R.2d 13.

A litigant desiring to proceed in forma pauperis must submit a sworn affidavit supporting his motion. The affidavit is to specifically detail the reasons for the alleged inability to pay court fees and must enumerate all sources of funds. Mckenzie v. Tuimavave, 26 A.S.R.2d 13.

Proceeding in forma pauperis is undeniably a privilege and not a right; therefore, permission to do so is at the court's discretion. McKenzie v. Tuimavave, 26 A.S.R.2d 13.

General statements are insufficient to make the required showing that plaintiff has necessary expenditures which would preclude his paying the filing fee. Mckenzie v. Tuimavave, 26 A.S.R.2d 13.

A receiver is a ministerial officer, agent, creature, hand, or arm of, and a temporary occupant and caretaker of the property for the court, and represents the appointing court, and is the medium through which the court acts. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

One of the inherent powers of a trial court is the power to dismiss a case for want of prosecution. A.S.G. v. Lavata`i, 31 A.S.R.2d 191.

Trial court has wide latitude and discretion in supervising the time limits, scope, and the extent of argument and summation. Rulings on such issues are subject to review for abuse of discretion. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

A court, as a separate department of government, may create a trust, transfer property to the trust, and appoint a trustee to take care of trust property for the best interest of the beneficiaries under its inherent power to do what is reasonably necessary for the proper administration of justice and where the exercise of such power is absolutely essential for the performance of the court's constitutionally mandated mission. Bendall v. Samoa Aviation, Inc., 1 A.S.R.3d 16 (App. Div. 1997).

Under A.S.C.A. § 3.1006, in the event of inadequate numbers of associate judges to sit at trial or on appeal, the Chief Justice may appoint temporary associate judges from a panel of persons recommended by the Chief Justice, found qualified by the Governor, and confirmed by the Senate. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

§ 5(3) —Disqualification – Recusal

Judge should disqualify himself from trying case even though he is entirely free of bias if circumstances have arisen which give bona fide appearance of bias, such as distant relationship to one of parties. Sauafea v. Filipo, 2 A.S.R. 477.

Application to disqualify judge should be filed prior to trial and alleged bias of judge is not timely raised on appeal. Iosia v. Heirs of Lemeanai Family, 3 A.S.R. 482.

Statute (Sec. 172-1952 Amendments) disqualifies judge if he is or has been a material witness, not if he is a mere potential witness. Iosia v. Heirs of Lemeanai Family, 3 A.S.R. 482.

Evidence fails to support that judge was related to one of parties, and any relation based on marriage would have been terminated by divorce. Betham v. Faumuina, 3 A.S.R. 537.

Application to disqualify judge should be filed at earliest opportunity and in case of appeal, immediately after notice of appeal. Scanlan v. Steffany, 3 A.S.R. 583.

Grounds for disqualification of judges must be affirmatively shown in a timely fashion in order to provide an appealable issue. In re Matai Title "Tuiolesega," 1 A.S.R.2d 37 (Land & Titles Div. 1980).

Motion for disqualification of judge which was apparently an attempt at "judge shopping" should be denied. Pene v. American Samoa Power Authority, 10 A.S.R.2d 23.

Trial judge who, in denying summary judgment against pro se litigant in a previous case, had quoted authority to the effect that summary judgment was not the appropriate remedy for incoherent and unskillful pleadings, did not thereby malign the litigant's person and did not create ground for recusal in subsequent cases involving the same litigant. Pene v. American Samoa Power Authority, 10 A.S.R.2d 23.

Judge has as much obligation not to recuse himself when there is no occasion for recusal as he has to recuse himself when there is such occasion. Pene v. American Samoa Power Authority, 10 A.S.R.2d 23.

When an Associate Judge of the High Court made a comment during trial that a party had obstructed the installation of a chief who was a cousin of the judge's wife, this relationship was too attenuated and the incident too peripheral to require disqualification of that judge. In re Matai Title Tauala, 15 A.S.R.2d 65.

Waiting until after a trial to move for a judge's disqualification is highly improper; doing so constitutes a waiver of the objection. In re Matai Title Tauala, 15 A.S.R.2d 65.

Mere fact that a judge asked questions which pointed out flaws in counsel's position or is related to a family that serves one of the parties in the case does not mean he is biased or prejudiced against a particular party. Uiagalelei v. Ulufale, 17 A.S.R.2d 158.

Because of the interest in the finality of judgments, "fraud on the court" (1) is typically confined to the most egregious cases, such as an attorney's exerting improper influence on the court or the bribery of a judge or juror, in which the integrity and impartial functioning of the court is directly impinged; and (2) must be proven by "clear and convincing evidence." Rocha v. Rocha, 24 A.S.R.2d 55.

The words of A.S.C.A. § 3.1007(a) "a case in which he ... has a substantial interest" not only mean that such a judge is actually biased in the case at issue, but also that such an interest may appear to exist. A lack of the legitimate appearance of impartiality is as threatening to smooth judicial

functioning here as elsewhere. Jessop v. Histake, 25 A.S.R.2d 12.

Antagonistic questions do not necessarily indicate improper judicial bias. Mulitauaopele v. Mulitauaopele, 25 A.S.R.2d 43.

The fact that an associate judge who heard a case at trial also heard the case on appeal, a violation of A.S.C.A. § 3.1007(b), was not a basis for reconsideration of the appeal where a quorum existed without the violating judge, the violating judge's vote was not outcome determinative, the decision of the court was unanimous, and the complaining party waited until after the decision was rendered to object. Soli Corp. v. Amerika Samoa Bank, 25 A.S.R.2d 94.

If a party fails to object to the presence of an associate judge on the appellate panel until after the decision has been rendered, this failure constitutes a waiver of the objection. Soli Corp. v. Amerika Samoa Bank, 25 A.S.R.2d 94.

The words of A.S.C.A. § 3.1007(a) "a case in which he ... has a substantial interest" not only mean that such a judge is actually biased in the case at issue, but also that such an interest may appear to exist. A lack of the legitimate appearance of impartiality is as threatening to smooth judicial functioning here as elsewhere. In re Matai Title "Faumuina", 26 A.S.R.2d 1.

Recusal should never be undertaken lightly, but there are certain instances in which recusal is proper. In re Matai Title "Faumuina", 26 A.S.R.2d 1.

The standard of review applied to a courts denial of a request for recusal is, in accordance with A.S.C.A. § 43.0801(b), "clearly erroneous." In re Matai Title "Faumuina", 26 A.S.R.2d 1.

Recusal is appropriate when an appointing governor appears in his capacity as an individual citizen before an appointee judge. In re Matai Title "Faumuina", 26 A.S.R.2d 1.

A judge has an obligation not to recuse himself or herself unless there is a need to do so. In re Matai Title "Faumuina", 26 A.S.R.2d 1.

There is a duty of recusal incumbent on an associate judge who finds himself or herself assigned to a case in which a governor who appointed the judge appears in his or her personal capacity. In re Matai Title "Faumuina", 26 A.S.R.2d 1.

A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person is a party to the proceeding, or an officer, director, or trustee of the party. Canon of Judicial Conduct 3(C)(1)(d)(i). Atlantic, Pacific, Marine, Inc. v. Clarke, 31 A.S.R.2d 156.

A judge disqualified may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If based on such disclosure, the parties and lawyers may agree in writing that the judge is no longer disqualified, and may participate in the proceeding. However, the parties and lawyers must make such determine independently of the judge's participation and in writing. Canon of Judicial Conduct 3(D). Atlantic, Pacific, Marine, Inc. v. Clarke, 31 A.S.R.2d 156.

Failure to file a formal, written motion to disqualify constitutes a waiver on the issue of a judge's impartiality. Tuaolo v. Fruean, 1 A.S.R.3d 33 (App. Div. 1997).

A judge's impartiality is a pre-trial issue. Motions to disqualify judges made after trial are improper and untimely. Tuaolo v. Fruean, 1 A.S.R.3d 33 (App. Div. 1997).

Under the "Rule of Necessity," an interested judge is required to sit on a matter where it otherwise would not be heard. Tuaolo v. Fruean, 1 A.S.R.3d 33 (App. Div. 1997).

The "Rule of Necessity" requires judges to sit even when where they otherwise would be required to recuse themselves sua sponte. Tuaolo v. Fruean, 1 A.S.R.3d 33 (App. Div. 1997).

The "Rule of Necessity" is properly invoked where there is no evidence to suggest that sufficient replacement judges are available. Tuaolo v. Fruean, 1 A.S.R.3d 33 (App. Div. 1997).

The mere fact that a Justice presides over a similar matter involving the same party, does not in itself create bias or prejudice against the litigant. Fuavai v. District Court, 2 A.S.R.3d 56 (App. Div. 1998).

Absent special circumstances, the general rule is that a judge who presided at the trial of a case which was reversed and remanded on appeal is not automatically disqualified to retry the case. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

This Territory has no statutory or constitutional prohibitions against the same judges retrying cases and controversies upon remand from the appellate division. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

Under A.S.C.A. § 3.1007, no judge or justice may sit on the appellate division and determine an appeal from a decision in which that judge or justice made or joined in at the trial court. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

Under A.S.C.A. § 3.1007, a judge has a duty not to recuse himself unless there is a need to do so is, and this duty is not

overridden where the alleged family ties of the judge are too tenuous, and where no circumstances indicate that the judge's family members have a personal or financial interest in the outcome of the case. Alleged relationships which are too distant to support even an inference of the appearance of impartiality include a half-sister who is related to an extended family to which a party belongs, and a wife who may be a first cousin by marriage to a party's step-father. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

The ancient common law Rule of Necessity which requires the adjudication of a controversy by a judge who is, by statute, canon, or other direct interest, disqualified from hearing that matter when no provision is made for calling in another judge or no other judge can take the disqualified judge's place need not be applied where it is determined that judges who participate in a retrial were not, ipso facto, disqualified from sitting because of their participation in the first trial. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. In Re Matai Title Tagoilelagi, 3 A.S.R.3d 66 (App. Div. 1999).

A judge's impartiality might reasonably be questioned in proceedings where a disinterested observer would entertain significant doubt that justice would be done. In Re Matai Title Tagoilelagi, 3 A.S.R.3d 66 (App. Div. 1999).

Where judge's failure to recuse himself found proper at trial court and issue decided under appropriate legal standard, reviewing court could nonetheless mandate recusal on remand out of an abundance of caution. In Re Matai Title Tagoilelagi, 3 A.S.R.3d 66 (App. Div. 1999).

§ 5(4) —Precedence and Stare Decisis

Purpose of stare decisis is to maintain uniformity and predictability of law, but not at expense of perpetuating manifest error. In re Matai Title Salave'a, 4 A.S.R. 44.

Although rule of stare decisis is basic, it must not be inflexibly applied if previous decision is erroneous. In re Matai Title Salave'a, 4 A.S.R. 44.

Powers of pardon and parole granted to executive by statutes and constitution do not give the executive carte blanche to ignore court orders and sentences. American Samoa Gov't v. Dole, 3 A.S.R.2d 63.

Release of prisoner within two weeks after court had sentenced him to a year of detention as condition of probation, whether called a furlough, work release, reward for good behavior, compassionate leave, or by another label, violated statutes and court order. American Samoa Gov't v. Dole, 3 A.S.R.2d 63.

When Supreme Court has not had occasion to reconsider a precedent for almost a century, almost all applications of precedent have been overruled by statute, and Supreme Court has overruled similar precedents in closely related or analogous areas, lower court may conclude that the precedent no longer represents the law that would be applied by Supreme Court. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

Rule of heredity that arose in previous trial court decision was not binding precedent when rule resulted from "judicial notice" of Samoan custom that ignored stark variation among different families' practices, rule was stipulated by the parties rather than briefed, argued, and decided, and rule had been criticized in subsequent opinions of the appellate court. In re Matai Title "Tauaifaiva", 5 A.S.R.2d. 13.

Decision of the highest court of a jurisdiction, including a decision of the Trial Division that was not appealed, should be followed by judge deciding subsequent case in the Trial Division unless there is some compelling reason not to do so. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The fact that a trial judge would have decided an earlier case differently is not a compelling reason to disregard the principle of stare decisis and ignore the authority of the earlier case. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

Prior judicial decision was not a strong precedent when: (1) the decision resulted from a summary proceeding that did not include full briefing and argument by counsel; (2) the judge sitting in the later case was the same judge who had decided the prior case, so that there was no risk of casual disregard for the reflection and deliberation leading to the first decision; (3) the first decision was itself arguably an unfounded departure from precedent; and (4) both cases involved statutory interpretation, in which case the deciding court's primary duty is one of fidelity to the enacted law. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

Alleged "informal practice of the High Court" prior to a contrary decision did not divest that decision of its value as precedent, where no reported decisions or other evidence established the rationale or even the definite existence of the practice. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

Territorial government is bound by court orders in proceedings to which it is a party and should not issue legal opinions that counsel disobedience to such orders. American Samoa Gov't v. Satele, 7 A.S.R.2d 154.

Village, county, and district councils have no power to veto a court decision, rendered after trial in accordance with statutory procedure, that a particular person is entitled to hold a matai

title. A.S.C.A. § 1.0401 et seq. In re Matai Title Sotoa, 8 A.S.R.2d 10.

Warden who released prisoner in violation of court order, on the authority of invalid order of parole board, was in continuing violation of court order for as long as the prisoner remained at large. Atuatasi v. Moaali`itele, 8 A.S.R.2d 53.

Signature of judge on a court order certifies that the judge has in fact exercised his judgment, that the premises of the order are true, that the order itself is lawful, and that it is appropriate under all the circumstances that the order be given the force of law. Bank of Hawaii v. Ieremia, 8 A.S.R.2d 177.

Court was bound by its own judgment in a case decided eighty-two years earlier, whose parties were ancestors in title of the parties to the later case and in which the court had specifically defined the rights of the parties, notwithstanding any contrary implication in an even earlier decision of another court in which the parties and the questions before the court were somewhat different than in both later cases. Willis v. Fai`ivae, 10 A.S.R.2d 121.

A court must find facts consistently with the evidence before it, even if such findings conflict with prior findings made by a court deciding a prior case with different parties and different evidence. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

Statement in a judicial opinion that was not necessary to the holding, on a question which was neither briefed nor argued by any party to the prior case, was not binding upon the court in deciding a subsequent case. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

Stare decisis applies to questions of law and not of fact, to general propositions rather than to specific inquiries. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

Where objectors to registration of land cited a prior case holding that the land belonged to them, but offered no surveys delineating the extent of their respective claims within the disputed area, the court would deny the offer of registration but would express no opinion with regard to the claims of the objectors beyond the holding in the prior case. Sivia v. Alaimalo, 13 A.S.R.2d 95.

A land registration in conflict with a Court order in a prior adjudication of land claims is void--or at least voidable in the absence of reliance by innocent third parties--for the same reasons that a registration would be without legal effect if it conflicted with an earlier valid registration. Fa`aaua`a v. Tauiliili, 15 A.S.R.2d 71.

Even if it would not exceed the Court's power, declaring a prior judicial decision null and void, when witnesses have died and memories have faded in the intervening thirty years, would be imprudent and unjust because the Court at that time was in a much better position to determine the issues material as to whether land should be registered. Lualemana v. Atualevao, 16 A.S.R.2d 34

High Court opinions between 1978 and 1986 were reported only if they established or altered a rule of law, criticized existing law, or, in the Justices' opinion, "involve[d] a legal issue of continuing public interest." Saufo`i v. American Samoa Gov't, 16 A.S.R.2d 71.

The court is bound by statute and treaty to recognize freehold grants made by the Land Commission of Samoa, which operated in Apia under the supervision of the then-Supreme Court of Samoa, prior to the United States-established government. Willis v. Fai`ivae, 17 A.S.R.2d 38.

As a matter of law, an earlier survey registered in accordance with law prevails over a later one. Willis v. Fai`ivae, 17 A.S.R.2d 38.

The court is bound to recognize a land survey which has been registered according to law. A.S.C.A. § 37.0101 et seq. Willis v. Fai`ivae, 17 A.S.R.2d 38.

Informal statements of traditional Samoan custom and law are neither binding on the Court nor persuasive, as they do not represent a recitation of legal authority. Pene v. Bank of Hawaii, 18 A.S.R.2d 65.

Even if erroneous, a court's decision as to whether a parcel of land is a person's individual land or a family's communal land is binding on later courts. Puailoa v. Estate of Lagafuaina, 19 A.S.R.2d 40.

The doctrine of stare decisis applies only to questions of law, not questions of fact or applications of principles of law to particular facts. Puailoa v. Estate of Lagafuaina, 19 A.S.R.2d 40.

A case is not overruled by a later case when they differ in findings of fact or issues raised and not in interpretation of law. Reid v. Puailoa, 23 A.S.R.2d 101.

Court orders entered pursuant to a stipulation of the parties, without the benefit of factual evaluation, may be vacated when a third party intervenes and a factual evaluation is necessary. Ala`ilima v. Zoning Board, 25 A.S.R.2d 146.

An order based on a material mistake of fact can be reopened and modified at the court's discretion. Mobile Marine Ltd. v. Ninna Marianne, 28 A.S.R.2d 88.

It is inappropriate for the Trial Division to revisit a principle settled by the Appellate Division. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

Underlying values of res judicata must sometimes be balanced against the policies implicated by its application, but this principle does not mean that a decision can never be final simply because it implicates a compelling question of policy such as the protection of Samoan custom. Fanene v. Fanene, 30 A.S.R.2d 115.

§ 5(5) —Supervision of Proceedings and Litigation

There was no error in court's questioning of attorney for lessee to determine whether his relationship with defendants was such that he was also liable under lease. Scanlan v. Steffany, 3 A.S.R. 583.

It is not error of trial court to delineate evidence surrounding signing of lease and actions of attorney in procuring or omitting such signature, since trial court is judge of fact and law. Scanlan v. Steffany, 3 A.S.R. 583.

Where defendant has important witness who is not available but he knows of witness at time of trial, he should apply for continuance. Tigi v. Government, 4 A.S.R. 902.

Court's refusal to permit witness to testify with respect to potential title holder's character, personality and knowledge of Samoan custom was not erroneous where it would have been cumulative and unnecessary since potential title holder testified himself; and there is no indication court doubted his testimony. Utu v. Aumoeualogo, 4 A.S.R. 906.

Trial judge has right to propound questions to witnesses to elicit pertinent facts; he may recall witnesses who have been examined; he may cross-examine; he may ask leading questions; and he may elicit any relevant and material evidence without regard to beneficial or prejudicial effect on either party. Ross v. Scanlan, 4 A.S.R. 913.

Trial court does not err in failing to consider witness present in court room when appellant did not call witness to testify. Willis v. Government, 4 A.S.R. 926.

Court's statutory responsibility to supervise litigation involving minors imposes a duty on the court to exercise its own best judgment on the fairness of attorney fee arrangements. Oto v. National Pacific Insurance Co. (Mem.), 3 A.S.R.2d 114.

Trial Court had discretion to dismiss action four years after it had been filed, eighteen months after court had given notice that the case would be dismissed unless good cause to the contrary should be shown, and one year after the date that counsel estimated he would move for trial, when no such motion had been made. Monte Kaho v. Ron Pritchard Ground Services, Inc., 4 A.S.R.2d 40.

Constitutional right to due process of law is not denied when a court which has repeatedly accommodated counsel's unusual requests and overlooked procedural irregularities finally ceases to do so and dismisses the action. Monte Kaho v. Ron Pritchard Ground Services, Inc., 4 A.S.R.2d 40.

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.

Trial judge may exclude spectators from the courtroom during testimony when necessary to protect or shield the witness; to prevent embarrassment or emotional disturbance; or to enable a reluctant witness to testify to material facts. American Samoa Gov't v. Masaniai, 6 A.S.R.2d 114.

Trial judge properly decided, after a public hearing at which each spectator had an opportunity to express reasons for his or her desire to remain in the courtroom, that the public should be excluded during the testimony of a youthful rape victim when trial judge found that certain spectators wished to be present in order to intimidate the witness. American Samoa Gov't v. Masaniai, 6 A.S.R.2d 114.

Exclusion of spectators from courtroom under exigent circumstances did not violate criminal defendant's right to a public trial or the public's right to be present. U.S. Const. amends. I, VI. American Samoa Gov't v. Masaniai, 6 A.S.R.2d 114.

When a judgment creditor moves to seize property of the judgment debtor and court has determined that the property does belong to the judgment debtor, the property should ordinarily be held by the Court rather than by the creditor, the debtor, or the person previously in possession pending judicial determination of the creditor's right to seize it. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Court did not deprive attorney of life, liberty, or property without due process of law, either by injury to his reputation or otherwise, where (1) attorney had represented judgment debtor; (2) attorney also represented other members of judgment debtor's family; (3) after judgment, the judgment debtor and her family had agreed to changes in the record ownership of property formerly recorded as property of the judgment debtor, had arranged for the sale of the property, and had removed themselves from the territorial jurisdiction of the court; (4) attorney had in his possession the proceeds of the sale, which judgment creditor alleged to be the property of the debtor but which debtor and other family members claimed to be the property of other family members; (5) court had held the funds to be the property of the judgment debtor and subject to seizure by the judgment creditor; and (6) court ordered the funds to be deposited in the registry of the court pending

further proceedings. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Trial court did not err in dismissing the complaint at the conclusion of plaintiff's case, where plaintiff had testified at length and had had ample opportunity to present all the evidence needed for his case in chief, trial court assumed as true some evidence that plaintiff indicated he would have offered in rebuttal, and trial court's decision was well supported in documentary evidence introduced during the plaintiff's case. Willis v. Fai`ivae, 12 A.S.R.2d 37.

Trial judge has wide discretion in deciding whether to appoint an interpreter and need not accept defendant's assertion that he needs one as dispositive, but must balance defendant's right to confrontation and effective assistance against the public's interest in the economical administration of criminal law. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

Bringing an action in the wrong division of the High Court does not render the action or judgment a nullity; absent a showing that an erroneous caption made some practical difference, the proper remedy is to give the case a new caption. Jennings v. Jennings, 19 A.S.R.2d 34.

Consolidation is appropriate when actions having "a common question of law or fact are pending before the court." T.C.R.C.P. 42(a). Pita v. Garrett, 29 A.S.R.2d 12.

With a common question of law or fact present, the court is permitted to order consolidation, with or without the parties' consent, to serve the purpose of convenience and economy of administration, and is given broad discretion to decide whether consolidation is desirable. Pita v. Garrett, 29 A.S.R.2d 12.

While the prosecuting attorney has almost unfettered discretion to decide whether or not to prosecute a case, the court has the discretion to decide whether or not to grant a motion to dismiss a criminal complaint. T.C.R.Cr.P. 48(a). American Samoa Gov't v. Su`a, 30 A.S.R.2d 43.

The court may refuse to dismiss a criminal case when it clearly and convincingly determines that dismissal would not be in the public interest. American Samoa Gov't v. Su`a, 30 A.S.R.2d 43.

In order to determine whether dismissal of a criminal case serves the public interest, the court can require the prosecuting attorney to disclose his reasons for wishing to dismiss the case prior to a ruling thereon. American Samoa Gov't v. Su`a, 30 A.S.R.2d 43.

A trial court may grant or deny, in its sound discretion, a continuance during trial to obtain a witness, which decision will not be overturned except upon a showing of clear abuse. A.S.G. v. Su`a, 31 A.S.R.2d 8.

In considering whether or not to grant or deny a continuance during trial to obtain a witness, the court must take into account such factors as the benefit the movant expects, the likelihood of producing the witness, the burden on the jurors, court and other witnesses, and foremost whether the continuance will achieve or nullify substantial justice. A.S.G. v. Su`a, 31 A.S.R.2d 8.

The court need not, and as a general rule will not, accept filings made after a matter has been submitted, particularly where the court specifically asked an attorney whether he would like additional time to make a filing, and he, in return, specifically answered that he would not. Clifton v. Voyager, 31 A.S.R.2d 12.

Where a court places property which is the subject of a dispute into the hands of a trustee prior to a final determination of the merits of the case this does not divest a party claiming ownership from asserting the party's claim for legal and ownership title and rights to the property at the subsequent trial. Bendall v. Samoa Aviation, Inc., 1 A.S.R.3d 16 (App. Div. 1997).

§ 5(6) —Supervision of Judgments and Settlements

SEE CIVIL PROCEDURE § 10(1) – ENFORCEMENT OF JUDGMENTS

An order or judgment is entered for all purposes on the date any judicial writing is filed or any pronouncement made from the bench. High Court Rule 23. Judicial Memorandum, 4 A.S.R.2d 172.

A proffered "settlement" of an already litigated claim, purporting to "adjust" boundaries established by the court, has no effect when it (1) was never judicially approved; (2) resulted from negotiations between a licensed legal practitioner and an adverse party represented by counsel in the absence of the latter party's counsel; (3) clearly results in disadvantage to the latter party; (4) was renounced by the latter party soon thereafter; and (5) bears a close resemblance to an earlier "settlement" asserted in court by the legal practitioner, the existence of which the adverse party denied immediately after having consulted his attorney. Te'o v. Sotoa, 5 A.S.R.2d 90.

Documents purporting to be settlements of prior disputes are customarily given stricter judicial scrutiny than contracts involving more palpable consideration, especially when the party drafting and pressing for the settlement is a business entity experienced in such transactions, the other party has no such experience and is unrepresented by counsel, the more experienced party employed threats or promises to encourage the other party to sign the document with little or no deliberation, and the consideration given by the more experienced party was relatively trivial. Development Bank v. Ilalio, 5 A.S.R.2d 110.

In determining whether a business entity believes in good faith that its claim is just for the purpose of determining whether the claim can be consideration for a settlement, the entity is chargeable with the knowledge of its agents who participated in the transactions giving rise to the claim. Development Bank v. Ilalio, 5 A.S.R.2d 110.

No reasonable person could conclude that creditor had agreed to a settlement proposed by debtor, and therefore no question of material fact was raised with respect to such settlement, where the evidence, taken in the light most favorable to the debtor, was that (1) debtor had told creditor's representative he had no intention of paying the debt but that he was willing to surrender a car that had been taken as collateral security; (2) creditor never verbally agreed to this proposal; (3) creditor had the legal right to take the car and then collect the remainder of the debt; (4) debtor had the subjective impression that creditor's representative was happy to receive the car, since otherwise the creditor would receive nothing at all; (4) creditor never took the car. Bank of Hawaii v. Pene, 8 A.S.R.2d 30.

Proposed settlement of previously litigated land claim which purports to adjust the boundaries set by the court's judgment should ordinarily be submitted to court for its approval. Estate of Sotoa v. Te`o, 8 A.S.R.2d 165.

Risk of abuse inherent in consent judgments ordinarily outweighs their usefulness as a means of saving time, at least in a jurisdiction where trial court routinely resolves uncontested matters by means of brief evidentiary hearings a few days after suit is filed. Bank of Hawaii v. Ieremia, 8 A.S.R.2d 177.

Court would not sign consent judgment where one party was represented by counsel, other side was unrepresented, consent judgment required unrepresented party to pay attorney fee that would not have been awarded if the case had been litigated, and court could not be sure that the principal amount had been correctly calculated. Bank of Hawaii v. Ieremia, 8 A.S.R.2d 177.

Signature by person unrepresented by counsel on document designated as settlement or consent judgment does not automatically entitle the document to judicial enforcement without prior judicial scrutiny. Bank of Hawaii v. Ieremia, 8 A.S.R.2d 177.

In an action for breach of an oral contract for the settlement of an outstanding electric bill, court would not find that the agreement included concessions by the electric company with regard to land disputes unrelated to the bill in question, where: (1) plaintiff's documentary evidence of the existence of such terms was self-serving and prepared after the negotiations; (2) defendant's representatives testified that there was no agreement on these terms; (3) notes made during the negotiations by defendant's counsel reflected no agreement to such terms; (4) plaintiff himself had sought the settlement as an alternative to a trial scheduled the same day, over the objections of defendant's counsel who had objected to a continuance for the purpose of settlement negotiations; (5) a stipulation signed by both parties at the conclusion of the negotiations had contained no reference to agreement on any collateral terms; (6) agreement to such terms would have been beyond the scope of defendant's representatives' authority; and (7) it made no business sense for defendant to agree to such terms. Pene v. American Samoa Power Authority, 10 A.S.R.2d 9.

Court presented with a settlement involving minor children would not approve a fee to an attorney from another jurisdiction who had not applied for admission pro hac vice and whose services, if any, constituted the unauthorized practice of law. Moananu v. American Samoa Gov't (Mem.), 11 A.S.R.2d 100.

Court would not approve a settlement award to a deceased plaintiff who had been dismissed from the case with the acquiescence of plaintiffs' counsel. Moananu v. American Samoa Government (Mem.), 11 A.S.R.2d 100.

Where counsel for plaintiff who died during the litigation did not move to substitute his client's estate, but instead continued to litigate for two years, recovered certain funds, and then moved for distribution of the funds among widow and various unnamed children of the decedent, court would deny the motion and retain the funds pending qualification of an administrator of decedent's estate. Te`o v. Continental Insurance Co. (Mem.), 13 A.S.R.2d 42.

Not being vested with prosecutorial discretion, courts can approve a consent-decree provision limiting the defendants' liability to ASG for past violations, but it is inappropriate for a court to enter an order prohibiting the prosecution of future violations of law. American Samoa Gov't v. StarKist Samoa, Inc., 16 A.S.R.2d 27.

Court orders providing for property settlements, unlike orders for alimony, may not be modified by the court to reflect changes in the circumstances of the parties. Mahoney v. Mahoney, 16 A.S.R.2d 109.

A settlement will not ordinarily be enforced when (1) the party that drafted and pressed for the "settlement" is a business entity experienced in and familiar with such transactions; (2) the other party is an individual who has no such experience or familiarity and who generally signs the document without benefit of legal counsel; (3) the transaction was a whirlwind settlement in which there was no evidence that the weaker party negotiated, deliberated, or fully understood what he was giving up, and in which the stronger party employed threats or promises to encourage a quick decision; and (4) the exchange was lopsided, in that potentially valuable legal rights were surrendered by the weaker party in exchange for a small sum

or other trivial consideration from the stronger party. Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

Merely recommending that an individual retain a lawyer cannot single handedly transform an unenforceable settlement in an enforceable one. Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

The "confession" situation must be distinguished from a settlement and compromise, in which each party makes a deliberate decision that the costs and risks of litigation exceed the possible advantages to be gained by it. Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

A damage award to a minor shall be deposited directly into the depositary of the High Court of American Samoa and placed in an interest-bearing account with the minor as beneficiary; disbursements are to be made only on application by the guardian ad litem and with the approval of one of the Justices. Sciascia v. Lutali, 23 A.S.R.2d 38.

The High Court generally rejects plea agreements under T.C.R.Cr.P. 11 (e)(1)(C) that remove the court's discretion in sentencing except in very rare occasions where the interests of justice were found to be better served by their acceptance. American Samoa Gov't v. Masaniai, 28 A.S.R.2d 7.

The court may void a judgment even after the parties have subsequently entered into a settlement, even though the decision, as a practical matter, invalidates the settlement. Interocean Ships, Inc. v. Samoa Gases, 30 A.S.R.2d 170.

§ 5(7) —Contempt

SEE LEGAL PROFESSION § 4(2) – SANCTIONS

Courts have inherent power to ensure the integrity of court functions by punishing contempt of court, even in the absence of statutory contempt power. American Samoa Gov't v. Godinet, 7 A.S.R.2d 127.

Criminal contempt statute authorizing the executive to prosecute certain conduct as criminal contempt of court does not limit court's power to act on its own under general contempt statute. A.S.C.A. §§ 3.0203, 46.4617. American Samoa Gov't v. Godinet, 7 A.S.R.2d 127.

General contempt statute may give rise to criminal liability despite existence of separate statute making certain acts criminal offenses. A.S.C.A. §§ 3.0203, 46.4617. American Samoa Government v. Godinet, 7 A.S.R.2d 127.

In certain circumstances, inexcusable neglect may constitute willful and contemptuous conduct and be punished as contempt of Court. Vaela'a v. Sunia, 1 A.S.R.3d 131 (Trial Div. 1997).

There is no right to appeal judgment of contempt. However, a contempt judgment may be contested by filing a writ of certiorari. Fuavai v. District Court, 2 A.S.R.3d 41 (App. Div. 1998).

§5(8) —Statutory Construction

SEE CONSTITUTIONAL LAW § 3(3) –STATUTORY CONSTRUCTION

Absent a clearly expressed legislative intention to the contrary, the language of the statute must ordinarily be regarded as conclusive. American Samoa Gov't v. Williams, 4 A.S.R.3d 140 (Trial Div. 2000).

Where statute prohibited possession of "a controlled substance," rather than "one or more controlled substances," statutory language made the possession of one controlled substance an offense, and possession of more than one substance multiple offenses. American Samoa Gov't v. Williams, 4 A.S.R.3d 140.

Although the starting point for interpretation of a statute is the language of the statute itself (and absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive), the court may also consider the wrong the statute seeks to prevent. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Statutory interpretation is purely a question of law to be decided by the court. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

The starting point for interpretation of a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

Courts may not read into a statute an implication that it does not warrant. Nua v. Sunia, 4 A.S.R.3d 208 (Trial Div. 2000).

In the absence of evidence to the contrary, the Court must regard the plain wording of the statute as conclusive. Ripley v. American Samoa Gov't, 4 A.S.R.3d 331 (Land & Titles Div. 2000).

The Court cannot read an implication into a statute that it does not warrant. Ripley v. American Samoa Gov't, 4 A.S.R.3d 331 (Land & Titles Div. 2000).

A statute should be interpreted according to its plain meaning, avoiding any construction that would render a provision to be meaningless or nugatory. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

The meaning of a statute must be ascertained in light of its purpose. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

Statutory interpretation is purely a question of law to be decided by the court. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

The purpose of statutory interpretation is to effectuate the intention of the legislature. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

The first step in statutory interpretation is determining whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

When the words are either reasonably susceptible to different meanings, conflict with the overall statutory purpose, or cause absurd results, a court must look beyond literal statutory language. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

Where a statute is ambiguous, the court analyzes the design of the statute as a whole and its object and policy. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

The court may examine sources other than the statute's language for evidence of legislative intent. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

Neither the Governor nor any other member of the Executive Branch may undo what the Legislature of American Samoa has put in place as law without having a statutory basis for such action. Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

Courts cannot change what is clear on the face of the statute. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

Where the issue is one of statutory interpretation, such is purely a question of law. Boral Gas of American Samoa, Inc. v. Iaulualo, 7 A.S.R.3d 57 (Trial Div. 2003).

The Court is free to interpret the laws of American Samoa differently than similarly worded federal laws. Boral Gas of American Samoa, Inc. v. Iaulualo, 7 A.S.R.3d 57 (Trial Div. 2003).

§ 6 Sovereign Rights

SEE TAXATION § 8 – SOVEREIGN IMMUNITY

SEE TORTS § 10 – GOVERNMENT TORT LIABILITY ACT

Laches on part of government or officers of government is not defense to claim founded on sovereign right. Luce v. Pila, 3 A.S.R. 127.

Protection from a known and inherently dangerous condition is an operational rather than a discretionary function for which government has no sovereign immunity under statute. Neither may government avail itself of sovereign immunity when acting in a proprietary capacity, as in the rental of housing to its employees. Savage v. Am. Samoa Gov't, 1 A.S.R.2d 102 (Trial Div. 1983).

When the government knows of a dangerous condition, it is liable for damages caused by its failure to attempt to alleviate it. Savage v. Am. Samoa Govt, 2 A.S.R.2d 6 (App. Div. 1984).

Court would not grant motion to dismiss territorial government as defendant in shareholders' derivative suit on the ground of sovereign immunity where government had created bank, made loans, executed mortgages, acquired stock in corporation, assumed management of the corporation, voted in corporate elections, and undertaken to sell the bank's majority interest in the corporation, since such actions might have given rise to an implicit agreement to be held responsible for breach of obligations thus undertaken. Fa'atiliga v. Lutali, 3 A.S.R.2d 139.

Territorial immunity from suit may be implied from similarities between structures of American Samoan and state governments. Ferstle v. American Samoa Gov't, 4 A.S.R.2d 160.

American Samoa Government, immune from suit absent consent or waiver, is not a "person" for purposes of federal civil rights statute. 42 U.S.C. § 1983. Ferstle v. American Samoa Gov't, 4 A.S.R.2d 160.

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 Gov't, 4 A.S.R.2d 160.

Territorial government is not a "person" liable under federal civil rights law for conspiracy to violate federal rights. 42 U.S.C. § 1985. Ferstle v. American Samoa Gov't, 4 A.S.R.2d 160.

Sovereign immunity is premised on the notion that there can be no action to enforce a right against authority that created the right. Ferstle v. American Samoa Gov't, 4 A.S.R.2d 160.

Absent waiver of sovereign immunity or consent to suit, action for damages under civil rights law may not be maintained against any of the several states. 42 U.S.C. § 1983. Ferstle v. American Samoa Gov't, 4 A.S.R.2d 160.

Territorial government whose consumer protection agency brought action in a representative capacity on behalf of a named individual, and which was not named as a plaintiff in its own right, could not recover damages in the consumer protection action for the loss of its own property. A.S.C.A. § 27.0402. American Samoa Gov't ex rel. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

The power to expel aliens is a fundamental, sovereign power exercised by the political branches of government. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

The usual reason given for construing statutes of limitation for suits against the United States Government as jurisdictional (i.e., not subject to waiver and/or tolling)--that the limitations are deemed an integral part of the initial waiver of sovereign immunity, which should not be extended by courts beyond the intent of Congress--does not apply to ASG. Randall v. American Samoa Gov't, 19 A.S.R.2d 111.

Under the Deeds of Cession between the chiefs of Eastern Samoa and the United States, all vestiges of sovereignty passed from former to the latter. Alamoana Recipe, Inc., v. American Samoa Gov't, 25 A.S.R.2d 97.

Sovereign Immunity protects the American Samoa Government from 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. Ala v. American Samoa Gov’t, 2 A.S.R.3d 163 (Trial Div. 1998).

Governmental conduct at the planning stage should usually be considered discretionary, while the actions government specifically undertakes to carry out its programs and policies should usually be considered operational. Ala v. American Samoa Gov’t, 2 A.S.R.3d 163 (Trial Div. 1998).

Routine cleaning or maintenance is not a discretionary governmental function but is operational in nature. Ala v. American Samoa Gov’t, 2 A.S.R.3d 163 (Trial Div. 1998).

When sovereign immunity is waived, the government is liable in the same manner and to the same extent as a private individual under like circumstances. Ala v. American Samoa Gov’t, 2 A.S.R.3d 163 (Trial Div. 1998).

Generally, the burden is on the officer accused of unlawful conduct to prove entitlement to immunity. Afele-Fa`amuli v. Am. Samoa Cmty. Coll., 4 A.S.R.3d 219 (Trial Div. 2000).

§ 7 Public Records

SEE EVIDENCE § 10 – CONTENTS OF WRITINGS, RECORDINGS & PHOTOGRAPHS

Most information available from chief executive of state or territory can be just as easily obtained from lesser officials. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

The language of A.S.C.A. § 10.0603 does not contemplate or give any direction regarding the disclosure of financial records to individual members of either house, and falls well short of creating the "plain duty" and "plain right" required for the issuance of a writ of mandamus. Lutu v. Ale, 28 A.S.R.2d 43.

A record is a public record if it is required to be kept by law, or is kept in furtherance of some other duty required by law, or which is meant to serve as a memorial of something done by a person in his/her capacity as a public official. Lutu v. Ale, 28 A.S.R.2d 43.

Private individuals cannot assert priority over public officials in the use of public documents for purposes such as auditing. Lutu v. Ale, 28 A.S.R.2d 43.

The right to review public records is not absolute. The law requires that the interests of the individual seeking the record be weighed against the public interest in confidentiality. Lutu v. Ale, 28 A.S.R.2d 43.

Where a record contains some private information, mingled with public information, mandamus may compel an official to allow supervised copying of the public portions of the record while omitting the private. Lutu v. Ale, 28 A.S.R.2d 43.

A duty to disclose information exists when: (1) the information is public record; and (2) petitioner's interest in the information outweighs any public interest in preventing disclosure of the information; or (3) the Constitution or a statute requires disclosure. Lutu v. Ale, 28 A.S.R.2d 43.

Where the right to view a public record is established, mandamus may compel disclosure of the record by whoever is preventing such disclosure. Lutu v. Ale, 28 A.S.R.2d 43.

§ 8 Government Employees

SEE EMPLOYMENT LAW § 4 – GOVERNMENT EMPLOYEES

BANKRUPTCY

§ 1 General Provisions
2 Stay of Proceedings

§ 1 General Provisions

SEE CIVIL PROCEDURE § 1(5) – BANKRUPTCY

The filing of a Chapter 11 bankruptcy petition in a United States District Court prevents the High Court from subsequently obtaining jurisdiction over property of the petitioner. 11 U.S.C. § 362(a). Rainwater v. The Sea Encounter, 3 A.S.R.2d 87.

Since there is neither a bankruptcy court in American Samoa nor any provision designating American Samoa as part of any district with a bankruptcy court, there exists no court with jurisdiction to entertain a bankruptcy action when the debtor's residence, domicile, principal place of business, and principal assets are in American Samoa. 11 U.S.C. § 101(49); 28 U.S.C. § 1472. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The acknowledged unfairness to a creditor in the Territory who must travel to the United States in order to pursue his claim against a debtor in bankruptcy who is otherwise amenable to suit locally is not enough to overcome the language and policy of the statute requiring the consolidation of claims against a bankrupt debtor. 11 U.S.C. § 362. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

A bankruptcy court which has acquired jurisdiction over a debtor and his legal rights and obligations may issue a judgment which is binding in American Samoa. Lutali v. Pedro, 27 A.S.R.2d 73.

Judgments obtained or other actions taken in violation of a stay in bankruptcy are void and of no effect. Lutali v. Pedro, 27 A.S.R.2d 73.

§ 2 Stay of Proceedings

SEE CIVIL PROCEDURE § 11(3) – STAY OF PROCEEDINGS

The filing of a Chapter 11 bankruptcy petition in a United States District Court automatically stays proceedings against the petitioner in the High Court of American Samoa. 11 U.S.C. § 362(a). Rainwater v. The Sea Encounter, 3 A.S.R.2d 87.

Automatic stay of suits against bankruptcy petitioner does not operate to stay proceedings against solvent co-defendants. 11 U.S.C. § 362. Monte Kaho v. Ron Pritchard Ground Services, Inc., 4 A.S.R.2d 40.

The automatic stay provided in the Bankruptcy Act differs from an injunction or temporary restraining order only in that the stay becomes binding without an affirmative act of the bankruptcy court. 11 U.S.C. § 362(d)&(e). Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The language and history of the automatic stay provided in the Bankruptcy Act imply that Congress intended for the stay to apply wherever Congress had the power to make it apply, without limitation. 11 U.S.C. § 362. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The automatic stay in bankruptcy protects both debtor and creditor, by providing debtor a "breathing spell" during which to reorder his financial condition and by ensuring that no single creditor can drain the debtor's assets without judicial attention to the rights of other creditors. 11 U.S.C. § 362. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The automatic stay of any judicial, administrative, or other proceeding against a debtor who has instituted a bankruptcy reorganization extends to proceedings in the High Court of American Samoa. 11 U.S.C. § 362. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

Trial court properly held that proceedings before it were automatically stayed when defendant filed bankruptcy petition in another jurisdiction. 11 U.S.C. § 362(a). Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 6 A.S.R.2d 62.

Judgments obtained or other actions taken in violation of a stay in bankruptcy are void and of no effect. Lutali v. Pedro, 27 A.S.R.2d 73.

The rule voiding actions in contravention of a stay applies to unlisted creditors, even if the creditor had no notice of the stay. Lutali v. Pedro, 27 A.S.R.2d 73.

The stay provisions set forth in 11 U.S.C. § 362(a) do not apply to actions brought by the debtor which inure to the benefit of the bankruptcy estate. PAL Air International, Inv.

v. Porter, 1 A.S.R.3d 1 (App. Div. 1997).

CIVIL PROCEDURE

§ 1 Initial Matters
1(1) —Jurisdiction Generally
1(2) —Personal Jurisdiction
1(3) —Subject Matter Jurisdiction
1(4) —Issues Related to Federal Jurisdiction
1(5) —Bankruptcy
1(6) —Admiralty
1(7) —Right of Action
1(8) —Cause of Action
1(9) —Rules of Civil Procedure Generally
1(10) —Affidavits
2 Service of Process
2(1) —General Provisions
2(2) —By Publication
2(3) —By Posting
2(4) —Under the JIFSA
3 Pleadings
3(1) —General Provisions
3(2) —Liberal Construction
3(3) —Amending Pleadings
3(4) —Rule 11 Sanctions
4 Pretrial Motions
4(1) —Motion to Dismiss
4(1)(a) —General Provisions
4(1)(b) —Failure to State a Claim – 12(b)(6) Motion
4(1)(c) —Court's Discretion
4(1)(d) —Compared to Summary Judgment Motion
4(1)(e) —Time for Filing Motion
4(2) —Motion for Judgment on the Pleadings
4(2)(a) —Generally
4(2)(b) —Compared to Summary Judgment Motion
4(3) —Motion for More Definite Statement
4(4) —Motion to Strike
4(4)(a) —Generally
4(4)(b) —Relation to Controversy
4(4)(c) —Unduly Prejudicial
4(5) —Dismissal of Actions
4(5)(a) —Generally
4(5)(b) —Voluntary Dismissal by Plaintiff
4(5)(c) —Voluntary Dismissal by Court
4(5)(d) — Failure to Prosecute
4(5)(e) —Time for Filing Motion
4(5)(f) —Costs of Previously Dismissed Action
4(6) —Continuances
5 Parties

5(1) —General Provisions
5(2) —Joinder
5(3) —Class Actions
5(4) —Substitution of Parties
5(5) —Interpleader
5(6) —Intervention
5(7) —Consolidation
5(8) —Counterclaims
5(9) —Cross-claims
5(10) —Third Party Practice
5(11) —Bifurcated Proceedings
6 Discovery
6(1) —General Provisions
6(2) —Depositions
6(3) —Interrogatories
6(4) —Productions of Documents & Things
6(5) —Physical and Mental Examinations
6(6) —Requests for Admission
6(7) —Protective Orders
6(8) —Sanctions
7 Summary Judgment
7(1) —Standard
7(2) —Opposition to Motion
7(3) —Compared to 12(b)(6) Motion to Dismiss
7(4) —Compared to Motion for Default Judgment
7(5) —Compared to Motion for Partial Summary Judgment
7(6) —Within Court's Discretion
7(7) —By Affidavit
7(8) —Notice and Hearing
7(9) —Summary Judgment Denied
7(10) —Summary Judgment Granted
7(11) —Appropriate Issues for Summary Judgment
7(12) —Standard of Review
7(13) —Grounds for Appeal
8 Injunctions
8(1) —General Provisions
8(2) —Preliminary Injunctions
8(3) —Injunctions Granted
8(4) —Injunctions Denied
8(5) —Substantial Likelihood of Success
8(6) —Irreparable Injury
8(7) —Permanent Injunctions
8(8) —Compared to Stay Pending Appeal
9 Equitable Remedies
9(1) —General Provisions
9(2) —Estoppel, Unclean Hands
9(3) —Laches
9(4) —Tolling

9(5) —Subrogation
9(6) —Constructive Trusts
10 Judgments
10(1) —Enforcement of Judgments
10(2) —Validity of Judgments
10(3) —Orders in Aid of Judgment
10(4) —Declaratory Judgments
10(5) —Default Judgments
10(6) —Interlocutory & Collateral Orders
10(7) —Res Judicata & Collateral Estoppel
10(8) —Merger
11 Post Judgment Motions & Appeals
11(1) —Motion for New Trial or Reconsideration
11(1)(a) —General Provisions
11(1)(b) —Time for Filing
11(1)(c) —Particularity Requirement
11(1)(d) —Grounds for New Trial or Reconsideration
11(2) —Relief from Judgment or Order - Rule 60 Motion
11(3) —Stay of Proceedings
11(3)(a) —General Provisions
11(3)(b) —Likelihood of Appellate Success
11(3)(c) —Irreparable Harm/Balance of Equities
11(3)(d) —Public Interest
11(4) —Appellate Jurisdiction
11(5) —Petition for Rehearing
11(6) —Appellate Procedures
11(6)(a) —Generally
11(6)(b) —Notice of Appeal
11(6)(c) —Appellate Briefs
11(6)(d) —Appellate Motions
11(6)(e) —Failure to Raise Issue Below
11(6)(f) —Transcripts
11(7) —Costs of Appeal
11(8) —Findings of Law – De Novo Review
11(9) —Findings of Fact – Clearly Erroneous
11(10) —Credibility of Evidence and Witnesses
11(11) —Administrative Agency Decisions
11(12) —Abuse of Discretion
11(13) —Harmless and Reversible Error
12 Conflict of Laws
12(1) —Law of the Forum
12(2) —Foreign Courts and Judgments
13 Writs
13(1) —General Provisions
13(2) —Procedural Details
13(3) —Elements
13(3)(a) —Generally

13(3)(b) —Plaintiff's Specific Legal Right
13(3)(c) —Defendant's Indisputable Duty
13(3)(d) —Other Avenues of Relief Exhausted
14 Garnishment
16 Alternative Dispute Resolution
15(1) —Mediation
15(2) —Voluntary Arbitration
15(3) —Compulsory Arbitration
15(4) —Condemnation Proceedings
15(5) —Appeal of Arbitrator's Decision

§ 1 Initital Matters

§ 1(1) —Jurisdiction Generally

High Court's jurisdiction is not plenary but subject to that enumerated by territorial legislature. Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

In appropriate circumstances, Court has jurisdiction to resolve a land dispute in a Matai title case. Nouata v. Pasene, 1 A.S.R.2d 25 (App. Div. 1980).

District Court lacks jurisdiction to try unsworn complaint. Aumua v. Am. Samoa Gov't, 1 A.S.R.2d 43 (App. Div. 1980).

Court has no jurisdiction to alter rights and obligations with respect to persons not parties and properties not pleaded. Reid v. Tavete, 1 A.S.R.2d 85 (App. Div. 1983).

This Court has no jurisdiction to hear a petition for limitation of liability which may be brought only in a United States district court. In re M/V Ocean Pearl, 2 A.S.R.2d 21 (Trial Div. 1984).

Territorial courts are established not under Article III of the Constitution, but by Congress pursuant to the general legislative powers granted by article I and the power granted by article IV to make rules and regulations for the territories. U.S. Const. arts. I, III, IV. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The High Court of American Samoa exercises judicial power that can be divested only by an Act of Congress. 48 U.S.C. § 1662a; Rev. Const. Am. Samoa art. III § 1. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The "judicial jurisdiction of the United States" extends to American Samoa. 11 U.S.C. § 101(49). Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

High Court of American Samoa has exclusive and original jurisdiction over territorial income tax proceedings, sitting as a District Court in refund cases and a Tax Court in deficiency proceedings. A.S.C.A. §§ 11.0401, 11.0408. Klauk v. American Samoa Government, 13 A.S.R.2d 52.

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.

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.

An order issued by a court without jurisdiction is null and void. Taulaga v. Patea, 17 A.S.R.2d 206.

The High Court cannot enjoin proceedings in other jurisdictions in a limitation-of-liability proceeding, because the federal statute restricts jurisdiction to federal district courts and because neither the territorial legislature nor the court's rules can extend the court's jurisdiction to encompass proceedings in other jurisdictions. 46 U.S.C. §§ 145, 181 et seq.; T.C.R.C.P. Rule F(1). In re Complaint of Voyager, Inc., 23 A.S.R.2d 47.

A single justice has the authority to issue an alternative writ, schedule a hearing, and set a briefing schedule; however, resolution of substantive issues, other than in connection with any preliminary or supplementary matter, requires a quorum of two justices and one associate judge. A.S.C.A. §§ 3.0209, 3.0220. In re Complaint of Voyager, Inc., 24 A.S.R.2d 90.

Appeals of the High Court's decisions are accomplished by suing the Secretary of the Interior in his official residence in Washington, D.C. Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 97.

The High Court has jurisdiction to review only the "final decisions" of the District Court. Lafaele v. American Samoa Gov't, 4 A.S.R.3d 35 (App. Div. 2000).

Where Court had both common law general jurisdiction and admiralty jurisdiction, action in rem against defendant vessel to enforce personal judgment could proceed under Supplemental Rule B or C of the Trial Court Rules of Civil Procedure. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Without jurisdiction, a court cannot proceed at all in any cause. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

Federal courts do not have exclusive jurisdiction over federal civil rights actions such as 42 U.S.C. § 1981, but instead have concurrent jurisdiction. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

The Trial Division of the High Court is not a court of limited jurisdiction; rather, it is a court of general jurisdiction with the power to hear any matter not otherwise provided by statute. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

The Legislature of American Samoa has the power to define the jurisdiction of the High Court as long as it is consistent with the laws and treaties of the United States and American Samoa. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

A.S.C.A. § 3.0208 clearly grants the High Court jurisdiction to hear claims brought under 42 U.S.C. § 1981. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

42 U.S.C. § 1981 applies to United States Territories, including American Samoa. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

There is no jurisdictional bar to claims that suspension of a Fono representative for his statements: (1) was an unconstitutional restrain on free speech; (2) was an unconstitutional taking of a property interest; and (3) is null. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

§ 1(2) —Personal Jurisdiction

Awards for alimony and child support must be predicated upon in personam jurisdiction, which cannot constitutionally be had, except in unusual circumstances, in the absence of personal service of process within the court's discretion. Tafaoa v. Tafaoa, 1 A.S.R.2d 68 (Trial Div. 1982).

Party who comes into court voluntarily seeking affirmative relief thereby subjects himself to adverse judgments beyond mere denial of the relief he seeks. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

Duty of a person who seeks affirmative relief from a court to obey the court's orders cannot be avoided by the device of designating another person as "attorney in fact" with power to secure affirmative judicial relief for the principal but not to subject the principal to liability arising from the same controversy in which judicial relief is sought. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

Party who enters an appearance in pending action, not only objecting to court's exercise of jurisdiction over property but also asserting arguments on the merits of the action, thereby subjects himself to the court's jurisdiction notwithstanding his characterization of his appearance as "special." In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Appearance of licensed attorney appointed as "attorney in fact" by principal outside court's territorial jurisdiction, asserting the principal's ownership of property within territorial jurisdiction and seeking affirmative relief, afforded an independent ground of jurisdiction over the principal and his property. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Judgment against defendant who had not been properly served by publication would be null and void, since court would not have obtained jurisdiction over defendant. In re Three Minor Children, 10 A.S.R.2d 57.

Although court may have in personam jurisdiction to order a party to convey to another party a deed to property in another state, it cannot directly affect or determine title to that real property. Godinet v. Godinet (Mem.), 11 A.S.R.2d 156.

Appellant who had sufficiently invoked the remedial powers of the court had subjected himself to its jurisdiction so that the trial court's exercise of such jurisdiction did not violate due process. Tedrow v. Manuma, 12 A.S.R.2d 51.

Defendant's motion to dismiss for lack of in personam jurisdiction would be continued in order to allow discovery on the issues of fact pertaining to jurisdiction, in light of the early posture of the case and of the contentions of plaintiff that he had not had sufficient time to meet the allegations set forth in defendant's affidavits denying jurisdiction and that defendant would not be unduly prejudiced by the resulting delay. T.C.R.C.P. 12(b)(2). Patau v. Rosendahl Corp., 12 A.S.R.2d 66.

Action had "sufficient minimum contacts" with territory, and territorial court was a convenient forum for litigation, where plaintiff seamen, who were foreign nationals employed by a foreign corporation, alleged that defendant had flown them to the territory to begin their employment and that the voyages on which alleged wrongful acts had taken place had begun and ended in the territory. Devera v. Tong Sheng Co., Ltd (Mem.), 14 A.S.R.2d 98.

Entry of an appearance by counsel, the raising of defenses on the merits without objection to the Court's jurisdiction, and active participation in a trial on the merits would generally be regarded as a waiver of any waiveable jurisdictional defenses. Diocese of Samoa Pago Pago v. KMST, Inc., 15 A.S.R.2d 20.

To properly assert personal jurisdiction over a nonresident, the long arm statute of the proposed forum must permit the exercise of jurisdiction under the particular facts of the case and such exercise of jurisdiction must satisfy the demands of due process. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

In order to subject a nonresident defendant to a judgment in personam, due process requires that he have certain minimum contacts with the forum such that maintaining the suit does not offend traditional notions of fair play and substantial justice. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

Minimum contacts needed for due process require that a defendant must have performed some act by which he purposefully availed himself of the privilege of conducting activities within the forum, thus invoking the benefits and protection of its laws. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

Minimum contacts required for due process insure that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts or because of the unilateral activity of another party or third person. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

Jurisdiction is proper where the minimum contacts proximately result from actions of the defendant himself that are purposefully directed toward the forum and create a substantial connection with it. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

Minimum contacts required by due process to assert personal jurisdiction were not satisfied where defendant neither designed nor manufactured the machinery alleged to have injured plaintiff in American Samoa, but merely installed piping for the machinery according to third party plans when such machinery was previously installed in another location. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

A court may extend personal jurisdiction over persons or businesses on the basis of their contacts with American Samoa. A.S.C.A. § 3.0103(b). Pene v. Bank of Hawaii, 19 A.S.R.2d 52.

A court may exercise personal jurisdiction in civil cases over persons who either reside or are found in American Samoa, have been duly summoned, or voluntarily appear. A.S.C.A. § 3.0103(a). Pene v. Bank of Hawaii, 19 A.S.R.2d 52.

A plaintiff established a prima facie case of jurisdiction over a defendant company when the verified complaint alleges facts from which it is reasonably inferred that some or all of the underlying transactions with the defendant occurred in American Samoa and when other business entities are under the supervision and control of defendant's agents and directors. Taiwan Simon Enterprises Co. v. Kao Ya Fisheries Co., 22 A.S.R.2d 13.

Service is made upon a partnership or other unincorporated association by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or law to receive service, pursuant to T.C.R.C.P. Rule 4(d)(3). As such a partnership may be served by serving a person with substantial authority and responsibility over its activities. Pago Petroleum Products, Inc., v. Ye Ahn Moolsoan, Ltd., 25 A.S.R.2d 14.

Service on a representative of a partnership is valid only with respect to the partnership, and does not confer jurisdiction over a partner individually. Jurisdiction over each partner must be acquired by service on a person or entity representing the partner for process purposes. Pago Petroleum Products, Inc., v. Ye Ahn Moolsoan, Ltd., 25 A.S.R.2d 14.

§ 1(3) —Subject Matter Jurisdiction

Village magistrates have jurisdiction to hear civil matters between natives when amount in dispute does not exceed ten dollars. Toomata v. Railey, 1 A.S.R. 623.

Village court must dismiss action for debt against Samoan brought by foreigner on behalf of foreigner because it does not have jurisdiction. Toomata v. Railey, 1 A.S.R. 623.

Defendant in civil action cannot waive lack of subject matter jurisdiction of court. Toomata v. Railey, 1 A.S.R. 623.

Where petitioner brings complaint seeking injunction against decision of Election Board and order of Election Commission, court has jurisdiction since petitioner has no other recourse, and court will hear case even though proper action would have been writ of certiorari. Tuia v. Yandall, 4 A.S.R. 559.

High Court has subject matter jurisdiction in case involving contested senatorial election by county council if: 1) the case arises under the constitution, laws or treaties; 2) it involves case or controversy; 3) the cause is described in Jurisdictional Statute. A.S. Const. Art. III, § 1; R.C.A.S. § 3.0304. Meredith v. Mola, 4 A.S.R. 773.

If claim for relief in case involving contested senatorial election requires construction of Samoan constitution, court will assume subject matter jurisdiction since claim to legislative seat is case or controversy and within general jurisdictional statute. A.S. Const. Art. II, § 1; R.C.A.S. § 3.0304. Meredith v. Mola, 4 A.S.R. 773.

Court will assume jurisdiction of suit involving political right if constitution does not specifically grant adjudicatory power to legislative power to make such determination. A.S. Const. Art. II, § 22. Meredith v. Mola, 4 A.S.R. 773.

If jurisdictional criteria are met, court will consider claim to legislative seat despite constitutional provision granting legislative powers to judge elections and qualifications of its members. A.S. Const. Art. II, § 22. Meredith v. Mola, 4 A.S.R. 773.

Court has subject matter jurisdiction of claim that petitioner was duly elected and qualified to sit in Fono. Tuitasi v. Lualemaga, 4 A.S.R. 798.

Statute of limitations does not extinguish right of action, but disallows remedy through courts. Haleck v. Scanlan, 4 A.S.R. 841.

Assertion of jurisdiction by the National Labor Relations Board over complaints charging unfair labor practices by employers in American Samoa precludes territorial court from exercising jurisdiction over such complaints. 29 U.S.C. § 164(c). Su'a v. Star Kist Samoa, Inc., 4 A.S.R.2d 135.

The distance between American Samoa and the NLRB regional office in San Francisco, and consequent expense and inconvenience of bringing complaints there, were not "interests so deeply rooted in local feeling and responsibility" that territorial court could exercise jurisdiction over complaints that would otherwise be within the exclusive jurisdiction of the National Labor Relations Board. Su'a v. Star Kist Samoa, Inc., 4 A.S.R.2d 135.

Where (1) court had jurisdiction over judgment debtor and her property; (2) attorney who represented judgment debtor had successfully petitioned the court for appointment as "special guardian" of judgment debtor's minor children for the purpose of selling real estate conveyed by her to the children and retaining funds in his trust account pending court approval of their disposition; and (3) same attorney had been designated by judgment debtor's husband as "attorney in fact" to sell a house located on the land, court had jurisdiction to determine whether the proceeds from sale of the house were part of the proceeds from sale of the land and to enjoin removal of the proceeds from the territory pending such determination, even though husband was neither a named party to the action nor personally amenable to service of process in the territory. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

First amendment prohibits court from assuming jurisdiction to review church electoral processes or other disputes concerning church policy and church administration. U.S. Const. amend. 1. Ofa v. Tongan Wesleyan Church, 8 A.S.R.2d 110.

Under statute requiring election appeals to be filed by 4:30 p.m. on the seventh calendar day following the election, court had no jurisdiction over an appeal filed at 8:00 p.m. on the seventh day. A.S.C.A. § 6.0903(a). Tuika v. Chief Election Officer, 9 A.S.R.2d 57.

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.

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.

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.

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.

Motion for dismissal of action for lack of subject matter jurisdiction of the High Court of American Samoa, which went not to the jurisdiction of the court itself but to the bringing of the action in the trial division rather than the land and titles division, was without merit, as the appropriate remedy was not dismissal but transfer to the proper division; because the same judges sit in both divisions, the most important practical consequence of such a transfer would be a change in case number. Hunkin v. Grisard (Mem.), 13 A.S.R.2d 38.

According to Tax Court rule, a 90-day notice must have been issued for the court to have jurisdiction in a deficiency proceeding initiated by a taxpayer. United States Tax Court Rule 13(a). Klauk v. American Samoa Government, 13 A.S.R.2d 52.

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. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

Where a suit filed under the Government Tort Liability Act has a jurisdictional defect which is cured while the suit is

pending, the court will not dismiss the suit and require plaintiff to refile since to do so would be a needless and wasteful exercise. Mataipule v. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

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.

Since the only difference between a three-judge panel sitting as the Land and Titles Division and the same three judges sitting as the Trial Division is whether the case is styled "CA" or "LT", a final decision by one division is not subject to attack on jurisdictional grounds. Diocese of Samoa Pago Pago v. KMST, Inc., 15 A.S.R.2d 20.

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.

Statutory requirement that petition for redetermination of deficiency of income taxes be made within 90 days after notice of deficiency was mailed is jurisdictional. 26 U.S.C. § 6213(a); A.S.C.A. § 11.0401. Stephens v. American Samoa Government, 15 A.S.R.2d 87.

The High Court, while sitting as a Tax Court for deficiency proceedings, does not have jurisdiction to hear such a deficiency proceeding unless it was filed within the statutory deadline; while sitting as a District Court for refund cases, it lacks jurisdiction until there has been payment or collection of disputed taxes. 26 U.S.C. § 7422; A.S.C.A. § 11.0409. Stephens v. American Samoa Government, 15 A.S.R.2d 87.

For the purpose of foreclosing a ship's preferred mortgage lien, the High Court is considered a "district court" and thus has jurisdiction to enforce such a lien. 46 U.S.C. §§ 31301(2)(E), 31325-26. United Airlines Employee Credit Union v. M/V Sans End, 15 A.S.R.2d 95.

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.

Requirement that an administrative claim first be filed is a jurisdictional prerequisite to suit under the Government Tort Liability Act. Mataipule v. Tifaimoana Partnerships, Ltd., 16 A.S.R.2d 48.

Claim under the Government Tort Liability Act accrues when an administrative claim is denied. Mataipule v. Tifaimoana Partnerships, Ltd., 16 A.S.R.2d 48.

Cause of action accrues under the Government Tort Liability Act when the administrative remedies under the Act are exhausted, because plaintiff cannot seek judicial relief until then. Mataipule v. Tifaimoana Partnerships, Ltd., 16 A.S.R.2d 48.

Where a party to a divorce decree issued by the High Court which provided for custody and support of the parties' minor children and a property settlement later sought to modify the decree when the parties no longer lived in American Samoa, the Court declined to exercise jurisdiction on the issues of child support and custody, since the courts of domicile or residence could more effectively enforce terms ensuring the children's welfare and best interests and had a more substantial interest in doing so. Mahoney v. Mahoney, 16 A.S.R.2d 109.

Where a party to a divorce decree issued by the High Court which provided for a property settlement later sought to modify the decree when the parties no longer lived in American Samoa, the Court asserted jurisdiction regarding the property issue since the property in question was still located in American Samoa. Mahoney v. Mahoney, 16 A.S.R.2d 109.

A final decision in a case in which the Court had jurisdiction over the subject matter and the parties, and in which the parties had a fair opportunity to address the issues, has the force of law and binds the parties even though it may be an erroneous decision; such a decision is not rendered "void" even if it conflicts with precedent or a non-jurisdictional statute. T.C.R.C.P. 60(b)(4). Saufo`i v. American Samoa Government, 16 A.S.R.2d 71.

Since the rule relating to the timely manner for ordering a transcript of proceedings on appeal is not jurisdictional, the court may grant additional time to comply with its requirements. A.C.R. 10(b). Opapo v. Puailoa, 17 A.S.R.2d 30.

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.

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.

If issued by a court having jurisdiction over the parties and the subject matter, an order requiring the Registrar to issue a land-registration certificate is binding on the parties and their successors in interest and can be vacated only in the most extraordinary and compelling of circumstances. T.C.R.C.P. 60(b). Ava v. Logoai, 19 A.S.R.2d 75.

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.

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.

The usual reason given for construing statutes of limitation for suits against the United States Government as jurisdictional (i.e., not subject to waiver and/or tolling)--that the limitations are deemed an integral part of the initial waiver of sovereign immunity, which should not be extended by courts beyond the intent of Congress--does not apply to ASG. Randall v. American Samoa Gov't, 19 A.S.R.2d 111.

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.

A required certificate of irreconcilable conflict by the Secretary of Samoan Affairs or his deputy is a jurisdictional mandate without which an action should not proceed. Ava v. Logoa'i, 20 A.S.R.2d 51.

All assets of the marital estate, including assets held outside of the Territory, are subject to the court's jurisdiction, although the court may not have jurisdiction to enforce an award of real property in another forum. Rocha v. Rocha, 20 A.S.R.2d 63.

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.

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.

Though modelled 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.

The High Court cannot enjoin proceedings in other jurisdictions in a limitation-of-liability proceeding, because the federal statute restricts jurisdiction to federal district courts and because neither the territorial legislature nor the court's rules can extend the court's jurisdiction to encompass proceedings in other jurisdictions. 46 U.S.C. §§ 145, 181 et seq.; T.C.R.C.P. Rule F(1). In re Complaint of Voyager, Inc., 23 A.S.R.2d 47.

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.

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.

A "void" judgment, from which relief may be granted, is one in which a court lacked the power to enter the judgment, as when a court lacked jurisdiction over the parties or the subject matter, violated "due process of law," or engaged in "a plain usurpation of power." Fed. R. Civ. P. 60(b)(4); T.C.R.C.P. Rule 60(b)(4). Reid v. Puailoa, 23 A.S.R.2d 144.

Under the dead-ship doctrine, a vessel which has been permanently removed from navigation (and so is a "dead" ship) does not attract liens of a maritime nature, and any watercraft deemed to be "dead" are outside a court's admiralty jurisdiction. Southwest Marine of Samoa, Inc. v. M/V Kwang Myong #71, 24 A.S.R.2d 152.

The High Court has jurisdiction over monetary claims exceeding $5,000, pursuant to A.S.C.A. § 3.0208(a)(1), but in calculating the amount in controversy, attorney's fees expressly provided for by contract, and interest accrued prior to the commencement of the action may be included. Non-contractual attorneys fees and other incidental costs may not be included in the calculation. Jessop v. Hisatake, 25 A.S.R.2d 12.

Since no statute or administrative rule compels the referral of objections to document registration to the Secretary of Samoan Affairs, the Territorial Registrar should not automatically make such referrals when such objections arise. Such cases are properly forwarded to the Secretary only if referrals are required by statute, by administrative rule, by orders of the Land Commission on a case-by-case basis, or pursuant to specific authority delegated to the Registrar by the Land Commission. The land Commission should establish policies and criteria for making such referrals. Tuitasi v. Lauofo, 25 A.S.R.2d 57.

A judgment of the Trial Division remains in the jurisdiction of the Trial Division, and attempts to enforce the judgment should be made at the trial level, not in the Appellate Division. Paisano's Corp. v. Blue Pacific Management Corp., 25 A.S.R.2d 75.

The High Court lacks jurisdiction to block enforcement of federal tax laws. Alamoana Recipe, Inc., v. American Samoa Gov't, 25 A.S.R.2d 97.

The trial court retains discretion to adjudicate claims that were not pleaded. Estate of Fuimaono, 25 A.S.R.2d 110.

A divorce decree which is final between the parties does not, and cannot, foreclose the possibility of ownership interests by others who were not parties to the decree, and a trial court is properly empowered to adjudicate those interests. Reine v. Taotoai, 25 A.S.R.2d 136.

When a statute prescribes administrative remedies which must be exhausted before judicial review is allowed, these procedures are jurisdictional. McGuire v. Zoning Board, 26 A.S.R.2d 59.

The Zoning Board, and not this court, has the jurisdiction to decide the issues, at the administrative level, where court has already determined that it lacked jurisdiction to decide these issues based on party's failure to exhaust administrative remedy. McGuire v. Zoning Board, 26 A.S.R.2d 69.

The court will not retroactively dismiss a lawsuit for lack of jurisdiction when it presently has jurisdiction. The time for the motion to dismiss for lack of jurisdiction was during the time that the court did not have jurisdiction. Randall v. American Samoa Gov't, 28 A.S.R.2d 70.

Controversies relating to land are under the exclusive jurisdiction of the Land and Titles Division. A.S.C.A. § 3.03089(b). Meredith v. Koko, 28 A.S.R.2d 149.

A defendant's claim of communal land, even though in defense, invokes the prerequisite filing of a certificate of irreconcilable dispute issued by the Secretary of Samoan Affairs or his deputy. Meredith v. Koko, 28 A.S.R.2d 149.

The power of a court of equity to appoint a trustee in a proper case is part and parcel of its general jurisdiction and control over trust estates. The court can exercise this power very broadly. The court may also make necessary orders to protect the property of such trust. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

The defense of lack of subject matter jurisdiction is properly asserted under Rule 12(b)(1)**,** not Rule 12(b)(6). Lagapagatele v. Lagapagatele, 2 A.S.R.3d 195 (Land & Titles Div. 1998).

Once the issue of subject matter jurisdiction is raised, the burden of establishing it always rests on the party asserting jurisdiction. Lagapagatele v. Lagapagatele, 2 A.S.R.3d 195 (Land & Titles Div. 1998).

Where Court lacked subject matter jurisdiction it would not consider defense of expiration of the statute of limitations. Lagapagatele v. Lagapagatele, 2 A.S.R.3d 195 (Land & Titles Div. 1998).

Under the Jurisdictional Immunities of Foreign States Act, a court has subject matter jurisdiction to adjudicate suits against foreign government-related agencies so long as the activity concerned is not covered by the JIFSA's immunity provisions. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

A foreign sovereign is not immune from a court's jurisdiction in any case in which the action is based upon a commercial activity carried on in the United States by the foreign state. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

In order to satisfy the exception to immunity under the Jurisdictional Immunities of Foreign States Act, the alleged conduct must be a commercial activity, in which a private actor could take part; and there must be a nexus between the plaintiffs' action and the commercial activity. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Where foreign, government-related entities recruited, exported, and employed workers in a for-profit garment manufacturing company in American Samoa, such actions clearly constituted commercial activity in which a private actor could equally participate and was the premise of the workers' lawsuit. Therefore, such entities were not immune to suit under the Jurisdictional Immunities of Foreign States Act.

Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Subject matter jurisdiction, rights of actions, and causes of action are three very different concepts. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

Subject matter jurisdiction speaks to a court's power to adjudicate a case. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

In deciding a motion to dismiss for lack of subject matter jurisdiction, the burden of proof is on the party claiming jurisdiction. Affidavits and other supporting material may be used to challenge or prove subject matter jurisdiction. Ainu'u v. Ainu'u, 7 A.S.R.3d 158 (Trial Div. 2003).

§ 1(4) —Issues Related to Federal Jurisdiction

Court is not bound by Federal Rules of Civil Procedure in cases involving title to land or Matai title disputes, and therefore, findings of fact and conclusions of law are not required. In re Matai Title "Tuiolesega," 1 A.S.R.2d 37 (Land & Titles Div. 1980).

The filing of a Chapter 11 bankruptcy petition in a United States District Court prevents the High Court from subsequently obtaining jurisdiction over property of the petitioner. 11 U.S.C. § 362(a). Rainwater v. The Sea Encounter, 3 A.S.R.2d 87.

Assertion of jurisdiction by the National Labor Relations Board over complaints charging unfair labor practices by employers in American Samoa precludes territorial court from exercising jurisdiction over such complaints. 29 U.S.C. § 164(c). Su'a v. Star Kist Samoa, Inc., 4 A.S.R.2d 135.

The distance between American Samoa and the NLRB regional office in San Francisco, and consequent expense and inconvenience of bringing complaints there, were not "interests so deeply rooted in local feeling and responsibility" that territorial court could exercise jurisdiction over complaints that would otherwise be within the exclusive jurisdiction of the National Labor Relations Board. Su'a v. Star Kist Samoa, Inc., 4 A.S.R.2d 135.

Territorial court would defer as a matter of comity or full faith and credit to the lawful orders of a court of the United States properly exercising its jurisdiction even if there were no federal statute requiring it to do so. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 6 A.S.R.2d 62.

Assertion of jurisdiction by the National Labor Relations Board over alleged unfair labor practices preempts territorial court jurisdiction over such claims. 29 U.S.C. § 164(c). Su`a v. Star-Kist Samoa, Inc., 7 A.S.R.2d 58.

While interests "deeply rooted in local feeling and responsibility" may give rise to exceptions to preemption of territorial court jurisdiction by the National Labor Relations Board, the expense and inconvenience to a local resident who must file a complaint at the National Labor Relations Board offices in San Francisco does not constitute such an interest. Su`a v. Star-Kist Samoa, Inc., 7 A.S.R.2d 58.

Termination of employment due to union activity is perhaps the most obvious example of conduct which is federally preempted by the National Labor Relations Act and over which territorial court has no jurisdiction. Su`a v. Star-Kist Samoa, Inc., 7 A.S.R.2d 58.

The Federal Anti-Injunction Act prevents the High Court, at any level, from restraining the assessment of collection of any federal tax. 26 U.S.C. §§ 876, 7421(a). Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 46.

The Federal Anti-Injunction Act is applicable to temporary, as well as permanent pleas for injunctive relief. Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 46.

The High Court lacks jurisdiction to block enforcement of federal tax laws. Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 97.

The High Court lacks jurisdiction to grant relief for unauthorized tax collection by the IRS, since such actions must be brought in a district court of the United States, pursuant to 26 U.S.C. § 7433(a). Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 97.

The time limit for removal to federal district court is 30 days, and this clock begins ticking when a party formally intervenes and becomes a party of record, a process that may be initiated by either party. ASG Employees Federal Credit Union v. Gurr, 26 A.S.R.2d 87.

§ 1(5) —Bankruptcy Jurisdiction

SEE BANKRUPTCY

The filing of a Chapter 11 bankruptcy petition in a United States District Court prevents the High Court from subsequently obtaining jurisdiction over property of the petitioner. 11 U.S.C. § 362(a). Rainwater v. The Sea Encounter, 3 A.S.R.2d 87.

Since there is neither a bankruptcy court in American Samoa nor any provision designating American Samoa as part of any district with a bankruptcy court, there exists no court with jurisdiction to entertain a bankruptcy action when the debtor's residence, domicile, principal place of business, and principal assets are in American Samoa. 11 U.S.C. § 101(49); 28

U.S.C. § 1472. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The automatic stay of any judicial, administrative, or other proceeding against a debtor who has instituted a bankruptcy reorganization extends to proceedings in the High Court of American Samoa. 11 U.S.C. § 362. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

The acknowledged unfairness to a creditor in the Territory who must travel to the United States in order to pursue his claim against a debtor in bankruptcy who is otherwise amenable to suit locally is not enough to overcome the language and policy of the statute requiring the consolidation of claims against a bankrupt debtor. 11 U.S.C. § 362. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

Trial court properly held that proceedings before it were automatically stayed when defendant filed bankruptcy petition in another jurisdiction. 11 U.S.C. § 362(a). Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 6 A.S.R.2d 62.

§ 1(6) —Admiralty Jurisdiction

SEE ADMIRALTY § 1 – JURISDICTION AND PROCEDURE

§ 1(7) —Right of Action

Subject matter jurisdiction, rights of actions, and causes of action are three very different concepts. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

A right of action grants a plaintiff the right to pursue a judicial remedy. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

§ 1(8) —Cause of Action

Subject matter jurisdiction, rights of actions, and causes of action are three very different concepts. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

A cause of action refers to recognized legal rights upon which a litigant bases his claim for relief. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

§ 1(9) —Rules of Civil Procedure Generally

Term "natural justice and convenience" embraces due process of law, but procedures adopted to accommodate complex litigation which do not prejudice the opportunity of any party to be fully and effectively heard and do not offend due process. Te'o v. Fanene, 1 A.S.R.2d 3 (App. Div. 1980).

Although the rules of the courts of American Samoa are based on, and in many instances identical to, federal court rules, American Samoa courts are not bound to interpret their own rules in conformity with every judicial gloss that has been written on the federal rules. Am. Samoa Gov't v. NTV Electronics, 6 A.S.R.3d 289 (Trial Div. 2002).

§ 1(10) —Affidavits

In order to constitute a proper affidavit, the document must contain certain component parts, consisting of: (1) the caption or title; (2) the venue; (3) the affiant's signature; and (4) a certificate evidencing the fact that the affidavit was properly made before a duly authorized officer. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

Affidavits must be signed in the presence of the notary, as an authorized official, to assure the affiant's identity. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

The court will sanction attorneys who are proven to have falsely acknowledged affidavits or submitted false papers to the court. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

§ 2 Service of Process

§ 2(1) —General Provisions

Awards for alimony and child support must be predicated upon in personam jurisdiction, which cannot constitutionally be had, except in unusual circumstances, in the absence of personal service of process within the court's discretion. Tafaoa v. Tafaoa, 1 A.S.R.2d 68 (Trial Div. 1982).

Natural father's parental rights cannot be terminated without compliance with statutory requirements, including that diligent efforts be made to give actual notice. In re A Minor Child, 4 A.S.R.2d 181.

A party seeking the termination of parental rights must provide notice to the child's natural father, either by the statutorily approved method, or by publication if permitted by court order. In re A Minor Child, 4 A.S.R.2d 181.

Court is reluctant to issue order affecting the rights of absent parties without affording them prior notice and opportunity to be heard. S.W. California Production Credit Association v. The Vessel Conquistador (Mem.), 11 A.S.R.2d 7.

Court may disregard land registrations if the failure to give statutory notice appears in the registration record itself. A.S.C.A. § 37.0101 et seq. Afualo v. Fanene, Pualioa v. Afualo, 15 A.S.R.2d 48.

Courts may disregard land registrations if the failure to give notice, as required by statute, appears in the registration record itself. A.S.C.A. § 37.0101 et seq. Fa`aaua`a v. Tauiliili, 15 A.S.R.2d 71.

A collateral attack of an in rem judgment is permissible if notice in the first case was defective. Asifoa v. Faoa, 21 A.S.R.2d 91.

The district court is authorized to issue process, and an arrest warrant is a form of process. A.S.C.A. § 3.0304, T.C.R.Cr.P. 4(c)(1). American Samoa Gov't v. Meleisea, 24 A.S.R.2d 32.

The district court is authorized to issue process, and an arrest warrant is a form of process. A.S.C.A. § 3.0304, T.C.R.Cr.P. 4(c)(1). American Samoa Gov't v. Tagaloa, 24 A.S.R.2d 37.

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.

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.

Service is made upon a partnership or other unincorporated association by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or law to receive service, pursuant to T.C.R.C.P. Rule 4(d)(3). As such a partnership may be served by serving a person with substantial authority and responsibility over its activities. Pago Petroleum Products, Inc., v. Ye Ahn Moolsoan, Ltd., 25 A.S.R.2d 14.

Service on a representative of a partnership is valid only with respect to the partnership, and does not confer jurisdiction over a partner individually. Jurisdiction over each partner must be acquired by service on a person or entity representing the partner for process purposes. Pago Petroleum Products, Inc., v. Ye Ahn Moolsoan, Ltd., 25 A.S.R.2d 14.

Trial court rules should be construed liberally to effectuate service, especially when the defendant receives actual notice of the suit. Atlantic Pacific Marine, Inc. v. Clarke, 2 A.S.R.3d 136 (Trial Div. 1998).

For purposes of Trial Court Rule 4(d)(1), a person can have more than one dwelling house or usual place of abode. Atlantic Pacific Marine, Inc. v. Clarke, 2 A.S.R.3d 136 (Trial Div. 1998).

Where defendant had lived away from his usual residence for a substantial period of time prior to action being filed, aboard boat he owned and operated, and was actually residing there at time service was made, said vessel constituted a "dwelling house or usual place of abode" for purposes of T.C.R.C.P. 4(d)(1). Atlantic Pacific Marine, Inc. v. Clarke, 2 A.S.R.3d 136 (Trial Div. 1998).

A vessel can qualify as a dwelling house or usual place of abode. Atlantic Pacific Marine, Inc. v. Clarke, 2 A.S.R.3d 136 (Trial Div. 1998).

A crew member aboard a private vessel serves a gate keeping function and constitutes a person "residing therein" under Rule 4(d)(1). Atlantic Pacific Marine, Inc. v. Clarke, 2 A.S.R.3d 136 (Trial Div. 1998).

Where guest had spent at least one night aboard vessel and evidence suggested many more, he was properly considered "residing therein" for purposes of T.C.R.C.P. 4(d)(1). Atlantic Pacific Marine, Inc. v. Clarke, 2 A.S.R.3d 136 (Trial Div. 1998).

The primary function of the service of process rules is to bring notice of the commencement of an action to a defendant's attention and to provide a ritual that marks the court's assertion of jurisdiction over the lawsuit. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

The Jurisdictional Immunities of Foreign States Act contains provisions for the service of process upon foreign governmental instrumentalities and agencies. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

E-mail is usually not a permitted means of service. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

The court possesses discretion to exclude unserved documents from its consideration. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

Where party knew of the service requirements under the rules and of the possible penalty for failing to affirmatively show a genuine issue for trial, yet failed to properly serve its opposition papers, Court concluded that such opposition papers would not be considered. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

§ 2(2) —By Publication

Service by publication should be genuinely calculated to give notice of the pendency of a proceeding and of the consequences of failure to appear. Memorandum of the Justices, 3 A.S.R.2d 33.

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.

Counsel who despite court's notices repeatedly submitted proposed orders and notices that did not comply with requirements of notice by publication statute would be ordered to pay cost of court time consumed in connection with the improper notice, and to refrain from billing his client for time and costs of effecting improper notice. In re A Minor Child, 7 A.S.R.2d 24.

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.

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.

Territorial statute requiring three forms of notice for service by publication on absent defendants requires all three elements, not just one of them. A.S.C.A. § 43.0252(a). In re Three Minor Children, 10 A.S.R.2d 57.

Of three forms of notice required by statute providing for service by publication, attempt to reach the defendant by mail is by far the most important, since it usually offers the likeliest prospect of actual notice. In re Three Minor Children, 10 A.S.R.2d 57.

Judgment against defendant who had not been properly served by publication would be null and void, since court would not have obtained jurisdiction over defendant. In re Three Minor Children, 10 A.S.R.2d 57.

§ 2(3) —By Posting

An affidavit of a posting of notice may be inadequate where: 1) it alleges that notice was posted for thirty-three days, as opposed to the requisite sixty days; 2) it was subscribed before the posting took place and thus was prepared without personal knowledge as to whether the posting actually took place; 3) it does not show the signature of the person qualified to take oaths and so may not have been made under oath; and 4) it states that notice was posted in a village different from that where the deed indicated the land is located. A.S.C.A. § 37.0103(a). Vaimaona v. Tuitasi, 18 A.S.R.2d 88.

Inadequacies of affidavit of posting may be supplemented on remand by testimony showing actual compliance with statutory guidelines. A.S.C.A. § 37.0103(a). Vaimaona v. Tuitasi, 18 A.S.R.2d 88.

§ 2(4) —Under the JIFSA

The Jurisdictional Immunities of Foreign States Act contains provisions for the service of process upon foreign governmental instrumentalities and agencies. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

The Jurisdictional Immunities of Foreign States Act was enacted to provide access to courts of the United States, its states and territories, for resolution of ordinary legal disputes involving a foreign sovereign, their subdivisions, agents, and instrumentalities. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

With regard to application of the Jurisdictional Immunities of Foreign States Act, the High Court of American Samoa constitutes a court of the United States. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Service in accordance with the Jurisdictional Immunities of Foreign States Act is made upon a foreign state's agency or instrumentality by delivery of a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Individual who served as authorized representative for two foreign government-related entities, who regularly reported to such entities, and who was specifically entrusted to deal with legal matters pertaining to employment of workers from such foreign country, was an "agent" under the Jurisdictional Immunities of Foreign States Act and authorized to receive process on behalf of such entities in employment-related case. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 3 Pleading

§ 3(1) —General Provisions

Under the rules of the High Court, only members of the court's bar may practice in the High Court and although the High Court may accept briefs from counsel who are not members of its bar, counsel must comply with local rules regarding the filing of motions. In re M/V Ocean Pearl, 2 A.S.R.2d 106 (Trial Div. 1986).

A defense that merely negates some element of the plaintiff's prima facie case need not be affirmatively pled. Development Bank v. Ilalio, 5 A.S.R.2d 110.

A party waives defenses raised in its answer when it fails at trial to offer evidence and arguments in support of those defenses. Development Bank v. Pritchard, 6 A.S.R.2d 125.

Where complaint set forth a single obligation and in a single paragraph demanded the entire principal plus interest and expenses, and where court subsequently granted summary judgment for an amount smaller than the amount demanded in the complaint, the court should not later subdivide the demand into separate claims in order to construe the judgment as having only partly disposed of the case. Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 84.

Statute of limitations defense must be properly pled and proven. King v. Commissioner of Revenue, 7 A.S.R.2d 90.

Failure to plead the statute of limitations is a waiver of that defense. King v. Commissioner of Revenue, 7 A.S.R.2d 90.

Requirement that motion must state with particularity the grounds on which it is based is especially important to motion for new trial, one of whose purposes is to avoid unnecessary appeals by alerting the trial court to possible errors or omissions in its opinion. T.C.R.C.P. Rule 7. Kim v. Star-Kist Samoa, Inc., 8 A.S.R.2d 146.

Where debtor did not plead usury as a defense to action on debt, court need not decide whether statutory penalty of forfeiture can be invoked in a civil action. A.S.C.A. § 28.1510. Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc., 9 A.S.R.2d 62.

Plaintiff could not introduce an alternative basis for government liability at closing argument, since the pleadings had not put defendant on notice to defend against such a claim. Tauiliili v. American Samoa Government, 13 A.S.R.2d 61.

Issue not raised in the pleadings or at trial could not be raised for the first time by motion for new trial. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Defendant is entitled to come to trial prepared to defend only against the allegations in the verified complaint, not against a new and different set of allegations. Palelei v. Star-Kist Samoa, Inc., 15 A.S.R.2d 120.

If a party does not deny allegations in a complaint, he is deemed to have admitted it. T.C.R.C.P. 8(d). Beaver v. Craven, 19 A.S.R.2d 14.

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 estopped 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.

A court must treat issues that the parties have impliedly or expressly consented to try as having actually been raised in the pleadings, and thus as not waived by the failure to plead. Fed. R. Civ. P. 8, 15; T.C.R.C.P. 8, 15. Alofipo v. Va, 21 A.S.R.2d 69.

The trial court retains discretion to adjudicate claims that were not pleaded. Estate of Fuimaono, 25 A.S.R.2d 110.

T.C.R.C.P. 7(b)(1) requires that an application to the court for any order shall be by motion which shall state with particularity the grounds therefore. In re Matai Title "Lolo", 26 A.S.R.2d 46.

In determining whether matter is scandalous such that the court should strike it from a motion, it is not enough that the matters complained of merely offend the complainor's sensibilities if they relate to issues relevant to the defense. T.C.R.C.P. 12(f). Lacambra v. Lacambra, 28 A.S.R.2d 114.

T.C.R.C.P. Rule 12(f) only permits the court to strike scandalous material from a "pleading" and not from a motion. Rakshan v. American Samoa Gov't, 28 A.S.R.2d 151.

Where court granted motion for reconsideration, vacating order denying motion to quash service of process, court's actions did not dismiss or alter answer previously filed by defendant, even though said answer was filed after the court's original order on motion to quash service. Atlantic Pacific Marine, Inc. v. Clarke, 2 A.S.R.3d 136 (Trial Div. 1998).

A Motion for Judgment on the Pleadings should be granted only when the merits can be determined. Lagapagatele v. Lagapagatele, 2 A.S.R.3d 195 (Land & Titles Div. 1998).

A court will not find implied consent to try an unpled issue where the party is prejudiced or unfairly surprised by the introduction of evidence outside the scope of the pleadings. Samoa Sharkfin Trading Co. v. Hong, 3 A.S.R.3d 36 (App. Div. 1999).

Where party had notice that unpled claim would be raised at trial, he could not claim unfair surprise by it being so tried. Samoa Sharkfin Trading Co. v. Hong, 3 A.S.R.3d 36 (App. Div. 1999).

Where party had opportunity to raise any and all known legal defenses to unpled claim at trial, but chose instead to deny the claim, he could not claim prejudice resulting from Court's

allowing unpled claim to be tried. Samoa Sharkfin Trading Co. v. Hong, 3 A.S.R.3d 36 (App. Div. 1999).

Where respondent had not filed an answer in response to petition for review of order, such omission did not require court to give judgment in petitioner's favor, as rule requiring timely filing of answer imposed no sanction for its violation. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

In filing a memorandum only via facsimile, a party fails to meet the original signature requirement of T.C.R.C.P. 11. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

§ 3(2) —Liberal Construction

High Court must construe pleadings so as to do substantial justice and therefore will occasionally permit pleadings that do not comply strictly with formal requirements. T.C.R.C.P. Rule 8(f). Development Bank v. Ilalio, 5 A.S.R.2d 110.

Principle that the court will construe pleadings so as to do substantial justice applies specifically to the requirements of affirmative and particular pleadings. T.C.R.C.P. Rules 8(f), 8(c), 9(b). Development Bank v. Ilalio, 5 A.S.R.2d 110.

Pro se pleadings should be construed to state a cause of action or a valid defense unless Court can say with assurance that the litigant can prove no set of facts in support of his claim that would entitle him to relief. Development Bank v. Ilalio, 5 A.S.R.2d 110.

Pro se defendants' pleadings describing the facts and theories of their position were fully adequate despite their failure to use the usual legal terminology. Development Bank v. Ilalio, 5 A.S.R.2d 110.

Rule directing liberal construction of pleadings when necessary to promote justice takes on added importance when pleading party is appearing pro se. American Samoa Government v. Agasiva, 6 A.S.R.2d 32.

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.

Although a pro se complaint should be broadly construed in the interest of justice, the complaint must nevertheless state a claim upon which judicial relief can be granted. Rakhshan v. American Samoa Government, 20 A.S.R.2d 1.

Although a claim under the survival statute was not plead with specificity, the liberal rules of pleading allows the claim when the cause of action was sufficiently noticed. Utu v. American Samoa Government, 20 A.S.R.2d 53.

If an unpleaded defense is introduced at trial without objection, the pleadings will be treated as though they had actually raised the issue; in the absence of such implicit consent, a court has the discretion to permit the amendment of pleadings over objection to conform to the evidence at trial. Fed. R. Civ. P. 15(b), T.C.R.C.P. 15(b). Alofipo v. Va, 21 A.S.R.2d 69.

When a party mistakenly designates a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation. T.C.R.C.P. 8(c). Jennings v. Jennings, 22 A.S.R.2d 10.

Although a court has an obligation to liberally construe pleadings to avoid injustice, this does not extend to refashioning a plaintiff's theory of relief in order to withstand a motion to dismiss for failure to state a claim upon which relief can be granted. T.C.R.C.P. 12(b)(6). Mackenzie v. Lutali, 24 A.S.R.2d 75.

The Trial Court Rules of Civil Procedure only require a short, plain statement that the pleader is entitled to relief, and pleadings are to be construed liberally so as to do substantial justice. T.C.R.C.P. 8(a)(1), 8(e)(1), 8(f). Morgan v. American Samoa Government, 24 A.S.R.2d 164.

The pleadings of a pro se plaintiff not learned in the law should be construed to state a cause of action unless the litigant can prove no facts which would entitle him to relief. Morgan v. American Samoa Government, 24 A.S.R.2d 164.

It is within the court's discretion to treat an argument misdesignated as an affirmative defense, as if it had been properly pleaded as a compulsory counterclaim. T.C.R.C.P. Rule 8(c). Jennings v. Thompson, 25 A.S.R.2d 77.

Issues not raised by the pleadings but nonetheless tried by the implied or express consent of the parties are treated in all respects as if they had been raised in the pleadings. Samoa Sharkfin Trading Co. v. Hong, 3 A.S.R.3d 36 (App. Div. 1999).

A complaint alleging defamation in a letter requesting investigation by the Attorney General states no cause of action because such a request is absolutely privileged. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div.2000).

Although a plaintiff's allegations may be vague, pro se pleadings are construed to state a cause of action unless the court can say with assurance that the litigant can prove no set of facts in support of his claim that would entitle him to relief. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

The court will construe pleadings and their amendments liberally, in order to do substantial justice, even if the pleadings occasionally do not strictly comply with formal requirements. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

An alter ego claim in a complaint is sufficient notice under T.C.R.C.P. 8(a) that a plaintiff seeks to hold the defendant individually liable for certain actions. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

§ 3(3) —Amending Pleadings

Statute does not require timely amendment of pleadings to conform to evidence for evidence to be admissible. F.R. Civ. P. 15. Tung v. Ah Sam, 4 A.S.R. 764.

Court will, per F. R. Civ. Pro. 15(b), amend pleading to proof, to determine case on merits, rather than dismiss because Plaintiff chose wrong cause of action. Moon v. Falemalama, 4 A.S.R. 836.

Court would allow claimant to amend his complaint at trial so as to state a new legal basis for liability when the amendment would create no new factual questions. T.C.R.C.P. Rule 15(b). Ryan, Inc., v. Vaka, 5 A.S.R.2d 31.

In order to promote justice, court would exercise its discretion and give respondent leave to amend its answer to assert fraud on the part of petitioner and thus avoid petitioner's statute of limitations defense even though it had not yet been established that petition properly raised the issue. King v. Commissioner of Revenue, 7 A.S.R.2d 90.

Amended complaint supersedes rather than supplements the original complaint. Utu v. National Pacific Insurance Co., 9 A.S.R.2d 88.

Where amended complaint inadvertently omitted the name of one plaintiff, court would entertain a motion for second amended complaint to reinstate her as a party provided that original complaint had given defendants timely notice of her claim. Utu v. National Pacific Insurance Co., 9 A.S.R.2d 88.

Where plaintiffs in wrongful death action had omitted other potential plaintiffs from their pleadings, amendment of the pleadings after trial to include additional plaintiffs would be permitted only insofar as it would work no prejudice on the defendants. Saufo`i v. American Samoa Government (Mem.), 14 A.S.R.2d 51.

Where damages had been assessed against defendants in wrongful death action, but plaintiffs had omitted other potential beneficiaries from their pleadings and sought to cure the omission by amendment after trial, plaintiffs would be required to share their damage award with their new co-plaintiffs. Saufo`i v. American Samoa Government (Mem.), 14 A.S.R.2d 51.

Amendments to pleadings should be freely made in the interest of full consideration of the merits, unless the objecting party is prejudiced by lack of notice and surprise. Thompson v. Toluao, 24 A.S.R.2d 127.

Leave to amend, pursuant to T.C.R.C.P. Rule 15(a) shall be freely given when justice so requires, with a bias toward testing claims on their merits and not on procedural defects. Leave to amend should be granted in the absence of reasons such as undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, or futility of the amendment. Ape v. American Samoa Government, 25 A.S.R.2d 106.

Court will exercise its discretion under T.C.R.C.P. 15(a) to grant a motion to amend pleadings where the amended pleadings merely restate the same allegations contained in the original complaint and do not give plaintiff an unfair advantage in the proceedings. T.C.R.C.P. 15(a). McKenzie v. Le'iato, 27 A.S.R.2d 63.

A T.C.R.C.P. 15(b) motion can be made at any time, even after judgment, and such requests shall be freely granted when the presentation of the merits of the action will be subserved and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. Motu v. American Samoa Gov't, 28 A.S.R.2d 3.

The relation back of amendments is a legal fiction designed to allow the correction of technical mistakes in pleading by amendment without violating the statute of limitations. Randall v. American Samoa Gov't, 28 A.S.R.2d 70.

A trial court may not deny leave to amend without justification. Thomsen v. Bank of Haw., 28 A.S.R.2d 86.

The court will not prevent amendment of a pleading regarding matters which are material to the case unless we see actual prejudice to the defendant or, perhaps, concrete evidence of bad faith. Thomsen v. Bank of Haw., 28 A.S.R.2d 86.

T.C.R.C.P. Rule 15(a) gives the court wide latitude to permit amendment of a pleading. It the court finds that the ends of justice and fairness are legitimately furthered by amendment, it will permit it. Thomsen v. Bank of Haw., 28 A.S.R.2d 86.

T.C.R.C.P. Rule 15(a) allows a party to amend his pleadings once, as a matter of course, any time before a permitted responsive pleading is served. Pipili v. Ah Sue, 1 A.S.R.3d 63 (Trial Div. 1997).

Failure to allege the jurisdictional amount in the complaint does not subject it to dismissal where the complaint is amended to

include this allegation prior to the filing of a responsive pleading by the defendant. Pipili v. Ah Sue, 1 A.S.R.3d 63 (Trial Div. 1997).

Where plaintiff had named non sui juris governmental entity, rather than American Samoa Government, having done so "to identify for the court which specific actors in the ASG were wrongdoers", said error in pleading subjected complaint to dismissal, but pleading could be amended to name proper party under T.C.R.C.P. 15(a). McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

T.C.R.C.P. 15(a) allows a party to amend a pleading by leave of the court when justice so requires. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

In order for a party to amend its pleading, changing the name of the party against whom the claim is asserted, the claim against the properly-named party must arise out of the same conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

In order for a party to amend its pleading, changing the name of the party against whom the claim is asserted, the party brought in by amendment must have (1) received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

Where a more carefully drafted complaint might state a claim, a plaintiff should ordinarily be given leave to amend. Afele-Fa`amuli v. Am. Samoa Cmty. Coll., 4 A.S.R.3d 219 (Trial Div. 2000).

Where plaintiff had described actions taken by defendant of which she complained, yet failed to explicitly state any claim against defendant, proper remedy was to allow plaintiff to amend her complaint and 20 days was the appropriate time allotted for her to do so. Afele-Fa`amuli v. Am. Samoa Cmty. Coll., 4 A.S.R.3d 219 (Trial Div. 2000).

T.C.R.C.P. 15(a) is lenient, providing that a complaint may be amended freely when justice requires, and applies when the purpose is to clarify standing; and denial of leave to amend is proper only when amendment would be clearly frivolous, unduly prejudicial, cause undue delay or is done in bad faith. Nua v. Sunia, 4 A.S.R.3d 234 (Trial Div. 2000).

In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.,--leave to amend a complaint should, as the rules require, be freely given. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Where defendant/cross-claimant had not moved to amend cross-claim, but simply added extraneous language to his trial memorandum, despite having more than five years time to so move, court would not accept implicit "amendment" of cross-claim because of the undue delay, prejudice resulting to other parties. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

A minimum requirement for a party's amendment of pleadings is that it submit a motion for leave to amend under T.C.R.C.P. 15 (a). American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Complaint must be amended when each count of complaint fails to incorporate previous paragraphs detailing allegations of action. Haleck v. TRT, Inc., 6 A.S.R.3d 226 (Trial Div. 2002).

Where opposing party has already answered pleading, leave of the court is necessary to amend it. RDL, Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 256 (Trial Div. 2002).

Whether to grant a motion to amend the pleadings lies within the court's sound discretion. RDL, Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 256 (Trial Div. 2002).

The Rules of Civil Procedure require the court to freely grant amendments when justice so requires. However, leave to amend will be denied when factors such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of amendment are present. RDL, Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 256 (Trial Div. 2002).

When a motion to amend concerns the addition of a party, the movant bears the burden of demonstrating whether the third party they seek to join satisfies the requirements of being a necessary joinder or a permissive joinder under the rules. RDL, Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 256 (Trial Div. 2002).

In order to facilitate a proper decision on the merits of the case, the Court may allow a plaintiff leave to amend the pleadings where they are legally deficient and when justice so requires. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

§ 3(4) —Rule 11 Sanctions

Whenever counsel signs a motion, counsel is certifying that the motion is not being presented for any improper purpose, and that legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and under T.C.R.C.P. 11(c)(1)(B) the Court is empowered to enter an order describing the specific conduct that appears to violate this rule, and direct an attorney to show cause why it has not violated the rule. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 180 (Trial Div. 2000).

Where counsel failed to heed Court's warning to be forthcoming with court, and court determined that he had violated T.C.R.C.P. 11(b)(3), monetary sanctions were proper. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

§ 4 Pretrial Motions

§ 4(1) —Dismissal of Actions

When only one party remains, there can be no trial of a contested case, and dismissal is appropriate. C.A.S. 6.0106. In re Matai Title Lutali, 4 A.S.R. 10.

"Dismissal" of an action is an appropriate term for denial of all relief requested by the plaintiff after adjudication on the merits. T.C.R.C.P. Rule 41(b). Development Bank v. Ilalio, 5 A.S.R.2d 110.

A civil action may be dismissed if, upon the facts and the law, a plaintiff has shown no right to relief. T.C.R.C.P. Rule 41(b). Fuimaono v. Fuia, 23 A.S.R.2d 121.

A suit dismissed without prejudice leaves the situation the same as if the suit had never been brought in the first place. Pasesa v. Laumatia, 27 A.S.R.2d 88.

The method and timetable for deciding a Rule 12(b) motion for judgment on the pleadings under Rule 12(d) of the American Samoa Trial Court Rules of Civil Procedure is left to the sole discretion of the trial judge who may defer that determination until trial. The last portion of Rule 12(d) gives the court discretion to grant a preliminary hearing or to defer resolution of the issues until trial. Gatolai v. American Samoa Gov't, 1 A.S.R.3d 129 (Trial Div. 1997).

§ 4(1)(a)—General Provisions

A complaint may be dismissed even though the flaw in the pleading is "procedural" rather than "jurisdictional". T.C.R.C.P. Rule 12 (b)(1)-(5),(7). Moeisogi v. Faleafine, 5 A.S.R.2d 131.

Motion to dismiss for failure to timely file pre-trial brief would be denied, but moving party could recover attorney fees and expenses occasioned by the delay and related proceedings from attorney who had failed to file brief. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 137.

Where plaintiff's counsel had been ordered to amend his pleading, did not do so for a period of two years, and did not answer letters from opposing counsel respecting the failure to amend, court would not dismiss the action for failure of diligent prosecution, but would assess against plaintiff's counsel an award to opposing parties of the fees incurred in connection with the motion to dismiss, and would impose deadlines within which plaintiff must complete discovery and move to set a trial date. Kane v. Country Comfort, 10 A.S.R.2d 16.

Court acted properly in granting motion to dismiss at conclusion of plaintiffs' case, at least in light of territorial statute allowing land court to proceed in such manner as it considers to be most consistent with natural justice and convenience, where plaintiffs objected that evidence they had been saving for rebuttal could have established a prima facie case but court concluded that defendants would prevail even if plaintiffs succeeded in proving every fact they offered to prove on rebuttal. A.S.C.A. § 3.0242. Willis v. Fai`ivae, 10 A.S.R.2d 121.

Court denied a motion to dismiss by defendants/trustees which argued that plaintiff was estopped from alleging breach of such trust by a trust provision requiring that disputes regarding interpretation be referred to the probate court for instructions, since such a piecemeal and novel approach to defining and sorting out the issues between litigants was meritless and unfounded. Beaver v. Cravens, 17 A.S.R.2d 6.

Order extending the time to comply with Appellate Court Rule 10(b) was affirmed, and motion to dismiss for failure to timely comply was denied, where the resulting delay was less than thirty days, the appeal would not have been perfected for the current appellate session even with timely compliance, and appellee suffered no real prejudice by the delay. Opapo v. Puailoa, 17 A.S.R.2d 30.

When a party fails to object to the court's ruling on the motion to dismiss, any such objection must be regarded as waived. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

The standard of proof on a motion to dismiss at the conclusion of a plaintiff's evidence is a preponderance of the evidence; the court is not obliged to rule on the motion at that point but may defer judgment until the close of all the evidence. Crispin v. American Samoa Gov't, 21 A.S.R.2d 60.

For a motion to dismiss at the conclusion of a plaintiff's evidence in a court-tried civil action, restyled by the Federal

Rules of Civil Procedure as a judgment on partial findings, a plaintiff must prevail by a preponderance of the evidence. Fed. R. Civ. P. 52(c); T.C.R.C.P. Rule 41(b). Reine v. Fiame, 23 A.S.R.2d 25.

In reviewing a motion to dismiss, it is improper for the court to consider documents outside of the pleadings without converting the motion into a motion for summary judgment pursuant to T.C.R.C.P. 56. T.C.R.C.P. 56. McKenzie v. Le'iato, 27 A.S.R.2d 63.

The court will not retroactively dismiss a lawsuit for lack of jurisdiction when it presently has jurisdiction. The time for the motion to dismiss for lack of jurisdiction was during the time that the court did not have jurisdiction. Randall v. American Samoa Gov't, 28 A.S.R.2d 70.

As a general principle, policy and due process concerns favor resolution of a case on the merits. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 149 (Trial Div. 1999).

Motions to dismiss are viewed with disfavor and are rarely granted. Haleck v. TRT, Inc., 6 A.S.R.3d 226 (Trial Div. 2002).

§ 4(1)(b)—Failure to State a Claim – 12(b)(6) Motion

A complaint sufficient to state a claim upon which relief can be granted must describe the alleged injury and set forth a basis for imposing liability on defendant; conclusory allegations will not suffice. Pene v. American Samoa Power Authority, 4 A.S.R.2d 152.

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). A.S.C.A. § 43.1207 Tevaseu v. American Samoa Government, 5 A.S.R.2d 10.

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. T.C.R.C.P. Rule 12(b)(6). Moeisogi v. Faleafine, 5 A.S.R.2d 131.

Complaint asserting ownership of land did not fail to state a claim because of plaintiff's failure to comply with statutory requirement of timely objection to defendant's prior registration of land, where pleadings did not establish that defendant had complied with statutory notice requirements for registration of land. T.C.R.C.P. Rule 12(b)(6); A.S.C.A. §§ 37.0102, 37.0103. Moeisogi v. Faleafine, 5 A.S.R.2d 131.

The defense of failure to state a cause of action upon which relief can be granted has traditionally been regarded as a defense on the merits. Diocese of Samoa Pago Pago v. KMST, Inc., 15 A.S.R.2d 20.

Motion to dismiss may be heard on the basis of affidavits alone or through a full evidentiary hearing on the merits. T.C.R.C.P. 12(b)(2). Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

In ruling upon a motion to dismiss for failure to state a claim, the complaint must be liberally construed and viewed in the light most favorable to the plaintiff. Beaver v. Cravens, 17 A.S.R.2d 6.

Court denied a motion to dismiss for failure to state a claim which relied on plaintiff's failure to specially plead the elements needed for a shareholder's derivative action, since the pleaded causes of action were personal, not derivative, and plaintiff was seeking redress for herself from the corporation rather than suing on its behalf. T.C.R.C.P. 12(b)(6), 23.1. Beaver v. Cravens, 17 A.S.R.2d 6.

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.

Great specificity is ordinarily not required to survive a Rule 12(b)(6) motion. ASG Employees Federal Credit Union v. Gurr, 26 A.S.R.2d 87.

Filing a motion to dismiss for failure to state a claim under T.C.R.C.P. Rule 12(b)(6) in lieu of an answer satisfies a defendant's procedural requirement under the law. Rakshan v. American Samoa Gov't, 28 A.S.R.2d 151.

A T.C.R.C.P. Rule 12(b) motion to dismiss is not a responsive pleading for the purposes of T.C.R.C.P. Rule 15(a). Pipili v. Ah Sue, 1 A.S.R.3d 63 (Trial Div. 1997).

A complaint in a contested land case that the Governor failed to provide the affected plaintiff with notice of the Governor’s decision concerning alienation of communal property is not subject to dismissal for failure to state a claim. Ah Soon v. Tafa’ifa, 1 A.S.R.3d 236 (Trial Div. 1997).

Under T.C.R.C.P. 12(b)(6), review of a motion to dismiss is limited to whether the claimant is entitled to offer evidence to support the claims regardless of the likelihood of recovery, and in reviewing a motion to dismiss, the pleadings should be construed in favor of the claimant, and the burden of demonstrating that there is no claim is upon the party moving to dismiss. Johnson v. American Samoa Gov’t, 2 A.S.R.3d 173 (Trial Div. 1998).

A complaint will be dismissed for failure to state a claim only where it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Johnson v. American Samoa Gov't, 2 A.S.R.3d 173 (Trial Div. 1998).

Under T.C.R.C.P. 12(b)(6), a defense of immunity is a proper basis for granting a motion to dismiss, and a government entity is immune from suit unless it consents to suit through legislation or by acting in a non-governmental capacity. Johnson v. American Samoa Gov't, 2 A.S.R.3d 173 (Trial Div. 1998).

In a motion for judgment on the pleadings, a court may look only at the pleadings. Administrator v. Amerika Samoa Bank, 3 A.S.R.3d 146 (Trial Div. 1999).

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

Under T.C.R.C.P. 12(b)(6), a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief; the court assumes the allegations in the complaint are true, and the burden of proving the absence of a claim rests on the party seeking dismissal. Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

A complaint which clearly alleges that a lessor's lease termination was wrongful because plaintiff had complied with the terms of the lease sufficiently states a cause of action for breach of the lease. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

A complaint alleging defamation in a letter requesting investigation by the Attorney General states no cause of action because such a request is absolutely privileged. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

Under Rule 12(b)(6) a plaintiff's factual allegations are accepted as true, and contract interpretation is not something to be decided in a Rule 12(b)(6) motion; the court liberally construes the claims of pro se litigants, and where it appears that a plaintiff has asserted a breach of contract and has implicitly made a claim for property damage such claim will not be dismissed. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

A motion to dismiss for failure to state a claim under T.C.R.C.P. 12(b)(6) should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Afele-Fa`amuli v. Am. Samoa Cmty. Coll., 4 A.S.R.3d 219 (Trial Div. 2000).

In considering a 12(b)(6) motion, the court assumes the allegations in the complaint are true. Afele-Fa`amuli v. Am. Samoa Cmty. Coll., 4 A.S.R.3d 219 (Trial Div. 2000).

The burden of proving the absence of a claim rests on the party seeking dismissal. Afele-Fa`amuli v. Am. Samoa Cmty. Coll., 4 A.S.R.3d 219 (Trial Div. 2000).

A motion to dismiss for failure to state a claim will be denied unless it appears beyond doubt that no set of facts can be proven which would entitle a defendant in interpleader to relief. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 17 (Trial Div. 2001).

In considering a 12(b)(6) motion, all material allegations in the complaint are taken as true and construed in the light most favorable to the defendant. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 17 (Trial Div. 2001).

The burden of proving the absence of a claim rests on the movant. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 17 (Trial Div. 2001).

In considering a motion to dismiss for failure to state a claim, the pleadings are to be construed in the light most favorable to the claimant. American Samoa Gov't v. NTV Electronics, 5 A.S.R.3d 73 (Trial Div. 2001).

Complaint is interpreted in light most favorably to plaintiff in deciding motion to dismiss for failure to state cause of action. Haleck v. TRT, Inc., 6 A.S.R.3d 226 (Trial Div. 2002).

Great specificity is not required to survive motion to dismiss as long as pleadings give notice of nature of claims. Haleck v. TRT, Inc., 6 A.S.R.3d 226 (Trial Div. 2002).

In determining a motion to dismiss for failure to state a claim, the complaint is to be liberally construed and viewed in the light most favorable to the plaintiff. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

The Court must take the material facts alleged in the complaint as true and read the complaint as liberally as possible, drawing all inferences in favor of the plaintiff. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

§ 4(1)(c)—Court's Discretion

It is for Trial Court to decide whether a demurrer to an action interposed by defendant is vexatious and merely for purposes of delay thereby assessing upon defendant costs for that portion of the action taken up by the demurrer. Dwyer v. McDonald, 1 A.S.R. 652.

Court may invoke T.C.R.C.P. Rule 12(b)(6) on its own motion. Pene v. American Samoa Power Authority, 4 A.S.R.2d 152.

Court may, in its discretion, dismiss without prejudice a complaint that fails to state a claim upon which relief can be granted. T.C.R.C.P. Rule 12(b)(6). Pene v. American Samoa Power Authority, 4 A.S.R.2d 152.

Although a court has an obligation to liberally construe pleadings to avoid injustice, this does not extend to refashioning a plaintiff's theory of relief in order to withstand a motion to dismiss for failure to state a claim upon which relief can be granted. T.C.R.C.P. 12(b)(6). Mackenzie v. Lutali, 24 A.S.R.2d 75.

The method and timetable for deciding a Rule 12(b) motion for judgment on the pleadings under Rule 12(d) of the American Samoa Trial Court Rules of Civil Procedure is left to the sole discretion of the trial judge who may defer that determination until trial. The last portion of Rule 12(d) gives the court discretion to grant a preliminary hearing or to defer resolution of the issues until trial. Gatolai v. American Samoa Gov't, 1 A.S.R.3d 129 (Trial Div. 1997).

In considering a 12(b)(6) motion, the court assumes the allegations in the complaint are true. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

The burden of proving the absence of a claim rests on the party seeking dismissal. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

§ 4(1)(d)—Compared to Summary Judgment Motion

SEE CIVIL PROCEDURE § 7(3) – COMPARED TO 12(b)(6) MOTION

Insufficient pleadings are properly attacked by motion to dismiss for failure to state a claim rather than with motion for summary judgment. T.C.R.C.P. Rule 12(b)(6), Rule 56. Pene v. American Samoa Power Authority, 4 A.S.R.2d 152.

Court may treat a motion for summary judgment as a motion to dismiss for failure to state a claim when moving papers, though improperly styled, clearly state the latter. T.C.R.C.P. Rule 56, Rule 12(b)(6). Pene v. American Samoa Power Authority, 4 A.S.R.2d 152.

Where a motion to dismiss for failure to state a claim upon which relief may be granted presents matters which are outside the pleadings, the court will treat the motion as one for summary judgment. T.C.R.C.P. Rule 12(b). Mauga v. Lutu, 10 A.S.R.2d 115.

Standard of proof on a motion to dismiss at the conclusion of plaintiffs' evidence at trial, unlike the standard on a motion for summary judgment before trial, is that plaintiffs must prevail by a preponderance of the evidence. Willis v. Fai`ivae, 10 A.S.R.2d 121.

A motion to dismiss will be treated as a summary judgment motion when evidence extrinsic to the complaint is presented to and considered by the court. T.C.R.C.P. 12(b)(6), 56. Samoana Fellowship, Inc. v. American Samoa Power Authority, 24 A.S.R.2d 71.

Conversion of a 12(b)(6) motion into a motion for summary judgment lies squarely with the court. ASG Employees Federal Credit Union v. Gurr, 26 A.S.R.2d 87.

When a court converts a motion under T.C.R.C.P. 12(b) into a motion for summary judgment under T.C.R.C.P. 56, the court must make the parties aware that the court is considering a motion for summary judgment by giving the parties 10 days notice of the conversion. T.C.R.C.P. 12(b), 56. McKenzie v. Le'iato, 27 A.S.R.2d 63.

Where Motion for Judgment on the Pleadings is made, but Court looks beyond the pleadings, it is considered a Motion for Summary Judgment. Administrator v. Amerika Samoa Bank, 3 A.S.R.3d 146 (Trial Div. 1999).

A motion to dismiss will be treated as a summary judgment motion when evidence extrinsic to the complaint is presented to and is considered by the court. Pouesi v. American Samoa Gov't, 5 A.S.R.3d 164 (Trial Div. 2001).

§ 4(1)(e)—Time for Filing Motion

T.C.R.C.P. 6(d) requires parties to serve supporting memorandum not later than 3 days before the hearing, unless otherwise permitted by the court. Where memorandum filed on a Friday, and motion heard the following Monday, movant had obviously not complied with T.C.R.C.P. 6(d). BHP Petroleum South Pacific, Inc. v. Daitoh Trading Co. 1 A.S.R.3d 60 (Trial Div. 1997).

§ 4(2) —Motion for Judgment on the Pleadings

RESERVED

§ 4(2)(a)—Generally

RESERVED

§ 4(2)(b)—Compared to Summary Judgment Motion

RSERVED

§ 4(3) —Motion for More Definite Statement

RESERVED

§ 4(4) —Motion to Strike

§ 4(4)(a) —Generally

Motions to strike are generally disfavored and will not be granted unless the allegations' supporting information fulfills two criteria: (1) it must have no relation to the controversy; and (2) it must be unduly prejudicial. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

Where plaintiff alleged that defendant had made misrepresentations and failed to negotiate in good faith, evidence regarding conduct of negotiations would not be inadmissible under Evidence Rule 408, nor would such evidence be immaterial or subject to being stricken under T.C.R.C.P. 12(f). McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

Court refused to strike portions of memorandum of law filed in support of motion for summary judgment where movant's asserted grounds were that the memorandum contained conclusory and unsupported statements and law cited in support of motion to strike applied only to affidavits, not memoranda of law. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

The court may deny a party's motion to strike when it has failed to specify the specific portions of an affidavit that are objectionable. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

§ 4(4)(b) —Relation to Controversy

In order to prove that an allegation in a pleading has "no relation to the controversy," and hence should be struck by the Court, a party must demonstrate "that no evidence in support of the allegation would be admissible [at trial]." McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

§ 4(4)(c) —Unduly Prejudicial

RESERVED

§ 4(5) —Dismissal of Actions

§ 4(5)(a) —Generally

RSERVED

§ 4(5)(b) —Voluntary Dismissal by Plaintiff

Voluntary dismissal pursuant to T.C.R.C.P. 41, if timely filed, is available as a matter of unconditional right. Eurocompany S.P.A. v. Yurgrettansflot, 7 A.S.R.3d 76 (Trial Div. 2003).

Voluntary dismissal under T.C.R.C.P. 41 is effective at the moment the notice is filed with the clerk, and no judicial approval is required. Eurocompany S.P.A. v. Yurgrettansflot, 7 A.S.R.3d 76 (Trial Div. 2003).

In order to be effectuated, a voluntary dismissal must be filed before service by the adverse party of an answer or of a motion for summary judgment. Eurocompany S.P.A. v. Yurgrettansflot, 7 A.S.R.3d 76 (Trial Div. 2003).

A plaintiff's right to voluntarily dismiss an action under T.C.R.C.P. 41 is not extinguished by the defendant's filing of a motion to dismiss under T.C.R.C.P. 12(b). Eurocompany S.P.A. v. Yurgrettansflot, 7 A.S.R.3d 76 (Trial Div. 2003).

§ 4(5)(c) —Voluntary Dismissal by Court

RESERVED

§ 4(5)(d) —Failure to Prosecute

Both under the authority of T.C.R.C.P. 41(b) and through its inherent powers, a court may dismiss a case for lack of prosecution. Estate of Pua`auli v. LBJ Tropical Medical Center, 4 A.S.R.3d 103 (Trial Div. 2000).

Factors considered in deciding whether to dismiss a case for lack of prosecution are the court's need to manage its docket, the public interest in the expedient resolution of litigation, the risk of prejudice to the defendants, the policy favoring resolution of disputes on their merits, and the availability of less drastic sanctions. Estate of Pua`auli v. LBJ Tropical Medical Center, 4 A.S.R.3d 103 (Trial Div. 2000).

Unreasonable delay is a prerequisite for dismissal for failure to prosecute. Estate of Pua`auli v. LBJ Tropical Medical Center, 4 A.S.R.3d 103 (Trial Div. 2000).

Unreasonable delay creates a presumption of injury to a defendant's defenses, and actual prejudice to a defendant's case is a factor in judging whether a delay is unreasonable. Estate of Pua`auli v. LBJ Tropical Medical Center, 4 A.S.R.3d 103 (Trial Div. 2000).

Where many witnesses are no longer available and much or all of the evidence has been lost, actual prejudice is shown and weighs heavily in favor of dismissal. Estate of Pua`auli v. LBJ Tropical Medical Center, 4 A.S.R.3d 103 (Trial Div. 2000).

Unreasonable delay is not a fixed time period, but exists when the plaintiff is totally inactive for a significant period, such as where he has been completely inactive for 12 years and is

completely unresponsive in explaining the delay. Estate of Pua`auli v. LBJ Tropical Medical Center, 4 A.S.R.3d 103 (Trial Div. 2000).

The burden is on the plaintiff to show that the delay was justified or excusable. Estate of Pua`auli v. LBJ Tropical Medical Center, 4 A.S.R.3d 103 (Trial Div. 2000).

§ 4(5)(e) —Time for Filing Motion

RESERVED

§ 4(5)(f) —Costs of Previously Dismissed Action

RESERVED

§ 4(6) —Continuances

Trial court's decision to grant or deny continuance will only be overturned upon clear showing of abuse of discretion. Williams v. Tupuola, 6 A.S.R.3d 44 (App. Div. 2002).

§ 5 Parties

§ 5(1) —General Provisions

Real party in interest is entitled to intervene when appeal is filed against nominal appellee, such as Workmen's Compensation Commissioner. F.R. Civ. Pro. 24. In re Westerlund v. Scanlan, 4 A.S.R. 998.

Rights and liabilities of parties depend upon facts as they existed at time of commencement of action and not at time of trial. Stevens v. Tee, 2 A.S.R. 627.

Court has no jurisdiction to alter rights and obligations with respect to persons not parties and properties not pleaded. Reid v. Tavete, 1 A.S.R.2d 85 (App. Div. 1983).

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.

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.

Motion to intervene in an action after court has entered judgment is barred when movants possessed knowledge of the action prior to the entering of judgment. T.C.R.C.P. 24. Development Bank of American Samoa v. Lagarejos, 27 A.S.R.2d 91.

Post-judgment intervention is generally allowed only upon a strong showing of entitlement by the applicant. Development Bank of American Samoa v. Lagarejos, 27 A.S.R.2d 91.

Where a party dies during the pendency of a case and such death is formally suggested upon the record, said action shall be dismissed as to the deceased party if a motion for substitution is not made within 90 days of the formal suggestion. Lagapagatele v. Lagapagatele, 2 A.S.R.3d 195 (Land & Titles Div. 1998).

The parties' actual knowledge of another party's death, or mention of the death in court proceedings or pleadings is not sufficient to trigger the running of the ninety day period for substitution under T.C.R.C.P. 25(a)(1). Lagapagatele v. Lagapagatele, 2 A.S.R.3d 195 (Land & Titles Div. 1998).

Where no formal suggestion of death had been made upon the record prior to the parties' motion to dismiss for failure to timely substitute, said motion triggered the ninety-day substitution period. Lagapagatele v. Lagapagatele, 2 A.S.R.3d 195 (Land & Titles Div. 1998).

A stakeholder may be discharged if it is a disinterested party; but dismissal is improper when an interpleading plaintiff disputes its liability to the insured for an additional sum as demanded in a counterclaim. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 121 (Trial Div. 2000).

Under T.C.R.C.P. 22, persons having claims against the plaintiff may be joined as defendants and required to interplead; but where a person asserts no claim and disclaims any interest in the proceeds of the insurance policy at issue, he is not a proper party defendant. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 121 (Trial Div. 2000).

§ 5(2) —Joinder

Where evidence shows that person representing family in civil action was acting as agent of family and that matai was notified of action before decision was rendered, and family representative made no effort for continuance to permit matai to intervene, court will not reverse decision, grant new trial and permit matai to intervene where he has stood by and awaited outcome of lawsuit before attempting such intervention. Taliutafa v. Toaga, 2 A.S.R. 218.

Partner of defendant who may be liable under action may intervene as party defendant. Steffany v. Scanlan, 3 A.S.R. 456.

Persons may join as plaintiffs in action where there are common questions of law and fact affecting their separate rights. Lualemana v. Magalei, 4 A.S.R. 849.

A party that requests joinder in an action cannot later object to the joinder. Fa'atupu v. Malepeai, 2 A.S.R.2d 58 App. Div. 1985).

Potential claimants to an estate's proceeds were to be joined as necessary parties when the complete relief granted by the court would affect the property rights of persons who were not presently parties to the action. T.C.R.C.P. 19. Jennings v. Jennings, 22 A.S.R.2d 10.

The decision to sever properly joined defendants is at the trial court's discretion and should be granted only if there is a serious risk that a joint trial would compromise a defendant's specific trial right or prevent the jury from making a reliable judgment about guilt or innocence. T.C.R.Cr.P. 8(b), 14. American Samoa Government v. Fealofa'i, 24 A.S.R.2d 10.

The party raising the defense of failure to join an indispensable party bears the burden of showing that the absent party would be prejudiced by proceeding with the action and so is needed for a just adjudication. T.C.R.C.P. 12(b)(7), 19. Shon v. Mollerup Moving & Storage Co., 24 A.S.R.2d 50.

The court determines whether or not it is feasible to join a person as a party, as a difference exists between necessary parties who cannot be served process and those who may be subject to process but who simply have not been served. T.C.R.C.P. 19. Shon v. Mollerup Moving & Storage Co., 24 A.S.R.2d 50.

In regards to subrogation, an insurance company must be joined as a necessary party plaintiff only if it has compensated an insured for his entire loss and if a danger exists that a defendant will face future lawsuits from the insurance company. T.C.R.C.P. 17(a), 19. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 108.

Joinder is appropriate when the court is asked to adjudicate upon the rights of a party who is not presently before the court. Senate v. Lutali, 26 A.S.R.2d 125.

Motion to intervene in an action after court has entered judgment is barred when movants possessed knowledge of the action prior to the entering of judgment. T.C.R.C.P. 24. Development Bank of American Samoa v. Lagarejos, 27 A.S.R.2d 91.

Trial court properly denied plaintiff's motion, at close of case, to add corporate entity as party defendant because such motion was tardy, company would not have had opportunity to defend against plaintiff's claims, and consequently joinder would have been unjust. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

When a motion to amend concerns the addition of a party, the movant bears the burden of demonstrating whether the third party they seek to join satisfies the requirements of being a necessary joinder or a permissive joinder under the rules. RDL, Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 256 (Trial Div. 2002).

A necessary party is defined as a person whom in whose absence, and among the already existing parties, complete relief cannot be accorded. RDL, Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 256 (Trial Div. 2002).

Joint and several liability does not make a party "indispensable" for purposes of Rule 19 of the Rules of Civil Procedure. RDL, Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 256 (Trial Div. 2002).

Multiple parties may, but need not be, joined if claims against them (1) arise out of the same transaction, occurrence, or series of transactions or occurrences and (2) will present some question of law or fact in common. RDL, Inc./CIDA, Inc. v. Am. Samoa Comty. College, 6 A.S.R.3d 256 (Trial Div. 2002).

§ 5(3) —Class Actions

If persons constituting class are numerous, they may be represented in court by one or more as will fairly insure adequate representation of all. Lualemana v. Magalei, 4 A.S.R. 849.

Where there is class suit by representation and words "and other" are included after listing of plaintiffs on petition, decision may be binding with respect to person in class whose interests are identical with those listed as plaintiffs. Lualemana v. Magalei, 4 A.S.R. 849.

Under T.C.R.C.P. 23(a), there are four prerequisites to a class action: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Nguyen v. Daewoosa Samoa, Ltd., 4 A.S.R.3d 135 (Trial Div. 2000).

Ability to identify the plaintiffs is not the criterion used to determine whether plaintiffs have met the numerosity requirement for class action; rather the court looks at the practicability of joinder, and to whether hearing the arguments as to a large number of individual plaintiffs would be impractical and would severely strain the limited resources of the court system. Nguyen v. Daewoosa Samoa, Ltd., 4 A.S.R.3d 135 (Trial Div. 2000).

Although some allegations of numerous plaintiffs may differ, where there are ample commonalities in their claims they may

be granted class action status. Nguyen v. Daewoosa Samoa, Ltd., 4 A.S.R.3d 135 (Trial Div. 2000).

Under T.C.R.C.P. 23(b)(3), the court may certify a class action when it finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy, and allows class certification when the plaintiffs seek primarily monetary or injunctive relief. Nguyen v. Daewoosa Samoa, Ltd., 4 A.S.R.3d 135(Trial Div. 2000).

In determining whether common questions predominate for class action certification, the court makes a pragmatic assessment of whether common issues of both law and fact predominate in the entire action, and may consider whether other potential plaintiffs have shown a desire to have claims adjudicated separately. Nguyen v. Daewoosa Samoa, Ltd., 4 A.S.R.3d 135 (Trial Div. 2000).

Under T.C.R.C.P. 23(b)(3), a class action must be superior to other methods of proceeding, and it is so when individual members are likely unable or unwilling to bring an action on their own, as when many of the plaintiffs do not speak English and have little understanding of the legal system. Nguyen v. Daewoosa Samoa, Ltd., 4 A.S.R.3d 135 (Trial Div. 2000).

Under T.C.R.C.P. 23(b)(1)(A) class action is appropriate if the prosecution of separate actions would create a risk of inconsistent or varying adjudications as to individual class members and establish incompatible standards of conduct for the party opposing the class. Nguyen v. Daewoosa Samoa, Ltd., 4 A.S.R.3d 135 (Trial Div. 2000).

Certification of a class action under T.C.R.C.P. 23(b)(3) is appropriate where questions of law and fact common to members of the class predominate over any questions affecting only individual members, and a class action would be superior to other available methods for fair and efficient adjudication of the controversy. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

In order to maintain a class suit, each plaintiff must recover damages at the same rate. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

When a class action is brought on behalf of multiple aggrieved employees against employer, where possible individualized remedies should be utilized because it will compensate the claimants without unfairly penalizing the employer. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Where court was unable to make individual back pay awards for certain workers due to lack of payroll records, court properly employed a class-wide method to ascertain the workers' damages by calculating the average overtime earned and payments received of the named and identifiable members of each corresponding worker's group. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 5(4) —Substitution of Parties

RESERVED

§ 5(5) —Interpleader

Under T.C.R.C.P. 22, a party attempting to interplead must have a legitimate fear of multiple liability or litigation; and the propriety of interpleader is often determined in conjunction with a motion such as a summary judgment motion. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 121 (Trial Div. 2000).

An interpleader is a two-stage proceeding in which the court first determines whether the requirements for interpleader have been met, and, if so, then considers the merits. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 121 (Trial Div. 2000).

Interpleader promotes judicial efficiency and fairness to parties by avoiding multiple litigation and inconsistent adjudications, and is liberally granted. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 121 (Trial Div. 2000).

A stakeholder may be discharged if it is a disinterested party; but dismissal is improper when an interpleading plaintiff disputes its liability to the insured for an additional sum as demanded in a counterclaim. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 121 (Trial Div. 2000).

Under T.C.R.C.P. 22, persons having claims against the plaintiff may be joined as defendants and required to interplead; but where a person asserts no claim and disclaims any interest in the proceeds of the insurance policy at issue, he is not a proper party defendant. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 121 (Trial Div. 2000).

In interpleader cases, the appropriate procedure for the Court is to consider the merits of the claims in the second stage of interpleader or at trial. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 17 (Trial Div. 2001).

§ 5(6) —Intervention

In an *in rem* action, party's motion to intervene is unnecessary where party has asserted ownership of the property at issue and the court has accepted the party's ownership claim. Alves v. M/V Koorale, 7 A.S.R.3d 80 (Trial Div. 2003).

When the owner asserts his claim to the ship and assumes the responsibility of the lawsuit by defending it and putting up a security, for all intents and purposes, he has officially

intervened in the suit. Alves v. M/V Koorale, 7 A.S.R.3d 80 (Trial Div. 2003).

§ 5(7) —Consolidation

RESERVED

§ 5(8) —Counterclaims

While some courts allow the vessel itself to bring a counterclaim in an *in rem* action, American Samoa courts follow the approach permitting a claimant acting on behalf of the ship to counterclaim. Alves v. M/V Koorale, 7 A.S.R.3d 80 (Trial Div. 2003).

Counterclaims that arise after the initial pleadings are considered "after acquired" and can only be asserted by leave of court in exercise of its discretion. Alves v. M/V Koorale, 7 A.S.R.3d 80 (Trial Div. 2003).

Court will exercise its discretion and allow after-acquired counterclaims where claims are properly asserted as counterclaims and where permitting claims would be in the interest of judicial economy and fairness to avoid multiple litigations. Alves v. M/V Koorale, 7 A.S.R.3d 80 (Trial Div. 2003).

§ 5(9) —Cross-claims

A party cannot assert cross-claims against non-parties by amendment under T.C.R.C.P. 15; T.C.R.C.P. 14(a) requires that to file a claim against an additional party, a third-party plaintiff must serve a summons and complaint on the new parties. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 180 (Trial Div. 2000).

Under T.C.R.C.P. 13(g), cross-claims against a co-party are permitted when they arise out of the same transaction or occurrence that is the subject matter of a claim or relate to property that is the subject matter of the original action; and argument based on independence from the original claim precludes a cross-claim. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 180 (Trial Div. 2000).

A cross-claim is any claim by one party against a co-party. American Samoa Gov't v. NTV Electronics, 5 A.S.R.3d 73 (Trial Div. 2001).

T.C.R.C.P. 13(g) permits parties to assert cross-claims, arising out of the same transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein, or that relates to any property that is the subject matter of the original action. American Samoa Gov't v. NTV Electronics, 5 A.S.R.3d 73 (Trial Div. 2001).

A cross-claim fails to state a claim, and is subject to dismissal under Rule 12(b)(6), if it merely requests indemnity from a co-party but does not assert a plea for affirmative relief against the co-party. American Samoa Gov't v. NTV Electronics, 5 A.S.R.3d 73 (Trial Div. 2001).

Cross-claims for indemnity are permitted. American Samoa Gov't v. NTV Electronics, 5 A.S.R.3d 73 (Trial Div. 2001).

Cross-claims for indemnity must be timely made where they are available. American Samoa Gov't v. NTV Electronics, 5 A.S.R.3d 73 (Trial Div. 2001).

§ 5(10) —Third Party Practice

A party cannot assert cross-claims against non-parties by amendment under T.C.R.C.P. 15; T.C.R.C.P. 14(a) requires that to file a claim against an additional party, a third-party plaintiff must serve a summons and complaint on the new parties. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 180 (Trial Div. 2000).

§ 5(11) —Bifurcated Proceedings

A trial court's decision to bifurcate resolution of issues is reviewed for abuse of discretion. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

Bifurcation can be at any point of a trial that will minimize the overlap in evidence between the segmented phases or otherwise promote economy and accuracy in adjudication. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

§ 6 Discovery

§ 6(1) —General Provisions

A request to produce under T.C.R.C.P. Rule 34 may only be directed to parties to the action. Parties may include non-party corporations which are subsidiaries of parties. Johnson v. Coulter, 25 A.S.R.2d 84.

A witness who is not an officer of a party is a non-party witness, and her testimony may be compelled only by a subpoena issued and served in accordance with T.C.R.C.P. Rule 45(d). Johnson v. Coulter, 25 A.S.R.2d 84.

The party upon whom a request to produce is served, pursuant to T.C.R.C.P. Rule 34(b), must serve a written response within 30 days after service of the request unless the court permits a shorter length of time. Johnson v. Coulter, 25 A.S.R.2d 84.

Discovery is a liberal process under T.C.R.C.P. Rule 26(b)(1), and may include any relevant, non-privileged material. Johnson v. Coulter, 25 A.S.R.2d 84.

A direct order by the court as provided in T.C.R.C.P. 37(a) and (b) is not a prerequisite to imposition of sanctions under T.C.R.C.P. 37(d). T.C.R.C.P. 37. Pago Petroleum Products, Inc. v. Ye Ahn Moolsoan, Ltd., 27 A.S.R.2d 94.

T.C.R.C.P. 37 permits immediate sanctions against parties for wilful failure to comply with discovery rules. T.C.R.C.P. 37. Pago Petroleum Products, Inc. v. Ye Ahn Moolsoan, Ltd., 27 A.S.R.2d 94.

Ultimate production of material in question does not absolve a party where it failed to produce the material in a timely fashion. T.C.R.C.P. 37. Pago Petroleum Products, Inc. v. Ye Ahn Moolsoan, Ltd., 27 A.S.R.2d 94.

The court may tailor the sanction to the severity of the misconduct. T.C.R.C.P. 37. Pago Petroleum Products, Inc. v. Ye Ahn Moolsoan, Ltd., 27 A.S.R.2d 94.

A document may be under a party's control, even though he does not have a copy in his possession, if he has a legal right to obtain it. Pago Petroleum Products, Inc. v. Kim, 29 A.S.R.2d 218.

The language of T.C.R.C.P. 37 is mandatory--if the court grants the motion to compel discovery, the court shall award costs and attorneys' fees. Pago Petroleum Products, Inc. v. Kim, 29 A.S.R.2d 218.

The Trial Court Rules of Civil Procedure, used in American Samoa Courts, do not follow Rule 53 of the Federal Rules of Civil Procedure regarding special masters. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 149 (Trial Div. 1999).

Trial Court Rules governing discovery are liberally construed in favor of discovery, and parties opposing discovery have a heavy burden to show good cause why discovery should be denied; good cause requires a showing that clearly defined and serious injury, harassment, or the abuse of court processes would otherwise result; good cause is not established by showing that discovery may involve inconvenience and expense. Nua v. Sunia, 4 A.S.R.3d 234 (Trial Div. 2000).

Individual has no common law right to discovery to extent that discovery materials are not judicial records or public documents. However, T.C.R.C.P. 26 permits broad discovery of information that appears reasonably calculated to lead to admissible evidence. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 20 (Trial Div. 2001).

When abusive discovery is shown, court may issue protective order circumscribing discovery to protect party from annoyance, embarrassment, oppression, or undue burden or expense. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 20 (Trial Div. 2001).

Under definition of "contract of reinsurance" in A.S.C.A. § 29.1590, T.C.R.C.P. 26(b)(2) allows discovery of existence and contents of insurance agreement between reinsurer and insurer. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 31 (Trial Div. 2001).

T.C.R.C.P. 26(b)(1) requires that discovery be both non-privileged and relevant to subject matter in pending action. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 31 (Trial Div. 2001).

Discovery of identity of reinsurers and their contracts with defendant are not relevant to subject matter of case. Although T.C.R.C.P. 26(b)(2) allows discovery as to "any insurance agreements," Court exercised its discretion to limit discovery. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 31 (Trial Div. 2001).

As a general rule, pre-trial orders governing discovery are neither final decisions, nor fall within the collateral order exception. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

A party affected by a court's interim discovery ruling may challenge the decision on appeal from the final decision in the case. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

Court declined to reconsider pre-trial discovery ruling, granting motions to quash and for protective order, since said ruling was reviewable upon appeal from final decision in case. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

Pre-trial orders governing discovery, not falling within finality exception or collateral order exception, may only be challenged on appeal from final decision. Motion to reconsider order denying motion to compel discovery was denied. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 88 (Trial Div. 2001).

T.C.R.C.P. 26(f) authorizes court to call discovery conference. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 88 (Trial Div. 2001).

Although not adopting the federal rule mandating discovery conferences, Court found rule's subjects of discussion to be addressed extremely practical as guidelines for what is anticipated at discovery conference and required that both parties' counsel file the following before discovery conference: (a) list of subjects to be addressed by discovery; (b) proposed plan and schedule of discovery; (c) proposed limitations to be placed on discovery in addition to those already adjudicated; and (d) any other proposed orders with respect to discovery. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 88 (Trial Div. 2001).

All parties and their attorneys are under duty to participate in good faith in framing discovery plan. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 88 (Trial Div. 2001).

After discovery conference, court order will identify issues; establish plan and schedule for discovery; set limitations, if any; and determine other matters for proper management of discovery. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 88 (Trial Div. 2001).

Where plaintiffs sought tax returns and financial information of defendant and asserted that information might demonstrate how defendants managed to acquire funds in order to make various payments at issue in action, court determined discovery requests sought information relevant to breach of fiduciary duty claim. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

Where discovery requests did not specify a time limitation, court found such requests overbroad. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

§ 6(2) —Depositions

Deposition of a witness absent from the Territory is admissible as evidence in the High Court provided that the deposition is taken according to applicable rules, the party offering it cannot procure the attendance of the witness by process or other reasonable means, and the opposing party has an opportunity and motive to cross-examine the witness. T.C.R.Ev. 804(a)(5), (b)(1). Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

The examining party may set a party's deposition at any place which he desires, though a court may issue a protective order specifying the time and place of a deposition upon a showing of good cause. T.C.R.C.P. 30. Beaver v. Cravens, 24 A.S.R.2d 115.

What constitutes "reasonable notice" to other parties in setting the time and place for a deposition is quite flexible, depending on the circumstances. T.C.R.C.P. 30(b)(1). Beaver v. Cravens, 24 A.S.R.2d 115.

Although pre-trial discovery is broad, deposition testimony is limited to a factual examination, and may not be used to examine as to argumentative matters, or to elicit conclusions, opinions, or opinion evidence and must not require an expert opinion, or require inferences which may be drawn from facts. Berleme v. Matagiese, 3 A.S.R.3d 118 (Trial Div. 1999).

An evasive or incomplete answer is treated as a failure to answer, and a motion to compel will be granted in such instance. Berleme v. Matagiese, 3 A.S.R.3d 118 (Trial Div. 1999).

A defendant is entitled to have the plaintiff's attorney deposed to answer any question relating to anything contained in the complaint which the defendant does not understand and wants amplified, and is entitled to be told what proof the plaintiff has to support such charges. Berleme v. Matagiese, 3 A.S.R.3d 118 (Trial Div. 1999).

A motion to compel will not be granted as to a question which is argumentative and serves no purpose in providing additional discovery information. Berleme v. Matagiese, 3 A.S.R.3d 118 (Trial Div. 1999).

Opposing counsel may be deposed when no other means exists to obtain the desired information, and the information sought is relevant and nonprivileged, and the information is crucial to case preparation. Berleme v. Matagiese, 3 A.S.R.3d 118 (Trial Div. 1999).

Objections to the form of the question are proper objections for deposition, especially if it presumes a predicate. Berleme v. Matagiese, 3 A.S.R.3d 118 (Trial Div. 1999).

Where an objection to a question is based on attorney-client privilege, the basic rationale for asserting the privilege must be elicited for the court to make a meaningful evaluation of the privilege claim. Berleme v. Matagiese, 3 A.S.R.3d 118 (Trial Div. 1999).

A party is not required to answer questions which are not within his knowledge, and limits exist as to what a witness should be required to do in order to prepare to answer oral questions. Berleme v. Matagiese, 3 A.S.R.3d 118 (Trial Div. 1999).

Although deposition was rancorous and terminated prematurely, Court refused to impose artificial regulations of conduct beyond those already provided by the Trial Court Rules of Civil Procedure, but instead warned that such rules were to be followed. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 149 (Trial Div. 1999).

Under T.C.R.C.P. 32(a)(3), a deposition is excludable when the deponent is not shown to be unavailable. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Under T.C.R.C.P. 32(a)(4), if a portion of a deposition is used by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

The examining party may set the deposition of a party at any place which he desires, subject to the power of the court to grant a protective order if deemed necessary. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

The court may issue a protective order designating the location for an oral deposition in order to protect the party being deposed from "undue burden or expense" upon a showing of good cause. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

A presumption exists that a non-resident defendant will be deposed at his place of residence. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

In the absence of exceptional or unusual circumstances, when a deponent resides at a substantial distance from the deposing party's residence, the deposing party should be required to take the deposition at a location in the vicinity in which the deponent resides, even if the deponent is a party. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

§ 6(3) —Interrogatories

RESERVED

§ 6(4) —Production of Documents & Things

Defendants proffered no explanation as to how subpoenaed information is reasonably calculated to lead to discovery of admissible evidence inasmuch as information regarding party's financial condition or net worth is generally considered irrelevant. Court found compliance with subpoena oppressive and unduly burdensome, given sensitive nature of plaintiff's financial information and burden of producing requested documents. Court granted motion to quash subpoena duces tecum and issued protective order. Plaintiff's motion for T.C.R.C.P. 11 sanctions was taken under advisement. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 20 (Trial Div. 2001).

Where plaintiffs sought tax returns and financial information of defendant and asserted that information might demonstrate how defendants managed to acquire funds in order to make various payments at issue in action, court determined discovery requests sought information relevant to breach of fiduciary duty claim. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

Requests for production under T.C.R.C.P. 34 may only be directed to the parties to the action. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

A requesting party may seek the production of documents or things which are in the possession, custody, or control of the responding party. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

"Control", as used in T.C.R.C.P. 34, includes both the actual possession of the requested materials or the legal right to obtain the materials. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

The term "control", as used in T.C.R.C.P. 34, is broadly construed. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

The party seeking production of documents or things under T.C.R.C.P. 34 bears the burden of establishing that the responding party controls the requested materials. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

An individual party to a lawsuit can be compelled to produce relevant information and documents relating to a non-party corporation of which it is an officer, director, or shareholder. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

Where requesting party established that responding party served on board of corporation, was one of the incorporators of corporation, was 33% shareholder of corporation, and was president of corporation, such was sufficient to show that responding party had control over corporation and could be expected to produce records of corporation. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

When financial information is relevant to the subject matter at issue it is discoverable. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

Courts perform a two prong test prior to ordering the disclosure of tax returns: first, the court must find that the returns are relevant to the subject matter of the action; and second, the court must find that there is a compelling need for the returns because the information contained therein is not otherwise readily obtainable. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

Once relevance has been established, the party resisting discovery bears the burden of proving that alternative sources would provide the required information. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

§ 6(5) —Physical & Mental Examinations

RESERVED

§ 6(6) —Requests for Admission

RESERVED

§ 6(7) —Protective Orders

RESERVED

§ 6(8) —Sanctions

When court is asked to deem certain facts established in movant's favor as a sanction for discovery violations, but such sanction would effectively work a dismissal or judgment in

movant's favor, court will apply same standards as if movant were directly seeking dismissal. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 149 (Trial Div. 1999).

Dismissal will only be ordered in response to Rule 37 violations as a last resort, and only where less severe sanctions would not be effective. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 149 (Trial Div. 1999).

T.C.R.C.P. 37(a)(4) authorizes the award of reasonable expenses, including attorney's fees, to a party that successfully obtains a court order to compel discovery, and sanctions may be imposed on the party failing to comply with discovery, or the party's attorney advising non-compliance, or both. Nua v. Sunia, 4 A.S.R.3d 234 (Trial Div. 2000).

When abusive discovery is shown, court may issue protective order circumscribing discovery to protect party from annoyance, embarrassment, oppression, or undue burden or expense. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 20 (Trial Div. 2001).

Court denied plaintiff's motion to compel discovery, granted defendant's motion for protective order, and awarded reasonable expenses of motion, including attorney's fees. Plaintiff's counsel may resume deposition but shall not ask irrelevant questions regarding reinsurers of insurance policy issued to plaintiff. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 31 (Trial Div. 2001).

§ 6(9) —Expenses

T.C.R.C.P. 37(a)(4) authorizes the award of reasonable expenses, including attorney's fees, to a party that successfully obtains a court order to compel discovery, and sanctions may be imposed on the party failing to comply with discovery, or the party's attorney advising non-compliance, or both. Nua v. Sunia, 4 A.S.R.3d 234 (Trial Div. 2000).

Court denied plaintiff's motion to compel discovery, granted defendant's motion for protective order, and awarded reasonable expenses of motion, including attorney's fees. Plaintiff's counsel may resume deposition but shall not ask irrelevant questions regarding reinsurers of insurance policy issued to plaintiff. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 31 (Trial Div. 2001).

Under T.C.R.C.P. 37(a)(4), the court has authority to award costs and attorney's fees to the prevailing party on a motion to compel. Haleck v. TRT, Inc., 7 A.S.R.3d 164 (Trial Div. 2003).

§ 7 Summary Judgment

§ 7(1) —Standard

Party moving for summary judgment assumes burden of showing compliance with all statutory requirements necessary to support his position. Sec. 10.0112 R.C.A.S. Muagututi'a v. Vaovasa, 4 A.S.R. 105.

When parties maintain that they have settled a claim after trial had begun, but thereafter submit separate proposed judgments, court may treat submissions as cross motions for summary judgment. Jennings v. Tavai, 1 A.S.R.2d 81 (App. Div. 1983).

On motion for summary judgment, there was no genuine issue of material fact requiring trial on the merits where the parties differed in their characterizations of the material facts but the facts themselves were undisputed. Palelei v. Star Kist Samoa, Inc., 5 A.S.R.2d 162.

Court deciding a motion for summary judgment must assume the truth of the evidence presented by the non-moving party and draw from the evidence the inferences most favorable to the non-moving party. Lokan v. Lokan, 6 A.S.R.2d 44.

The main question in a motion for summary judgment is whether any triable issue of fact remains. Ah Mai v. American Samoa Government (Mem.), 11 A.S.R.2d 133.

On motion for summary judgment, facts asserted by the non-moving party are presumed to be true and the Court may draw such inferences from the non-moving party as are most favorable to that party. Ah Mai v. American Samoa Government (Mem.), 11 A.S.R.2d 133.

Summary judgment is appropriate if the pleadings and supporting papers show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. T.C.R.C.P. 56(c). D. Gokal & Co. v. Daily Shoppers Inc., 13 A.S.R.2d 11.

In considering a motion for summary judgment, the court must consider all pleadings and supporting papers in the light most favorable to opposing party, and must also give such party the benefit of all inferences reasonably deducible from the evidence. T.C.R.C.P. 56. D. Gokal & Co. v. Daily Shoppers Inc., 13 A.S.R.2d 11

Party seeking injunction as matter of summary judgment must show that no material question of fact remains. T.C.R.C.P. 56. Tufono v. Vaeao, 13 A.S.R.2d 47.

Summary judgment is appropriate when the pleadings and supporting papers show "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." T.C.R.C.P. 56. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

In ruling on a summary-judgment motion, the court must view all pleadings and supporting papers in the light most favorable to the opposing party, treat the opposing party's evidence as true, and draw from such evidence the inferences most favorable to him. T.C.R.C.P. 56. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

When a defendant has provided no showing regarding the context in which a release was signed--the negotiations preceding its execution; the circumstances under which it was signed; whether the underlying payment was a settlement under A.S.C.A. § 32.0668, commuted per A.S.C.A. § 32.0666; or whether the Commissioner had approved such settlement or issued a formal compensation order--an inference of invalidity must be drawn in plaintiff's favor for purposes of summary judgment. A.S.C.A. §§ 32.0668, 32.0666; T.C.R.C.P. 56. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

If there is no genuine issue as to any material fact, summary judgment can be rendered if either party is entitled to a judgment as a matter of law. T.C.R.C.P. 56. Beaver v. Craven, 19 A.S.R.2d 14.

In a summary judgment motion, the non-moving party is to be given the benefit of all reasonable inferences to be drawn from the evidence. Estate of Tuilesu v. Asifoa, 20 A.S.R.2d 45.

Regarding a summary-judgment motion, a court assumes the truth of the evidence presented by the non-moving party and draws inferences most favorable to the non-moving party. American Samoa Power Authority v. National Pacific Insurance Co., 23 A.S.R.2d 100.

In determining whether "no genuine issue as to any material fact" exists, a court views the pleadings and papers supporting the summary-judgment motion in the light most favorable to the non-moving party. T.C.R.C.P. 56(c). Lang v. American Samoa Government, 24 A.S.R.2d 59.

In deciding a summary-judgment motion, a court views the pleadings and supporting papers in the light most favorable to the non-moving party; nonetheless, the parties' differing in their characterization of the facts but not the facts themselves does not create a "genuine issue of material fact." T.C.R.C.P. 56(c). Samoana Fellowship, Inc. v. American Samoa Power Authority, 24 A.S.R.2d 71.

Summary judgment is appropriate when no genuine issue of material fact exists. Jessop v. Hisatake, 25 A.S.R.2d 12.

Summary judgment is only appropriate when "no genuine issue as to any material fact" exists. In reviewing the pleadings and supporting papers, a court must view them in the light most favorable to the non-moving party. That is, the facts must be beyond dispute, and the non-moving party's factual assertions, supported by evidence such as affidavits, are presumed to be true. T.C.R.C.P. 56(c). YKL Japan Ltd., v. F/V Korbee #1, 25 A.S.R.2d 121.

In determining whether "no genuine issue as to any material fact" exists, a court views the pleadings and papers supporting the summary-judgment motion in the light most favorable to the non-moving party. T.C.R.C.P. 56(c). Lang v. American Samoa Government, 24 A.S.R.2d 59.

Summary judgment is a drastic remedy to be granted only where the requirements of Rule 56 have clearly been met. A motion for such a judgment does not entitle the court to try issues of fact. In deciding the existence of factual issues to be tried, a court must resolve all ambiguities and draw all reasonable inferences in favor of the party against whom summary judgment is sought with the burden on the moving party to demonstrate the absence of any material factual issue genuinely in dispute. Thus, summary judgment should not be granted unless the entire record shows a right to judgment with such clarity as to leave no room for controversy and establishes affirmatively that the adverse party cannot prevail under any circumstances. YKL Japan Ltd., v. F/V Korbee #1, 25 A.S.R.2d 121.

In ruling on a summary judgment motion, the court must view all pleadings and supporting papers in the light most favorable to the opposing party, treat the opposing party's evidence as true, and draw from such evidence the inferences most favorable to him. Amerika Samoa Bank v. United Parcel Service, 25 A.S.R.2d 159.

Summary judgment is appropriate where the pleadings and supporting papers show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. T.C.R.C.P. 56. In ruling on such a motion, the court must view all pleadings and supporting papers in the light most favorable to the opposing party, and draw from such evidence the inferences most favorable to that party. Bryant v. Southwest Marine of Samoa, Inc., 25 A.S.R.2d 171.

Summary judgment is appropriate where the pleadings and supporting papers show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In ruling on such a motion, the court must view all pleadings and supporting papers in the light most favorable to the opposing party, treat the opposing party's evidence as true, and draw from such evidence the inferences most favorable to him. Asifoa v. National Pacific Insurance, 26 A.S.R.2d 23.

A defendant is not entitled to a trial upon the unsubstantiated hope that he can produce convincing evidence at trial. ASG Employees Federal Credit Union v. Galea`i, 26 A.S.R.2d 74.

Summary judgment is only appropriate when no genuine issue as to any material fact exists. In reviewing the pleadings and supporting papers, a court must view them in the light most

favorable to the non-moving party. The facts must be "beyond dispute," and the non-moving party's factual assertions, supported by evidence such as affidavits, are presumed to be true. Plaza Department Stores v. Duchnak, 26 A.S.R.2d 82.

In ruling on a motion for summary judgment, the court must view all pleadings and supporting papers in the light most favorable to the opposing party, treat the opposing party's evidence as true, and draw from such evidence the inferences most favorable to him. Plaza Department Store v. Duchnak, 26 A.S.R.2d 106.

Summary judgment should not be granted unless the entire record shows a right to judgment with such clarity as to leave no room for controversy and establishes affirmatively that the adverse party cannot prevail under any circumstances. Plaza Department Stores v. Duchnak, 26 A.S.R.2d 82.

In ruling on a motion for summary judgment the court must view all pleadings and supporting papers in the light most favorable to the opposing party, treat the opposing party's evidence as true, and draw from such evidence the inferences most favorable to him. American Samoa Government v. South Pacific Island Airsystems, Inc., 26 A.S.R.2d 132.

Summary judgment is a drastic and final remedy that operates to deprive the non-moving parties of their day in court. American Samoa Government v. South Pacific Island Airsystems, Inc., 26 A.S.R.2d 132.

Summary judgment is appropriate where the pleadings and supporting papers show "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." T.C.R.C.P. Rule 56. American Samoa Government v. South Pacific Island Airsystems, Inc., 26 A.S.R.2d 132.

It is not the duty of the court to assume or to provide the legal basis of a moving party's motion for summary judgment. T.C.R.C.P. 56. Richmond Wholesale Meat Co. v. J.M. Gebauer, Inc., 27 A.S.R.2d 61.

To determine that no material fact exists, the facts must be "beyond dispute," even though the non-moving party's factual assertions, supported by discovery material, are presumed to be true, and all inferences are construed in a light most favorable to the non-moving party. T.C.R.C.P. 56. Polynesian Airlines v. E.P.S., Inc., 27 A.S.R.2d 69.

To determine that no material fact exists on a motion for summary judgment, the facts must be "beyond dispute," even though the non-moving party's factual assertions, supported by discovery material, are presumed to be true, and all inferences are construed in a light most favorable to the non-moving party. T.C.R.C.P. 56. Kent Samoa v. Shimasaki, 27 A.S.R.2d 140.

T.C.R.C.P 56(d) demands that we establish uncontroverted facts only if practicable, not whenever possible. American Samoa Gov't Employees Federal Credit Union v. Sele, 28 A.S.R.2d 21.

The underlying purpose of T.C.R.C.P. 56(d) is to speed up litigation by eliminating before trial matters when there is no genuine issue of fact. American Samoa Gov't Employees Federal Credit Union v. Sele, 28 A.S.R.2d 21.

A court is generally required to grant partial summary judgment deciding certain factual issues, even when a complete disposition of the case is not possible. American Samoa Gov't Employees Federal Credit Union v. Sele, 28 A.S.R.2d 21.

The purpose of T.C.R.C.P. Rule 56(e) is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. Carpenters Fiji, Ltd. v. Pen, 28 A.S.R.2d 202.

Upon a motion for summary judgment, the court is required to view the evidence and the inferences that can be drawn therefrom in the light most favorable to the opposing party. The burden is upon the moving party to show that there is no genuine issue of material fact in dispute, and all doubts must be resolved against the movant. Pita v. Garrett, 29 A.S.R.2d 141.

Summary judgment is only appropriate when there is no "genuine issue as to any material fact" and the moving party is entitled to judgment as a matter of law. BHP Petroleum South Pacific, Inc. v. Daitoh Trading Co. 1 A.S.R.3d 60 (Trial Div. 1997).

On motion for summary judgment, non-moving party's factual assertions, supported by evidence such as affidavits, are presumed to be true. BHP Petroleum South Pacific, Inc. v. Daitoh Trading Co. 1 A.S.R.3d 60 (Trial Div. 1997).

In reviewing the pleadings and papers supporting a motion for summary judgment, a court must view them in the light most favorable to the non-moving party. Where the facts and the law reasonably support only one conclusion, summary judgment is mandated. Estate of Young v. M/V Diana Lynn, 1 A.S.R.3d 154 (Trial Div. 1997).

A party against whom a claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof. Estate of Young v. M/V Diana Lynn, 1 A.S.R.3d 154 (Trial Div. 1997).

Summary judgeent is appropriate only when the pleadings and supporting papers show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 149 (Trial Div. 1999).

In ruling on a summary judgment motion, the Court must view all pleadings and supporting papers in the light most favorable to the opposing party, treat the opposing party's evidence as true, and draw from such evidence the inferences most favorable to the opposing party. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 149 (Trial Div. 1999).

Under T.C.R.C.P. 56(c), summary judgment is appropriate when, after the court views the pleadings and supporting papers in the light most favorable to the non-moving party, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Taylor v. Solaita, 3 A.S.R.3d 218 (Land & Titles Div. 1999).

Summary judgment is appropriate only when the pleadings and supporting papers show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 65 (Trial Div. 2000).

In considering a summary judgment motion, the court must view all pleadings and supporting papers in the light most favorable to the opposing party, treat the opposing party's evidence as true, and draw from such evidence the inferences most favorable to the opposing party. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 165 (Trial Div. 2000).

A motion to dismiss will be treated as a summary judgment motion when evidence extrinsic to the complaint is presented to and is considered by the court. Pouesi v. American Samoa Gov't, 5 A.S.R.3d 164 (Trial Div. 2001).

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Pouesi v. American Samoa Gov't, 5 A.S.R.3d 164 (Trial Div. 2001).

On a motion for summary judgment, the court must view the pleadings and supporting papers in the light most favorable to the non-moving party. Pouesi v. American Samoa Gov't, 5 A.S.R.3d 164 (Trial Div. 2001).

If the moving party on a motion for summary judgment makes a prima facie showing that would entitle him or her to a directed verdict if uncontroverted at trial, the burden then shifts to the adverse party, who must set forth specific facts showing that there is a genuine issue for trial. Pouesi v. American Samoa Gov't, 5 A.S.R.3d 164 (Trial Div. 2001).

If the moving party on a motion for summary judgment makes a prima facie showing that would entitle him/her/it to a directed verdict if uncontroverted at trial, the burden then shifts to the adverse party, who must set forth specific facts showing that there is a genuine issue for trial. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

A court deciding a motion for summary judgment must assume the truth of the evidence presented by the non-moving party and draw from the evidence the inferences most favorable to the non-moving party. YRT, Inc. v. Progressive Ins. Co., 6 A.S.R.3d 108 (Trial Div. 2002).

Court deciding motion for summary judgment must assume truth of evidence presented by non-moving party and draw inferences from evidence most favorable to non-moving party. Langkilde v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 198 (Trial Div. 2002).

Summary judgment is only appropriate when no genuine issue as to material fact exists and moving party is entitled to judgment as matter of law. Langkilde v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 198 (Trial Div. 2002).

Disputed legal questions present nothing for trial and are appropriately resolved on a motion for summary judgment. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

Summary judgment is appropriate when there is no genuine issue as to any material fact. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

On a motion for summary judgment, the court views the pleadings and supporting documents in the light most favorable to the non-moving party. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

Disputed legal questions present nothing for trial and are appropriately resolved on a motion for summary judgment. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

Judicial economy is not a factor the court may consider under T.C.R.C.P. 56. RDL, Inc. v. American Samoa Community College, 7 A.S.R.3d 103 (Trial Div. 2003).

T.C.R.C.P. 56(d) establishes a procedural mechanism whereby a district court can, with the acquiescence of the parties, narrow the factual issues for trial. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

The standard for determining a Rule 56(d) motion is identical to the standard used for determining a motion brought under Rule 56(c). American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

Under T.C.R.C.P. 56(c), summary judgment is appropriate when the pleadings and other supporting documents show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

The party seeking summary judgment bears the burden of showing there is no genuine issue of material fact. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

After the movant has shown that there is no genuine issue of material fact, the non-moving party must then affirmatively show there is a genuine issue for trial. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

In considering a motion for summary judgment, all inferences are construed in a light most favorable to the non-moving party. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

When both parties file cross motions for summary judgment, the court must consider each motion separately and apply controverted facts in a light most favorable to the nonmovant. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

Summary judgment is appropriate where the pleadings and supporting documents show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

In ruling on a summary judgment motion, a court must: (1) view all pleadings and supporting documents in the light most favorable to the nonmoving party; and (2) treat the nonmoving party's evidence as true and draw from such evidence the inferences most favorable to the opposing party. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

On a motion for summary judgment, the moving party bears the burden of showing there is no genuine issue of material fact. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

§ 7(2) —Opposition to Motion

The party opposing summary judgment has the burden, once movant has put forward a prima facie case, of showing that there exists genuine issues of material fact which render summary judgment inappropriate. Amerika Samoa Bank v. Pacific Reliant Industries, 20 A.S.R.2d 102.

As non-moving parties, plaintiffs cannot prevail on a motion for summary judgment merely by asserting that a genuine issue exists for trial. Plaintiffs are not entitled to a trial upon the unsubstantiated hope that they can produce such evidence at trial. Bryant v. Southwest Marine of Samoa, Inc., 25 A.S.R.2d 18.

A non-moving party's single affidavit, if inadequate, may be insufficient opposition. Bryant v. Southwest Marine of Samoa, Inc., 25 A.S.R.2d 18.

For summary judgment purposes, party must provide a minimum level of convincing proof when faced with opposing party's credible and convincing evidence. Bryant v. Southwest Marine of Samoa, Inc., 25 A.S.R.2d 171.

If the proof in support of a motion for summary judgment has a high degree of credibility, the opponent must produce convincing proof to warrant denial of the motion. Bryant v. Southwest Marine of Samoa, Inc., 25 A.S.R.2d 171.

Where the proof in support of the motion has a high degree of credibility the opponent must produce convincing proof. Thus, the burden on the moving party may be discharged by pointing out that there is an absence of evidence to support the nonmoving party's case. ASG Employees Federal Credit Union v. Galea`i, 26 A.S.R.2d 74.

On a motion for summary judgment the burden on the moving party may be discharged by pointing out that there is an absence of evidence to support the nonmoving party's case. American Samoa Government v. Bernard, 26 A.S.R.2d 110.

Motion for summary judgment is wholly insufficient where moving party did not file any affidavits or other materials allowed by T.C.R.C.P. 56, and did not cite any authority stating the appropriate standard of review for summary judgment, or affirming that summary judgment is even the proper remedy for failure to respond to a T.C.R.C.P. 36 request for admissions, or showing that the facts admitted, even if true, give rise to the relief prayed for in the complaint. T.C.R.C.P. 56. Richmond Wholesale Meat Co. v. J.M. Gebauer, Inc., 27 A.S.R.2d 61.

In American Samoa a party opposing another's motion for summary judgment will not be allowed to rest upon his pleadings or the assertions of lawyers who have no personal knowledge of the facts. Carpenters Fiji, Ltd. v. Pen, 28 A.S.R.2d 202.

As non-moving party to a motion for summary judgment, a defendant is not entitled to a trial upon the unsubstantiated hope that he can produce such evidence at trial. A defendant cannot prevail by merely asserting that a genuine issue exists for trial. American Samoa Gov't Employees Federal Credit Union v. Hunkin, 31 A.S.R.2d 180.

Evidence necessary to defeat a motion for summary judgment may depend on the quality of the moving party's offering. If the proof in support of the motion has a high degree of credibility the opponent must produce convincing proof. American Samoa Gov't Employees Federal Credit Union v. Hunkin, 31 A.S.R.2d 180.

Once a moving party has put forth a prima facie case, the party opposing summary judgment has the burden of showing that there are genuine issues of material fact which render summary judgment inappropriate. Estate of Young v. M/V Diana Lynn, 1 A.S.R.3d 154 (Trial Div. 1997).

If the party moving for summary judgment makes a prima facie case that would entitle the movant to a directed verdict if uncontroverted at trial, the burden shifts to the adverse party, who must set forth specific facts showing that there is a genuine issue for trial. Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

Where opposing party objected to exhibit submitted in support of summary judgment motion and movant did not respond to objection, court properly excluded such exhibit from considerations pursuant to T.C.R.C.P. 56(e). American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

On a motion for summary judgment, the burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

A party opposing another's motion for summary judgment will not be allowed to rest upon his pleadings or the assertions of lawyers who have no personal knowledge of the facts. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

After the movant shows that there is no genuine issue of material fact on a motion for summary judgment, the nonmoving party must then bear the burden of affirmatively showing that there is a genuine issue for trial. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

Under T.C.R.C.P. 5(a), a party opposing summary judgment must serve the movant with its opposition papers. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

Where party knew of the service requirements under the rules and of the possible penalty for failing to affirmatively show a genuine issue for trial, yet failed to properly serve its opposition papers, Court concluded that such opposition papers would not be considered. Pratt & Whitney Canada v. Samoa Aviation Inc., 7 A.S.R.3d 198 (Trial Div. 2003).

§ 7(3) —Compared to 12(b)(6) Motion

SEE CIVIL PROCEDURE § 4(4) – COMPARED TO SUMMARY JUDGMENT MOTION

Insufficient pleadings are properly attacked by motion to dismiss for failure to state a claim rather than with motion for summary judgment. T.C.R.C.P. Rule 12(b)(6), Rule 56. Pene v. American Samoa Power Authority, 4 A.S.R.2d 152.

Court may treat a motion for summary judgment as a motion to dismiss for failure to state a claim when moving papers, though improperly styled, clearly state the latter. T.C.R.C.P. Rule 56, Rule 12(b)(6). Pene v. American Samoa Power Authority, 4 A.S.R.2d 152.

Where a motion to dismiss for failure to state a claim upon which relief may be granted presents matters which are outside the pleadings, the court will treat the motion as one for summary judgment. T.C.R.C.P. Rule 12(b). Mauga v. Lutu, 10 A.S.R.2d 115.

Standard of proof on a motion to dismiss at the conclusion of plaintiffs' evidence at trial, unlike the standard on a motion for summary judgment before trial, is that plaintiffs must prevail by a preponderance of the evidence. Willis v. Fai`ivae, 10 A.S.R.2d 121.

Dismissal of the complaint, not summary judgment, is the appropriate method of disposing of a case for failure to join an "indispensable party"; the rationale is that summary judgment is a judgment on the merits and bars the cause of action, whereas an order of dismissal only "abates" the claim and is without prejudice to the institution of a later action. T.C.R.C.P. 12(b)(7), 19, 56. Shon v. Mollerup Moving & Storage Co., 24 A.S.R.2d 50.

A motion to dismiss will be treated as a summary judgment motion when evidence extrinsic to the complaint is presented to and considered by the court. T.C.R.C.P. 12(b)(6), 56. Samoana Fellowship, Inc. v. American Samoa Power Authority, 24 A.S.R.2d 71.

The court treated a motion for default judgment as a motion for summary judgment when plaintiff had documents admitted into evidence and when a pro se defendant's unsigned, typed statement was treated as an answer. T.C.R.C.P. 55, 56. Tauoa v. Tino, 24 A.S.R.2d 88.

Conversion of a 12(b)(6) motion into a motion for summary judgment lies squarely with the court. ASG Employees Federal Credit Union v. Gurr, 26 A.S.R.2d 87.

§ 7(4) —Compared with Motion for Default Judgment

Evidence of amount of debt, presented in support of motion for default judgment or similar summary proceeding, should consist not of conclusory affidavit by attorney, but of bank ledgers and other direct evidence from which court can conclude for itself whether the amount has been correctly calculated. Bank of Hawaii v. Ieremia, 8 A.S.R.2d 177.

A motion for summary judgment against a defaulting party is inappropriate when the civil-procedure rules expressly provide for a motion for default judgment, which is designed to minimize injustice to non-appearing parties. Fed. R. Civ. P. 55, 56; T.C.R.C.P. 55, 56. Amisone v. Talaeai, 22 A.S.R.2d 51.

The court treated a motion for default judgment as a motion for summary judgment when plaintiff had documents admitted into evidence and when a pro se defendant's unsigned, typed statement was treated as an answer. T.C.R.C.P. 55, 56. Tauoa v. Tino, 24 A.S.R.2d 88.

§ 7(5) —Compared with Motion for Partial Summary Judgment

A plaintiff who moves for summary judgment in an amount smaller than the amount he sought in his complaint, although he was legally entitled to judgment for the entire amount, thereby surrenders the right to further relief unless the caption or the text of the motion states or clearly implies that it seeks only a partial summary judgment. Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 84.

Where complaint set forth a single obligation and in a single paragraph demanded the entire principal plus interest and expenses, and where court subsequently granted summary judgment for an amount smaller than the amount demanded in the complaint, the court should not later subdivide the demand into separate claims in order to construe the judgment as having only partly disposed of the case. Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 84.

Rule requiring that trial judge examine pleadings and evidence to determine what material facts remain in dispute after granting motion for partial summary judgment applies only when judgment is not rendered upon whole case or for all relief requested. T.C.R.C.P. 56(d). Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 84.

Although plaintiff who moved for summary judgment may have had subjective intent to seek additional amounts owed it, court will not construe judgment as only a partial summary judgment unless record contains objective indicia such that reasonable person could believe plaintiff had asked court to resolve only some issues but not others. Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 84.

Under T.C.R.C.P. 56(d), if only part of the case is appropriate for summary adjudication, the court may grant partial summary judgment in an order specifying the facts that appear without substantial controversy. Taylor v. Solaita, 3 A.S.R.3d 218 (Land & Titles Div. 1999).

If a case involves other defenses that raise no material issues of fact they may be the subject of a partial summary adjudication in plaintiff's favor in accordance with the procedure prescribed in Rule 56(d). American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

§ 7(6) —Within Court's Discretion

A trial court possesses the discretion to deny a summary judgment motion. A summary judgment motion may be denied when the trial court desires an inquiry into the facts to clarify the application of the law, even if summary judgment is technically justified. This is especially true when a court may be able to avoid deciding difficult or uncertain questions of law by making factual determinations. YKL Japan Ltd., v. F/V Korbee #1, 25 A.S.R.2d 121.

A trial court possesses the discretion to deny a summary judgment motion when it desires an inquiry into the facts to clarify the application of the law. Plaza Department Stores v. Duchnak, 26 A.S.R.2d 82.

Where moving party has provided no clear demonstration of legal authority that would allow this court to enter a decision on the motion for summary judgment as a matter of law, the court may exercise its discretion to deny the motion for summary judgment without prejudice. T.C.R.C.P. 56. Richmond Wholesale Meat Co. v. J.M. Gebauer, Inc., 27 A.S.R.2d 61.

A motion for summary judgment may be denied at any time and for any reason when the court concludes that justice is served by proceeding to trial rather than resolving the case on motion. American Samoa Power Auth. v. National Pac. Ins. Co., Ltd., 30 A.S.R.2d 149.

§ 7(7) —By Affidavit

Affidavit by party moving for summary judgment, consisting of conclusory characterization of the moving party's own unidentified records, did not constitute evidence of the fact asserted therein; for the purpose of the motion for summary judgment, this question of fact must be resolved in favor of opposing party. Bank of Hawaii v. Pene, 8 A.S.R.2d 30.

Statements of counsel at oral argument on a motion for summary judgment are not a substitute for affidavits based on personal knowledge and should not be used by the court as a basis for factual determination. Palelei v. Star-Kist Samoa, Inc., 9 A.S.R.2d 35.

When one party has moved for summary judgment based on affidavits, depositions, or answers to interrogatories, the other party may not rest on the allegations in his pleadings but must set forth by affidavit, deposition, or answers to interrogatories specific facts showing that there is a genuine issue for trial. T.C.R.C.P. Rule 56(e). Utu v. National Pacific Insurance Co., 9 A.S.R.2d 88.

Affidavits setting forth facts to support opposition to motion for summary judgment must be by one who has personal knowledge of the facts, not by attorney with no such personal knowledge. T.C.R.C.P. 56(e). Utu v. National Pacific Insurance Co., 9 A.S.R.2d 88.

Motion for summary judgment based on a statement of facts going beyond the factual allegations of the complaint and unsupported by affidavit should be summarily denied. Ah Mai v. American Samoa Government (Mem.), 11 A.S.R.2d 133.

Where the only evidence as to the claims of two parties to shares of rental payments due is affidavits provided by those parties showing their respective percentages of interest in the rented land, those parties are entitled to summary judgment on the matter. T.C.R.C.P. Rule 56(e). American Samoa Government v. Tuiasosopo, 18 A.S.R.2d 98.

T.C.R.C.P. Rule 56(e) states clearly that "affidavits shall be made on personal knowledge, . . . [containing] facts as would be admissible..., and shall show affirmatively that the witness is competent to testify to the matters therein. Evidence necessary to defeat a motion for summary judgment may depend on the quality of the moving party's offering. If the proof in support of the motion has a high degree of credibility the opponent must produce convincing proof. Bryant v. Southwest Marine of Samoa, Inc., 25 A.S.R.2d 18.

A non-moving party's single affidavit, if inadequate, may be insufficient opposition. Bryant v. Southwest Marine of Samoa, Inc., 25 A.S.R.2d 18.

An affidavit filed in support of summary judgment that does not comply with Rule 56(e) may be stricken. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

§ 7(8) —Notice and Hearing

Notice of second motion for summary judgment, which if granted would increase judgment debt from $5 million to $17 million, should be given to interested parties who received prior notice that sale of vessel was to be made to satisfy the original $5 million judgment, even though action was in rem against the vessel and interested parties had not intervened, since they might have relied to their detriment on earlier notice. Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 18.

On a motion for summary judgment all parties must be given reasonable opportunity to present all material made pertinent to such a motion. ASG Employees Federal Credit Union v. Gurr, 26 A.S.R.2d 87.

Adherence to notice requirements is necessary in order to present the opposing party with an adequate opportunity to put forward their best response. ASG Employees Federal Credit Union v. Gurr, 26 A.S.R.2d 87.

§ 7(9) —Summary Judgment Denied

Plaintiff's motion for summary judgment would be denied where, on the construction of the facts most favorable to defendant, the defendant had a claim against the plaintiff which was a proper subject of setoff and which was at least as great as the amount of plaintiff's claim against defendant. South Seas Trading Co. v. Suamalie Construction Co., 6 A.S.R.2d 80.

Where there is no evidence of circumstances surrounding delay in filing suit, except for plaintiff's assertion that he did not know defendants were occupying his land until shortly before suit was filed, court could not grant summary judgment for defendants on the ground of laches. Roberts v. Sesepasara, 8 A.S.R.2d 43.

Trial court improperly awarded summary judgment in defendant employer's favor as material facts remained in dispute where, of the two grounds on which employer might legally have terminated plaintiff's employment, defendant denied one and plaintiff denied the other. Palelei v. Star-Kist Samoa, Inc., 9 A.S.R.2d 35.

Where bus driver's supervisor submitted affidavit that any use of bus other than transporting children to school was outside the scope of driver's employment, but there is evidence that passengers on school bus may have been government employees who had been working on the bus, whether driver was within scope of employment is a disputed material fact precluding summary judgment. Utu v. National Pacific Insurance Co., 9 A.S.R.2d 88.

On motion for summary judgment, where there was some evidence of plaintiff's discovery of her injury and its cause more than one year before she brought action, but other evidence tended to show that plaintiff might have been convinced by defendants' agents that she had not been injured, a triable question of fact remained with respect to whether the action was barred by one-year statute of limitations. Ah Mai v. American Samoa Government (Mem.), 11 A.S.R.2d 133.

Plaintiff suing for value of goods paid for by defendants with checks drawn against insufficient funds was denied summary judgment where defendants raised triable issues of fact, claiming that plaintiff coerced them into sales contract; supplied unordered goods and overcharged for incomplete quantities of goods; and induced one of the defendants to sign a letter acknowledging liability by assuring them it was merely "for the record" and that they should "not worry" about it. D. Gokal & Co. v. Daily Shoppers Inc., 13 A.S.R.2d 11.

Summary judgment would be awarded plaintiff on issue of land ownership previously established in a proceeding having

in rem effect, but would be denied with respect to injunction against interference or encroachment on land where the pleadings and papers did not clearly show such interference or encroachment and where survey of disputed land in prior proceeding showed existing structures that might raise equitable issues. Tufono v. Vaeao, 13 A.S.R.2d 47.

Summary judgment was denied since the permission of an owner of a rental car was a triable issue of fact where the court refused to imply or deny as a matter of law that the owner permitted drivers not specified in the rental contract. Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

When a defendant has provided no showing regarding the context in which a release was signed--the negotiations preceding its execution; the circumstances under which it was signed; whether the underlying payment was a settlement under A.S.C.A. § 32.0668, commuted per A.S.C.A. § 32.0666; or whether the Commissioner had approved such settlement or issued a formal compensation order--an inference of invalidity must be drawn in plaintiff's favor for purposes of summary judgment. A.S.C.A. §§ 32.0668, 32.0666; T.C.R.C.P. 56. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

Since no release is valid except as otherwise provided for by the Workmen's Compensation Act, summary judgment was not available when the record was unclear on whether the release agreement was approved by the Workmen's Compensation Commission. A.S.C.A. § 32.0672; T.C.R.C.P. 56. Patau v. Rosendahl Corp., 19 A.S.R.2d 80.

When a court would have to assess evidence and the parties' credibility to resolve the issue of negligence, summary judgment is inappropriate. Ghiselli Bros., Inc. v. Ryan, Inc., 22 A.S.R.2d 57.

When a party disputed an assertion that a written insurance contract was the product of mutual mistake and so did not reflect the actual terms of the policy, a factual dispute precluding summary judgment existed. American Samoa Power Authority v. National Pacific Insurance Co., 23 A.S.R.2d 100.

Where plaintiff alleged that "delivery notice," containing a demand for payment, had been signed by the defendant at the time of delivery of the goods, factual issue was raised as to whether the parties had a written contract. BHP Petroleum South Pacific, Inc. v. Daitoh Trading Co. 1 A.S.R.3d 60 (Trial Div. 1997).

Where a question of law regarding the legality of poker machines in the territory was not sufficiently settled, plaintiff's motion to summary judgment premised on claim of illegality could not be granted. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 65 (Trial Div. 2000).

Where statute of limitations defense was premised upon when plaintiff knew or should have known the evidentiary basis of his fraud claim, triable issue of fact existed and trial court's grant of summary judgment was improper. Stancris Sales Co. v. Yong, 6 A.S.R.3d 39 (App. Div. 2002).

§ 7(10) —Summary Judgment Granted

Second motion for summary judgment, which if granted would increase judgment debt from $5 million to $17 million, raises questions (1) whether the proposed relief was requested in the pleadings and (2) whether contract debt was merged into the prior judgment, precluding further relief in excess of judgment amount. Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 18.

A plaintiff who moves for summary judgment in an amount smaller than the amount he sought in his complaint, although he was legally entitled to judgment for the entire amount, thereby surrenders the right to further relief unless the caption or the text of the motion states or clearly implies that it seeks only a partial summary judgment. Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 84.

Where complaint set forth a single obligation and in a single paragraph demanded the entire principal plus interest and expenses, and where court subsequently granted summary judgment for an amount smaller than the amount demanded in the complaint, the court should not later subdivide the demand into separate claims in order to construe the judgment as having only partly disposed of the case. Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 84.

Where party opposed summary judgment on the ground that there had been a settlement of the dispute, but even when the facts were taken in the light most favorable to this party no reasonable person could have concluded that the other party had agreed to a settlement, summary judgment would be granted. Bank of Hawaii v. Pene, 8 A.S.R.2d 30.

No reasonable person could conclude that creditor had agreed to a settlement proposed by debtor, and therefore no question of material fact was raised with respect to such settlement, where the evidence, taken in the light most favorable to the debtor, was that (1) debtor had told creditor's representative he had no intention of paying the debt but that he was willing to surrender a car that had been taken as collateral security; (2) creditor never verbally agreed to this proposal; (3) creditor had the legal right to take the car and then collect the remainder of the debt; (4) debtor had the subjective impression that creditor's representative was happy to receive the car, since otherwise the creditor would receive nothing at all; (4) creditor never took the car. Bank of Hawaii v. Pene, 8 A.S.R.2d 30.

Defendant was entitled to summary judgment on plaintiff's claim that she had been duly elected to the senate about four years before the commencement of the term for which she

claimed to have been elected. Rev. Const. Am. Samoa art. II §§ 4, 6. Mauga v. Lutu, 10 A.S.R.2d 115.

Summary judgment would be awarded plaintiff on issue of land ownership previously established in a proceeding having in rem effect, but would be denied with respect to injunction against interference or encroachment on land where the pleadings and papers did not clearly show such interference or encroachment and where survey of disputed land in prior proceeding showed existing structures that might raise equitable issues. Tufono v. Vaeao, 13 A.S.R.2d 47.

Where auto insurance policy excluded coverage for damages incurred while the vehicle was operated by a person under the influence, but continued coverage provided on behalf of third party beneficiaries who did not consent to the vehicle being driven by the intoxicated driver, defendant insurance company was granted summary judgment against plaintiff insured who had not consented to his intoxicated brother driving the vehicle, since the exception to the exclusionary clause did not apply where the indemnity and/or insurance was provided on behalf of the insured. Thompson v. National Pacific Insurance, 16 A.S.R.2d 114.

Summary judgment was appropriate when plaintiff proved the only debt it sought to collect and defendants presented no evidence to support their suggestion, contained in an affidavit, that they were entitled to offsets. T.C.R.C.P. 56. Nelson & Robertson Pty., Ltd. v. U Suk Ko, 19 A.S.R.2d 12.

Summary judgment is appropriate when the only issue raised by an objector to a land/building separation agreement is identical to the issue she and her predecessor raised in a previous case and that issue was litigated and decided between the parties. T.C.R.C.P. 56. Fanene v. Fanene, 19 A.S.R.2d 69.

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.

§ 7(11) —Appropriate Issues For Summary Judgment

Whether a particular matai has the power to evict people living on communal land depends on many facts and circumstances and is generally not a question for summary judgment. T.C.R.C.P. 56. Fanene v. Fanene, 19 A.S.R.2d 69.

Since issue of negligence depends on the reasonableness of a party's conduct, it cannot ordinarily be disposed of by summary judgment. Utu v. National Pacific Insurance Co., 9 A.S.R.2d 88.

Questions as to intent, as well as questions going to knowledge, timing, and control, are generally not appropriate for summary judgment. American Samoa Government v. South Pacific Island Airsystems, Inc., 26 A.S.R.2d 132.

Where statute of limitations defense was premised upon when plaintiff knew or should have known the evidentiary basis of his fraud claim, triable issue of fact existed and trial court's grant of summary judgment was improper. Stancris Sales Co. v. Yong, 6 A.S.R.3d 39 (App. Div. 2002).

Summary judgment is properly used for interpreting a contract whose terms are considered by opposing parties to be clear and unambiguous, despite disagreement between the parties as to what the agreement provides. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

§ 7(12) —Standard of Review

The appellate court reviews a grant of summary judgment de novo. Thompson v. National Pacific Insurance, 20 A.S.R.2d 85.

§ 7(13) —Grounds for Appeal

T.C.R.C.P. 56(f), which allows a party opposing a motion for summary judgment to move for a continuance so that it may secure facts by affidavit sufficient to oppose the motion, is not a proper basis for appeal, but must be invoked prior to the Court's ruling on the summary judgment motion. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

§ 8 Injunctions

SEE REAL PROPERTY § 15(2) – INJUNCTIONS

§ 8(1) —General Provisions

The automatic stay provided in the Bankruptcy Act differs from an injunction or temporary restraining order only in that the stay becomes binding without an affirmative act of the bankruptcy court. 11 U.S.C. § 362(d)&(e). Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70.

Punishment is not the purpose behind injunctive relief. Leaana v. Laban (Mem.), 12 A.S.R.2d 93.

Party seeking injunction as matter of summary judgment must show that no material question of fact remains. T.C.R.C.P. 56. Tufono v. Vaeao, 13 A.S.R.2d 47.

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.

Punishment is not the purpose behind injunctive relief. Leaana v. Laban (Mem.), 12 A.S.R.2d 93.

Summary judgment would be awarded plaintiff on issue of land ownership previously established in a proceeding having in rem effect, but would be denied with respect to injunction against interference or encroachment on land where the pleadings and papers did not clearly show such interference or encroachment and where survey of disputed land in prior proceeding showed existing structures that might raise equitable issues. Tufono v. Vaeao, 13 A.S.R.2d 47.

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.

The High Court's general admiralty jurisdiction includes limiting a shipowner's liability to the value of the ship, although lacking the statutory power of federal district courts to enforce this principle by injunction, pending the outcome of the limitation proceeding. Fa'atasiga v. M/V Ocean Pearl, 19 A.S.R.2d 59.

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.

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.

A plaintiff's attorney's fees are ordinarily excluded from judgments for injunctive relief in the absence of statutory authorization or special circumstances. Thompson v. Toluao, 24 A.S.R.2d 127.

The Federal Anti-Injunction Act prevents the High Court, at any level, from restraining the assessment of collection of any federal tax. 26 U.S.C. §§ 876, 7421(a). Alamoana Recipe Inc., v. American Samoa Government, 25 A.S.R.2d 46.

The Federal Anti-Injunction Act is applicable to temporary, as well as permanent pleas for injunctive relief. Alamoana Recipe Inc., v. American Samoa Gov't, 25 A.S.R.2d 46.

Evidence received prior to trial on a motion for temporary injunction becomes part of the record upon trial on the merits, pursuant to T.C.R.C.P. 65, incorporated by T.C.R.L.T. 5. Talauega v. Mulipola, 25 A.S.R.2d 74.

Trial court decisions regarding temporary restraining orders are appealable only when evident risk of harm cannot be corrected by the preliminary injunction review, or when the decisions are effectively final dispositions of the case. Alamoana Recipe Inc., v. American Samoa Gov't, 25 A.S.R.2d 97.

The court may issue a temporary restraining order if sufficient grounds for its issuance have been established by affidavit. Korea Deep Sea Fisheries Association v. Ho Pyo Hong, 31 A.S.R.2d 162.

§ 8(2) —Preliminary Injunctions

Where court found that circumstances required expedited hearing on motion for preliminary injunction, defendants who had not had time to retain counsel could redress any injury occasioned by the short notice by retaining counsel and bringing the matter for another hearing. Togiola v. Tafesilafa'i, 4 A.S.R.2d 54.

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.

Hardship is one factor the court must consider in determining whether to issue a preliminary injunction. Sotoa v. Togotogo, 7 A.S.R.2d 93.

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.

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

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.

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). Talauega v. Mulipola, 22 A.S.R.2d 7.

Though an injunction is usually inappropriate for past acts of trespass because the remedy at law is adequate, both injunctive relief and compensatory damages may be granted for a continuing trespass. Letuli v. Le'i, 22 A.S.R.2d 77.

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.

Being an extraordinary remedy, a preliminary injunction is granted only when clearly warranted and may be denied when administrative remedies have not been exhausted. A.S.C.A. § 4.1040. Le Vaomatua v. American Samoa Government, 23 A.S.R.2d 11.

A preliminary injunction may be issued only when (1) a substantial likelihood exists that the applicant will prevail at trial on the merits and that a permanent injunction will be issued; and (2) great or irreparable injury will result to the applicant before a full and final trial on a permanent injunction. Le Vaomatua v. American Samoa Government, 23 A.S.R.2d 11.

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.

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.

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.

For purposes of a preliminary injunction, a request for surety is inappropriate when the subject matter of the request relates to communal property issues. A.S.C.A. § 41.1309(b). Mamea v. American Samoa Power Authority, 26 A.S.R.2d 47.

The court may issue a preliminary injunction only after a hearing in which sufficient grounds have been established by a preponderance of the evidence. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 101.

A.S.C.A. § 1309(a) requires, prior to the issuance of a preliminary injunction, a written undertaking with sufficient sureties to assure that enjoined parties will receive the costs and damages that they may sustain by reason of the injunction, if the court decides that the applicant should have been entitled to the injunction or should pay damages as the court may determine. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 179.

A preliminary injunction during the pendency of an action is appropriate when "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 "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." A.S.C.A. § 43.1301(j). Pritchard v. Estate of Fui`availiili, 29 A.S.R.2d 112.

If a party does not meet the burden of showing irreparable harm before trial when applying for a preliminary injunction, a court need not consider the issue of likelihood of success on the merits at trial. Pritchard v. Estate of Fui`availiili, 29 A.S.R.2d 112.

The court will not stay proceedings so that a party may meet the necessary jurisdictional requirements in an action for a preliminary injunction pertaining to communal land when the party fails to meet the requirements for a preliminary injunction. Maiava v. Tufele, 30 A.S.R.2d 31.

A preliminary injunction may be ordered under American Samoan law when it is shown: (1) that 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. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

Admissible evidence adduced at preliminary injunction hearing will be made part of the trial record and need not be repeated at the trial on the merits. Gurr v. Gurr, 1 A.S.R.3d 203 (Land & Titles Div. 1997).

Sufficient grounds for the issuance of a preliminary injunction exist where (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. Pagofie v. Matagi, 1 A.S.R.3d 227 (Land & Titles Div. 1997).

A preliminary injunction should be granted where "sufficient grounds," are shown pursuant to the requirements of A.S.C.A. § 43.1301(g) and (j). First, the party seeking the injunction must show the greater likelihood of prevailing at trial. Second, the equities must weigh in favor of the party seeking the injunction and show that party would certainly suffer cognizable immediate injury, if the injunction is not granted. I'aulualo v. I'aulualo, 1 A.S.R.3d 230 (Land & Titles Div. 1997).

Under A.S.C.A. § 43.1303(a)(1) a preliminary injunction may be issued only after a hearing in which sufficient grounds for the issuance of such injunction has been established by a preponderance of the evidence. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 1 (App. Div. 1998).

Under A.S.C.A. § 43.1401(j), sufficient grounds for the issuance of a preliminary injunction require 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 that 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. Fanene v. Pago Pago Catholic Church, 3 A.S.R.3d 211 (Land & Titles Div. 1999).

A preliminary injunction may only issue upon applicant's showing of sufficient grounds after a duly noticed hearing inter partes. Uiagalelei v. Fia, 4 A.S.R.3d 175 (Trial Div. 2000).

In order to constitute the sufficient grounds necessary for the issuance of a preliminary injunction, a party must show: (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. Uiagalelei v. Fia, 4 A.S.R.3d 175 (Trial Div. 2000).

Under A.S.C.A. § 43.1301(j), a preliminary injunction must be grounded on findings that (a) there is a substantial likelihood that the applicant will prevail at trial on the merits and obtain a permanent injunction against the opposing party, and that (b) the applicant will suffer great or irreparable harm before a full and final trial can be held on whether a permanent injunction should issue. Save Family v. Leone Catholic Parish, 4 A.S.R.3d 265 (Land & Titles Div. 2000).

Under A.S.C.A. § 43.0304, the court is authorized to issue appropriate interim orders in land actions, and where there are prospects of confrontational episodes between the parties, they may be mutually enjoined from harassing the other side during the pendency of the action. Save Family v. Leone Catholic Parish, 4 A.S.R.3d 265 (Land & Titles Div. 2000).

A preliminary injunction is appropriate only when there is (a) a substantial likelihood that at trial on the merits the applicant will prevail and obtain a permanent injunction, and (b) great or irreparable injury will result to the applicant before a full and final trial can be fairly held on the propriety of a permanent injunction. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

Although normal procedure was to stay proceedings pending administrative decision, where plaintiff modified request for injunctive relief, seeking instead the removal of a constructed sidewalk, such modification required full consideration of the property rights of the parties for both preliminary and permanent injunction purposes and rendered the case ripe for trial. Court properly considered case at that point, and would have done the parties a disservice had it delayed further. Gi v. American Samoa Gov't, 5 A.S.R.3d 259 (Land & Titles Div. 2001).

A preliminary injunction is properly issued when there is a substantial likelihood the applicant will prevail at trial on the merits and obtain a permanent injunction against the opposing party, and great or irreparable injury will result to the applicant before a full and final trial can be fairly held on the permanent injunction issue. American Samoa Rugby Football Ass'n v. Godinet, 7 A.S.R.3d 161 (Trial Div. 2003).

In order to show a substantial likelihood of success at trial on the merits, to support a motion for a preliminary injunction, a movant merely needs to raise questions so serious and difficult as to call for more deliberate consideration, or at least demonstrate a fair question for litigation. Samoa Aviation, Inc. v. Am. Samoa Gov't, 7 A.S.R.3d 191 (Trial Div. 2003).

As a general proposition, the availability of an adequate legal remedy precludes equitable injunctive relief. Samoa Aviation, Inc. v. Am. Samoa Gov't, 7 A.S.R.3d 191 (Trial Div. 2003).

The existence of a legal remedy is not alone sufficient to deprive a movant of equitable relief—it must be speedy, adequate, and efficacious, and preserve the movant's rights at the present time and not as of a future date. Samoa Aviation, Inc. v. Am. Samoa Gov't, 7 A.S.R.3d 191 (Trial Div. 2003).

Where movant demonstrated that defendant had engaged in an ongoing course of conduct that was tantamount to unfair, and possibly bad faith, interfering with the very performance term under which sought termination of the lease, movant had sufficiently shown "substantial likelihood of success at trial on the merits" in order support a preliminary injunction. Samoa

Aviation, Inc. v. Am. Samoa Gov't, 7 A.S.R.3d 191 (Trial Div. 2003).

The ruin of a party's business constitutes irreparable harm. Samoa Aviation, Inc. v. Am. Samoa Gov't, 7 A.S.R.3d 191 (Trial Div. 2003).

§ 8(3) —Injunctions Granted

Court will issue preliminary injunction against any party who refuses to allow surveys by opposing parties on land claimed and occupied by him. Satele v. Uiagalelei, 6 A.S.R.2d 109.

Preliminary injunction restraining defendants from further construction on specified lands until land use and building permit applications are approved by plaintiff was appropriate where (1) the plaintiff objected to the construction only because the defendants had undermined his authority as senior matai by holding themselves out on the permits as owners of the land; (2) plaintiff's claim was supported by the preponderance of the evidence at the preliminary hearing; and (3) the injunction would not prevent defendants from completing their construction, since plaintiff had given his word that he would approve the permits if they were submitted to him. Sotoa v. Togotogo, 7 A.S.R.2d 93.

Preliminary injunction would be granted enjoining defendant from misrepresenting on the public record that family land was owned by non-matai family member who had signed her building permit application; the defendant would have ten days to rectify her building permit to reflect family ownership and family approval given under the signature of the matai with the appropriate family authority. Leaana v. Laban (Mem.), 12 A.S.R.2d 93.

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.

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.

Preliminary injunction was granted to a matai when a family member attempted to lease family land to a non-family member in a clear attempt to usurp the matai's pule. Sagapolutele v. Tala'i, 20 A.S.R.2d 16.

Once a grantee has received and registered a deed to land, a subsequent deed has no effect, and so an injunction properly enjoined a later purchaser from interfering with the prior grantee's use and enjoyment of the land. Sa v. Vollrath, 21 A.S.R.2d 37.

Where party expressed intent to prevent new landowner from exercising its ownership rights and continually trespassed on property, interfering with new landowner's ability to lease premises and threatening cancellation of the land sale, such actions established the necessary criteria for issuance of a permanent injunction. Amerika Samoa Bank v. Hunkin, 4 A.S.R.3d 278 (Land & Titles Div. 2000).

Where eviction would irrevocably disrupt sale of company, and cause territory to lose its only "Part 121" carrier, element of "great or irreparable injury" was shown, justifying preliminary injunction. Samoa Aviation, Inc. v. Am. Samoa Gov't, 7 A.S.R.3d 191 (Trial Div. 2003).

§ 8(4) —Injunctions Denied

Court would not issue preliminary injunction forbidding senior matai of family to interfere with ongoing construction on family land, since to do so would invade the traditional decision making powers of the matai and effect a change in the status quo in advance of trial on the merits. Mailo v. Nua, 5 A.S.R.2d 59.

Where evidence indicated that extraordinary generation of fumes resulted from scheduled annual fuel tank cleaning process, process had been completed and fume level had subsided, and process would not be repeated for about a year, neighboring residents had an adequate remedy at law and were not entitled to a preliminary injunction against fuel storage at facility in question. Tavai v. American Samoa Government, 6 A.S.R.2d 97.

Even when minority shareholder has proved that she will probably prevail at trial on at least some charges of impermissible self-dealing by corporate management, she is not entitled to a preliminary injunction unless she also proves that she or the corporation will be irreparably injured if no interim relief is granted pending trial on the merits. Haythornwaite v. Transpac Corp., 6 A.S.R. 2d 110.

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.

Preliminary injunction against construction on certain land was denied where petitioner's case consisted of a claim to the land based on an uncertain family history, while respondent claimed ownership based upon a differing family history plus a showing of established use and settled occupation; and where petitioner did not show that the construction would irreparably alter the land or cause any other great or irreparable injury. Gaoa v. Tulifua, 13 A.S.R.2d 30.

Injunctive relief was denied absent surveys delineating the exact interests of plaintiffs which required such relief. Vaivao v. Craddick, 14 A.S.R.2d 108.

Plaintiff failed to establish sufficient grounds for a preliminary injunction enjoining defendant/matai from building on a portion of family communal land, where the court had previously found that the matai's sleeping quarters were traditionally located at that site, the matai was building the home as sa`o for the benefit of the extended family rather than for herself or her immediate family, and the plaintiffs failed to show they would suffer great or irreparable harm if an injunction did not issue. Mauga v. Asuega, 17 A.S.R.2d 4.

In denying a preliminary injunction, the court balanced the relative hardships of plaintiff's legitimate nuisance complaints and a business' significant financial detriment from the proposed constraints, as well as the public interest in having the business available for consumers' use. Gurr v. Scratch, 22 A.S.R.2d 103.

A preliminary injunction is unwarranted when an environmental organization fails to plead specific harm to itself or its members and when it did not seek a stop order from the territorial Development Planning Office. A.S.C.A. §§ 4.1040, 24.0505(c). Le Vaomatua v. American Samoa Government, 23 A.S.R.2d 11.

Suits to restrain assessment or collection of any federal tax in any court are prohibited by the federal Anti-Injunction Act. 26 U.S.C. § 7421(a). Alamoana Recipe Inc. v. American Samoa Gov't, 24 A.S.R.2d 156.

Where halting construction would promote waste by exposing a partially built structure to the ravages of the elements, the equities weigh against it. Fanene v. Pago Pago Catholic Church, 3 A.S.R.3d 211 (Land & Titles Div. 1999).

Where a seawall benefits all parties in a land dispute, and the presence of a trench and construction materials and a planned monument and park do not create great or irreparable harm, and where delay of a project will likely increase costs, a preliminary injunction will not be issued. Save Family v. Leone Catholic Parish, 4 A.S.R.3d 265 (Land & Titles Div. 2000).

§ 8(5) —Substantial Likelihood of Success

Even when minority shareholder has proved that she will probably prevail at trial on at least some charges of impermissible self-dealing by corporate management, she is not entitled to a preliminary injunction unless she also proves that she or the corporation will be irreparably injured if no interim relief is granted pending trial on the merits. Haythornwaite v. Transpac Corp., 6 A.S.R.2d 110.

A party seeking preliminary injunction need not show with absolute certainty that he will prevail on the merits, nor is a movant required to prove a greater than fifty percent likelihood that they will prevail on the merits. A movant merely needs to raise questions so serious and difficult as to call for more deliberate consideration, or at least demonstrate a fair question for litigation. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 101.

A court tests substantial likelihood of success by whether the movant has a good chance of success, evaluated in the court's discretion, not measured by any mathematical probability, and taking into account serious issues calling for more deliberate consideration. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

Where the evidence does not lend substance to the plaintiff's mere claim of ownership, but there is support for the position of the defendant, there is not a substantial likelihood that the plaintiff will prevail at trial. Fanene v. Pago Pago Catholic Church, 3 A.S.R.3d 211 (Land & Titles Div. 1999).

If a preliminary injunction applicant demonstrates a legitimate issue to litigate with more deliberate consideration, the criterion of likely success on the merits at trial is sufficiently met. Fiame v. Tuiolemotu Family, 6 A.S.R.3d 310 (Land & Titles Div. 2002).

§ 8(6) —Irreparable Injury

In a Samoan land dispute between members of the same family, building a house on the disputed land will cause great and irreparable injury within the meaning of a statute regulating injunctive relief, since at the trial on the merits the court might find that the senior matai of the family has an obligation to consult with family members before building the house. Talili v. Satele (Mem.), 3 A.S.R.2d 36.

A party should not be allowed to avoid an injunction that would otherwise issue against him simply by doing all the irreparable harm he plans to do with no advance warning to those who will be injured. Talili v. Satele (Mem.), 3 A.S.R.2d 36.

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.

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.

When considering the irreparable harm criteria in an application for an injunction pending appeal, the court needs to balance the equities. Craddick Development, Inc. v. Craddick, 29 A.S.R.2d 64.

The law treats harm to land as unique. Loss of land cannot be replaced by like land. Craddick Development, Inc. v. Craddick, 29 A.S.R.2d 64.

Where a permanent concrete structure does not constitute per se an irreversible and irremediable encumbrance to land, there is no great or irreparable injury to the plaintiff. Fanene v. Pago Pago Catholic Church, 3 A.S.R.3d 211 (Land & Titles Div. 1999).

§ 8(7) —Permanent Injunctions

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.

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.

A trial court's grant of permanent injunctive relief is reviewed for an abuse of discretion, or application of erroneous legal principles. Le`i v. Olo, 25 A.S.R.2d 33.

An applicant is entitled to a permanent injunction if, after a full and final trial on the merits of the applicant’s claim, it is determined that a judgment for money damages will inadequately remedy the complained of wrong. Amerika Samoa Bank v. Hunkin, 4 A.S.R.3d 278 (Land & Titles Div. 2000).

The court may issue a permanent injunction only after full and final trial on the merits has been conducted and a determination has been made that a judgment for money damages will provide an inadequate remedy. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

Injunctive relief was proper where, despite having executed agreement to dissociate himself from company, party continued to act on behalf of company and interfere with its activities. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

§ 8(8) —Compared to Stay Pending Appeal

The decision to grant or deny a stay pending appeal, similar to that on a preliminary injunction, depends partly on the "balance of equities" and partly on the likelihood that the appeal will be successful. T.C.R.C.P. 62(a),(c). Asifoa v. Lualemana, 17 A.S.R.2d 10.

An injunction will be stayed in the following situations: there is a strong chance the judgment will be vacated on appeal; compliance with the judgment during the pendency of the appeal would amount to an effective denial of the right to appeal or would otherwise work extraordinary hardship on the appellant; little or no hardship would be imposed on adverse parties by appellant's non-compliance; or some combination of these conditions overcomes the presumption in favor of allowing each party the present enjoyment of his lawful rights. Asifoa v. Lualemana, 17 A.S.R.2d 10.

In assessing the likelihood of success on appeal, a court may stay an injunction when it has enough doubt about the substantive correctness of its decision, such as when new and difficult questions of law are involved. Asifoa v. Lualemana, 17 A.S.R.2d 10.

General principle of stays of injunctive relief and granting of injunctions pending appeal is preservation of the status quo pending appeal. Asifoa v. Lualemana, 17 A.S.R.2d 100.

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.

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, 24 A.S.R.2d 81.

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.

The general principle underlying stays of injunctive relief is that the status quo should be preserved pending appeal.

Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

Although normal procedure was to stay proceedings pending administrative decision, where plaintiff modified request for injunctive relief, seeking instead the removal of a constructed sidewalk, such modification required full consideration of the property rights of the parties for both preliminary and permanent injunction purposes and rendered the case ripe for trial. Court properly considered case at that point, and would have done the parties a disservice had it delayed further. Gi v. American Samoa Gov't, 5 A.S.R.3d 259 (Land & Titles Div. 2001).

§ 9 Equitable Remedies

§ 9(1)—General Provisions

Court of equity will not set aside previous decision where parties thereto did not act forthrightly to have decision changed. Tiumalu v. Mailo, 1 A.S.R. 434.

Principles of equity are part of English common law and therefore part of law of American Samoa. Mauga Family v. Mauga, 1 A.S.R. 587.

Courts of equity may vacate a judgment obtained by mistake, fraud or false testimony and grant a new trial. Jewett v. McMoor, 1 A.S.R. 611.

Where a corporation with outstanding debts and claims against it dissolves and reincorporates, equity will hold all assets traceable to the original corporation liable to discharge the debts and claims. Kneubuhl Maritime Services Corp. v. Adams, 8 A.S.R.2d 20.

For the purpose of determining whether a party that is a business entity has clean hands and may have the benefit of equitable remedies, the entity is chargeable with the acts and intentions of the agents who conducted the transaction on which it bases its claim. Hardy v. Anderson, 9 A.S.R.2d 79.

Where the trial court properly assessed that both parties breached their contract, its decision in equity requiring the parties to share expenses will be affirmed. EW Truck and Equipment Co. v. Coulter, 20 A.S.R.2d 88.

When an adverse party would not be prejudiced, an independent action for equitable relief from judgment may be treated as a motion for relief from final judgment, and vice-versa. Fed. R. Civ. P. 60(b); T.C.R.C.P. 60(b). Rocha v. Rocha, 24 A.S.R.2d 55.

The elements of an independent action for equitable relief from judgment require (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of defendant; and (5) the absence of any adequate remedy at law. Rocha v. Rocha, 24 A.S.R.2d 55.

Because the fraud which is the basis of an independent action for equitable relief from judgment must be "extrinsic," the fraud must have prevented the raising of an argument or the assertion of a claim or defense at trial, or deprived a party of his right to a "day in court"; as such, perjury and false testimony are inadequate grounds for relief. Rocha v. Rocha, 24 A.S.R.2d 55.

A court may dispose of an entire controversy by granting both equitable relief and damages, in order to avoid a multiplicity of lawsuits. Thompson v. Toluao, 24 A.S.R.2d 127.

Conduct which has been induced by trickery cannot later be used as a basis for estoppel. Jennings v. Thompson, 25 A.S.R.2d 77.

Liability under a quasi-contract theory is implied-in-law by the equitable principle against unjust enrichment. Farapo v. Schuster, 26 A.S.R.2d 112.

Restitutionary claims under the quasi-contract theory do not apply to family situations. Farapo v. Schuster, 26 A.S.R.2d 112.

A court in equity will not be bound by an unyielding formula, but must shape its relief to match the nature of the transaction, considering all of the circumstances bearing on the matter. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

The High Court of American Samoa is guided by the tenets and principles of equity in all matters within the court's jurisdiction. The concept of equity is founded on the basic precepts of "common honesty, clear fairness and good conscience." G.H.C. Reid & Co. v. K.M.S.T., 1 A.S.R.3d 82 (Trial Div. 1997).

Fraud shall not prevail, substance shall not give way to form, and technical considerations will not prevent substantial justice from being done. Where a transaction is "festooned" with the "badges of fraud," the court may set aside the fraudulent conveyance, and permit the plaintiff creditor to satisfy partially its judgment from the asset. G.H.C. Reid & Co. v. K.M.S.T., 1 A.S.R.3d 82 (Trial Div. 1997).

As a matter of equity, the court will not remain idle and implicitly condone a fraudulent attempt to hide assets from creditors. To hold otherwise would encourage a proliferation of asset transfers from debtors to friends and family members, and seriously undermine the stability of the local economy. G.H.C. Reid & Co. v. K.M.S.T., 1 A.S.R.3d 82 (Trial Div. 1997).

Where the law is inadequate, the court may utilize its equitable powers to contrive new remedies. G.H.C. Reid & Co. v. K.M.S.T., 1 A.S.R.3d 82 (Trial Div. 1997).

§ 9(2) —Estoppel, Unclean Hands

Equity requires that party bringing action has acted conscientiously and fairly. Mauga Family v. Mauga, 1 A.S.R. 587.

Where lessees' attorney states to lessor that signature of co-owner is not necessary to contract, lessor is estopped from asserting lease is invalid because of lack of signature. Steffany v. Scanlan, 3 A.S.R. 456.

Where lessee in prior judicial proceeding maintained that lease was valid contract, he is estopped from maintaining in subsequent proceeding that lease is not valid contract. Scanlan v. Steffany, 3 A.S.R. 583.

Where lessee's attorney states to lessor that signature of co-owner is not necessary to validity of lease, he is estopped from denying validity of lease because such signature was not obtained. Scanlan v. Steffany, 3 A.S.R. 583.

Doctrine of estoppel depends on four conditions: (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury. Atuatasi v. American Samoa Government, 9 A.S.R.2d 67.

When it acts in a sovereign capacity, the government is generally not subject to estoppel. Atuatasi v. American Samoa Government, 9 A.S.R.2d 67.

Estoppel may be applied against the government if, in addition to other factors necessary to give rise to an estoppel, the government's wrongful conduct threatens to work a serious injustice, and the public interest would not be unduly damaged by the estoppel. Atuatasi v. American Samoa Government, 9 A.S.R.2d 67.

Territorial government was not estopped from rearresting a prisoner where: (1) the prisoner, although ineligible for parole, had been paroled because of a clerical error; (2) prisoner had been released for only twenty-eight days before his rearrest, so that he had not been reintegrated into the community and could show no substantial injury resulting from his release and rearrest; (3) since there had been no significant reintegration into the community, no serious injustice was worked by the rearrest; and (4) since the prisoner had been recently convicted of a violent crime, it was not clear that the public interest would not be unduly damaged by the estoppel. Atuatasi v. American Samoa Government, 9 A.S.R.2d 67.

Statute providing that court "may" annul illegally contracted marriages follows the general rule that annulment is an equitable remedy which may be barred by equitable defenses including estoppel, laches, or the doctrine of unclean hands. A.S.C.A. § 42.0203. Pritchard v. Purcell, 11 A.S.R.2d 16.

Equitable doctrines of clean hands and estoppel will not bar annulment of bigamous marriage where party seeking annulment is apparently motivated by remorse for his offense against society's moral and legal code, but these doctrines do bar an action by a party who has merely tired of his bargain and seeks annulment as a substitute for divorce. Watson v. Watson, 11 A.S.R.2d 30.

Equitable bars to causes of action based on the plaintiff's own wrong are not designed only for the litigants, but also protect the courts from the appearance and substance of helping to make crime pay. Watson v. Watson, 11 A.S.R.2d 30.

Equitable considerations in favor of granting annulment of bigamously contracted marriage despite estoppel and clean hands doctrine, including the argument that by denying annulment the court would countenance the continued perpetration of crime and that annulment might help to clarify the rights of innocent third parties, do not appear in a case where the prior marriage has been dissolved. Watson v. Watson, 11 A.S.R.2d 30.

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. Watson v. Watson, 11 A.S.R.2d 30.

Neither law nor equity should aid a party who founds his cause of action on his own immoral or illegal act. Watson v. Watson, 11 A.S.R.2d 30.

Defense of estoppel requires that the party who raises the defense establish his own good faith or "clean hands." Huff v. Huff, 15 A.S.R.2d 83.

Court denied a motion to dismiss by defendants/trustees which argued that plaintiff was estopped from alleging breach of such trust by a trust provision requiring that disputes regarding interpretation be referred to the probate court for instructions, since such a piecemeal and novel approach to defining and sorting out the issues between litigants was meritless and unfounded. Beaver v. Cravens, 17 A.S.R.2d 6.

Equitable estoppel is appropriate when (1) the party to be estopped knows the facts; (2) he intends that his conduct shall be acted on or so acts that the party asserting estoppel has a

right to believe it is so intended; (3) the party asserting estoppel is ignorant of the facts; and (4) the party asserting estoppel relies on the conduct to his injury. Jennings v. Jennings, 21 A.S.R.2d 40.

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.

Once a stipulation is made in the course of judicial proceedings, estoppel prevents its withdrawal absent a showing of fraud or mistake. Stipulations entered into freely and fairly are not to be set aside except to prevent manifest injustice. T.C.R.C.P. 16. Mobile Marine Ltd. v. Ninna Marianne, 28 A.S.R.2d 88.

A void contract is a legal nullity, and cannot serve as the basis for equitable estoppel; while a voidable contract may be affirmed by the parties and rendered valid by the doctrine of estoppel—parties to a transaction conceded to be fair and supposed to be lawful, on the faith of which many other transactions have been entered into, are estopped from questioning its validity and repudiating the transaction to the injury of others. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

§ 9(3) —Laches

Where plaintiffs had waited three years to file suit after territorial Attorney General had announced that a territorial statute was unconstitutional, and government had granted a number of leases during the intervening years that did not conform to requirements of the statute, action for declaratory judgment that the statute was unconstitutional would be entertained but demand for the invalidation of leases signed prior to the date suit was filed was barred by laches. Tuika Tuika v. Governor of American Samoa, 4 A.S.R.2d 85.

Where there is no evidence of circumstances surrounding delay in filing suit, except for plaintiff's assertion that he did not know defendants were occupying his land until shortly before suit was filed, court could not grant summary judgment for defendants on the ground of laches. Roberts v. Sesepasara, 8 A.S.R.2d 43.

Although laches is technically an equitable defense and action for mandamus a proceeding at law, laches is available as a defense to a petition for writ of mandamus. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Elements of laches are unreasonable delay by one party in asserting his rights and resulting undue prejudice to the other party. Siofele v. Shimasaki, 9 A.S.R.2d 3.

One month delay in seeking judicial review of denial of the right to run for elective office was unreasonable where (1) the election was to be held two weeks after petitioners first sought judicial relief and (2) one of the petitioners, although absent from the territory, could have secured counsel or instructed his co-petitioner to assert their rights. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Where land claimant waited fifty-two years, before attempting to evict those upon the land, and innocent third parties bought land, built homes, and raised families on the land, the doctrine of laches would apply to limit any recovery, and good faith improvers would have a right to compensation upon eviction. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

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.

Doctrine of laches provides that where plaintiff's cause of action can be perfected by an act he must perform and he is not restrained or disabled from performing it, he cannot indefinitely suspend the statute of limitations by delaying such performance. Mataipule v. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

The classic elements of laches are an unreasonable delay in a party's assertion of his rights and undue prejudice to the other party. Jennings v. Jennings, 21 A.S.R.2d 40.

An action challenging ordinances condemning land for the coastal road was barred by laches when the plaintiff did not file suit until 90 years after the ordinances were enacted. A.S.C.A. § 37.2050. Anderson v. Vaivao, 21 A.S.R.2d 95.

Laches will generally be found where there is an unexcused or unreasonable delay by one party in asserting his or her rights, and a concomitant prejudice to the other party. Jennings v. Thompson, 25 A.S.R.2d 77.

As an equitable defense, laches is committed to the sound discretion of the trial court, and is reviewed for an abuse of that discretion. An appellate court will not reverse unless it has a definite and firm conviction that the court below committed a clear error of judgment upon a weighing of relevant factors, and should not substitute its own judgment for that of the lower court. Jennings v. Thompson, 25 A.S.R.2d 77.

When the limit within which a plaintiff might bring an action against a defendant is fixed by a statute of limitations, the doctrine of laches is inapplicable. Passi v. Amerika Samoa Bank, 28 A.S.R.2d 130.

If the delay in perfecting a right to sue is out of the plaintiff's control, the cause of action will accrue when the right is perfected, but if the plaintiff controls the condition, plaintiff must perfect the right within a reasonable time, which is measured using the limitation period as an analogy in the absence of circumstances justifying a longer delay. Bradcock v. American Samoa Gov't, 28 A.S.R.2d 182.

When deciding whether the plaintiff perfected the right to sue within a reasonable time, the court may consider not only when the administrative claim was filed, but when it could have been filed. The express purpose of this rule is to prevent the frustration of legislative intent by allowing a plaintiff to unilaterally extend the limitation period. Bradcock v. American Samoa Gov't, 28 A.S.R.2d 182.

Laches is an affirmative defense that requires a finding that a plaintiff delayed inexcusably or unreasonably in filing suit and that delay was prejudicial to the defendant. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

The decision on whether to apply laches depends upon the particular circumstances of the case at question. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Under laches analysis, Court determined that plaintiffs' commencing of action to enforce judgment less than 14 months after judgment was entered was neither unreasonable nor an inexcusable length of time. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Where plaintiff possessed actual knowledge of land claim, failed to take any steps to counter said claim during pendency of earlier case and in fact did not act until 13 years after Court had ordered registration of land in other party's name, the doctrine of laches applied. Amituanai v. Sataoa, 6 A.S.R.3d 341 (Land & Titles Div. 2002).

Laches is the unreasonable delay in one party's assertion of its rights resulting in another party's undue prejudice. Amituanai v. Sataoa, 6 A.S.R.3d 341 (Land & Titles Div. 2002).

Claimant to land ownership is charged with actual notice upon receiving information that would put person of ordinary prudence to inquiry that would lead to knowledge of adverse title. Amituanai v. Sataoa, 6 A.S.R.3d 341 (Land & Titles Div. 2002).

Laches is an equitable doctrine that bars an action where there has been an unreasonable delay in bringing the suit, and the other party has been prejudiced as a result of the delay. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

§ 9(4) —Tolling

Court will give effect to purpose of statute of frauds in American Samoa and look with disfavor upon uncorroborated oral testimony of events which supposedly took place years prior to testimony. Tupua v. Aumavae, 1 A.S.R. 231.

English Statute of Frauds was not brought to American Samoa as a part of common law. Steffany v. Scanlan, 3 A.S.R. 456.

There is no Statute of Frauds in American Samoa since it is not part of common law of England which was brought to United States and is of force only when specifically enacted by legislature. Scanlan v. Steffany, 3 A.S.R. 583.

Tolling is frequently deemed consistent with the purposes of statutes of limitation, particularly when the plaintiff was unable to bring suit due to circumstances that were in the primary control of the defendant. Randall v. American Samoa Gov't, 19 A.S.R.2d 111.

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.

The usual reason given for construing statutes of limitation for suits against the United States Government as jurisdictional (i.e., not subject to waiver and/or tolling)--that the limitations are deemed an integral part of the initial waiver of sovereign immunity, which should not be extended by courts beyond the intent of Congress--does not apply to ASG. Randall v. American Samoa Gov't, 19 A.S.R.2d 111.

Though mislabeled with an appellate-division rather than a civil-division number and not specifically requesting statutorily-provided injunctive relief, a petition for judicial review of a Workmen's Compensation Commission order was sufficient to toll the statute of limitations and so avoid dismissal. Felise v. Workmen's Compensation Commissioner, 24 A.S.R.2d 95.

T.C.R.C.P. 6(a) is not intended to modify or change an existing statute of limitations, and it cannot, of its own force, extend a substantive limitation period prescribed by statute, nor does it attempt to change or modify a jurisdictional statute, such as a statute of limitations. T.C.R.C.P. 6. Patau v. Hildre, 27 A.S.R.2d 83.

When the limit within which a plaintiff might bring an action against a defendant is fixed by a statute of limitations, the doctrine of laches is inapplicable. Passi v. Amerika Samoa Bank, 28 A.S.R.2d 130.

§ 9(5) —Subrogation

SEE TORTS § 17 – SUBROGATION

A person who is legally obliged to pay a debt of another person and who actually does pay that debt acquires the legal rights of the creditor under the equitable principle of subrogation. American International Underwriters v. American Samoa Government, 3 A.S.R.2d 115.

ASG provides free medical attention to American Samoans and qualified residents, but it can, under the equitable principle of subrogation, look to the tortfeasor for reimbursement. A.S.C.A. § 13.0601. Puailoa v. Barber, 19 A.S.R.2d 48.

The liability of an uninsured vehicle's owner is secondary to that of a principal tortfeasor who was driving with the owner's permission; while a plaintiff may collect from either defendant, the vehicle's owner has a right of indemnity and subrogation against the driver. Vaiti v. So'oso'o, 19 A.S.R.2d 71.

American Samoa's Workmen's Compensation Act does not explicitly provide for a right of subrogation where an employee receives compensation without a formal award and then recovers from a third party; however, an employer has an equitable right of subrogation and is entitled to be reimbursed from an employee's net recovery, whether by judgment or settlement, from a third party. A.S.C.A. §§ 32.0501 et seq. Vaeao v. Samoa Air, 20 A.S.R.2d 37.

§ 9(6) —Constructive Trusts

To allow lienholder to obtain higher priority by foreclosing in jurisdiction that does not have a federal district court, where Congress apparently intended to create uniform set of priorities and parties contracted accordingly, would give rise to unjust enrichment. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

Where the registered owners of land acquired it from plaintiff by fraud, a constructive trust in favor of plaintiff was properly imposed against both the land and proceeds from its sale. Fania v. Sipili, 14 A.S.R.2d 70.

When real property was obtained by constructive fraud or undue influence, violating a fiduciary relationship, a constructive trust provides the remedy to transfer the property to the person entitled to it. Jennings v. Jennings, 21 A.S.R.2d 40.

A constructive trust is a remedy used by a court of equity to compel a person who has acquired property to which he is not justly entitled to transfer it to the person entitled thereto. The wrongful act giving rise to a constructive trust need not amount to fraud or intentional misrepresentation. All that must be shown is that the acquisition of the property was wrongful and that the keeping of the property by the defendant would constitute unjust enrichment. Jennings v. Thompson, 25 A.S.R.2d 77.

A constructive trust may arise from violation of a fiduciary duty, such as where the property is obtained by constructive fraud or undue influence. Where there is a preexisting fiduciary relationship between the parties, a person whose property has been taken is entitled to restoration of the property itself. Jennings v. Thompson, 25 A.S.R.2d 77.

A constructive trust is one created by operation of law and imposed by a court in equity to prevent a fraud. Facts giving rise to a constructive trust in themselves give rise to an action to enforce such trust. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

The power of a court of equity to appoint a trustee in a proper case is part and parcel of its general jurisdiction and control over trust estates. The court can exercise this power very broadly. The court may also make necessary orders to protect the property of such trust. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

Generally, while it is a factor to consider, the parties need not have entered any agreement as a prerequisite to the imposition of a constructive trust as an equitable remedy. Stephens v. Stephens, 30 A.S.R.2d 55.

While generally land titles may not rest on parol evidence, constructive trusts are excepted from the requisite of written evidence under the statute of frauds. Stephens v. Stephens, 30 A.S.R.2d 55.

In considering the imposition of a contructive trust, what is important in a confidential family situation is the breach of reposed trust. In order to for a constructive trust to be justified, the legal titleholder of property must commit some wrong rendering his or her acquisition or retention of the property unconscionable. Stephens v. Stephens, 30 A.S.R.2d 55.

A confidential or fiduciary relationship will not of itself trigger a constructive trust, but is a notable prelude to imposition of this remedy. Stephens v. Stephens, 30 A.S.R.2d 55.

The very existence of close family connections creates, or at least most often creates, a confidential or fiduciary relationship for purposes of imposing a constructive trust. Stephens v. Stephens, 30 A.S.R.2d 55.

§ 10 Judgments

§ 10(1) —Enforcement of Judgments

SEE AMERICAN SAMOA GOVERNMENT § 5(6) – SUPERVISION OF JUDGMENTS AND SETTLEMENTS

Statement by prior court on family's right in land which was not essential to judgment was obiter dictum and is not binding on subsequent courts. Mulu v. Taliutafa, 3 A.S.R. 82.

Where judgment is ambiguous, interpretation will be adopted which is more reasonable, effective and conclusive and which is characterized by justice and fairness. Yuhashi v. Lopeti, 3 A.S.R. 322.

A proffered "settlement" of an already litigated claim, purporting to "adjust" boundaries established by the court, has no effect when it (1) was never judicially approved; (2) resulted from negotiations between a licensed legal practitioner and an adverse party represented by counsel in the absence of the latter party's counsel; (3) clearly results in disadvantage to the latter party; (4) was renounced by the latter party soon thereafter; and (5) bears a close resemblance to an earlier "settlement" asserted in court by the legal practitioner, the existence of which the adverse party denied immediately after having consulted his attorney. Te'o v. Sotoa, 5 A.S.R.2d 90.

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.

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.

Where land of which judgment debtor was the equitable owner had been fraudulently conveyed to judgment debtor's minor children, then caused by debtor and her husband to be sold by the children to a third party, proceeds from sale to third party were subject to seizure by judgment creditor. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

Court would exercise its equitable discretion to allow husband of judgment debtor, who had made payments on land contract and paid for a house on the land, to retain in preference to the judgment creditor half of the proceeds from sale of land which had been held in the name of the judgment debtor. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

When a judgment creditor moves to seize property of the judgment debtor and the Court has determined that the property does belong to the judgment debtor, the property should ordinarily be held by the Court rather than by the creditor, the debtor, or the person previously in possession pending judicial determination of the creditor's right to seize it. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Court did not deprive attorney of life, liberty, or property without due process of law, either by injury to his reputation or otherwise, where (1) attorney had represented judgment debtor; (2) attorney also represented other members of judgment debtor's family; (3) after judgment, the judgment debtor and her family had agreed to changes in the record ownership of property formerly recorded as property of the judgment debtor, had arranged for the sale of the property, and had removed themselves from the territorial jurisdiction of the court; (4) attorney had in his possession the proceeds of the sale, which judgment creditor alleged to be the property of the debtor but which debtor and other family members claimed to be the property of other family members; (5) court had held the funds to be the property of the judgment debtor and subject to seizure by the judgment creditor; and (6) court ordered the funds to be deposited in the registry of the court pending further proceedings. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Proposed settlement of previously litigated land claim which purports to adjust the boundaries set by the court's judgment should ordinarily be submitted to court for its approval. Estate of Sotoa v. Te`o, 8 A.S.R.2d 165.

Court would not sign consent judgment where one party was represented by counsel, other side was unrepresented, consent judgment required unrepresented party to pay attorney fee that would not have been awarded if the case had been litigated, and court could not be sure that the principal amount had been correctly calculated. Bank of Hawaii v. Ieremia, 8 A.S.R.2d 177.

Signature by person unrepresented by counsel on document designated as settlement or consent judgment does not automatically entitle the document to judicial enforcement without prior judicial scrutiny. Bank of Hawaii v. Ieremia, 8 A.S.R.2d 177.

Risk of abuse inherent in consent judgments ordinarily outweighs their usefulness as a means of saving time, at least in a jurisdiction where trial court routinely resolves uncontested matters by means of brief evidentiary hearings a few days after suit is filed. Bank of Hawaii v. Ieremia, 8 A.S.R.2d 177.

Where court order required disputed funds to be kept in bank pending outcome of the litigation, but an officer of one party to the litigation secretly withdrew and spent the funds in violation of the order, an opposing party which agreed to a settlement under which it would receive "the funds in the bank" did not thereby waive its right to receive the funds which had been wrongfully withdrawn, since it was entitled to rely on compliance by other parties with the court order. Bank

of Hawaii v. Congregational Christian Church, 9 A.S.R.2d 100.

Court order discharging plaintiff in interpleader, a bank, from further liability in connection with the interpleaded funds did not discharge the bank from continuing compliance with previous order prohibiting the disbursal of other funds pending the outcome of the litigation. Bank of Hawaii v. Congregational Christian Church, 9 A.S.R.2d 100.

Where one party to litigation, in violation of a court order, had released money to another party which had then spent it, both parties were jointly and severally liable to a third party who was held entitled to the money; as between the two parties who violated the order, the party who received and spent the money would be required to indemnify the party who merely released it. Bank of Hawaii v. Congregational Christian Church, 9 A.S.R.2d 100.

Court order permitting release of a prisoner should not be construed to require the release of the prisoner when such release would be contrary to the best judgment of the commissioner of public safety and when defendant's counsel had not informed the court that release had been denied by the commissioner. American Samoa Government v. Felise (Mem.), 11 A.S.R.2d 132.

The general rule of merger provides that when a final and personal judgment is rendered in favor of the plaintiff, the plaintiff cannot thereafter maintain an action on the original claim or part of the original claim, although he may be able to maintain an action upon the judgment. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Under A.S.C.A. § 43.0120(5), actions founded upon a judgment must be brought within 10 years. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

§ 10(2) —Validity of Judgments

Trial court judgment becomes final on parties who do not appeal or who dismiss their appeals, and they cannot appear in trial court proceedings on remand after successful appeal by other parties. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

A judgment that has become final cannot be disturbed in the absence of new evidence, fraud, surprise, or similar circumstances. T.C.R.C.P. Rule 60. Willis v. Willis, 4 A.S.R.2d 144.

A strong presumption of validity attaches to an order of the High Court signed by a Justice thereof. Satele v. Uiagalelei, 6 A.S.R.2d 143.

Territorial government is bound by court orders in proceedings to which it is a party and should not issue legal opinions that counsel disobedience to such orders. American Samoa Government v. Satele, 7 A.S.R.2d 153.

Signature of judge on a court order certifies that the judge has in fact exercised his judgment, that the premises of the order are true, that the order itself is lawful, and that it is appropriate under all the circumstances that the order be given the force of law. Bank of Hawaii v. Ieremia, 8 A.S.R.2d 177.

Judgment affirming a decision of land commission, in which one party had made a claim to ownership of land and another party had filed an objection, and in which the commission's decision purported only to reject the claim advanced by the original claimant, did not convey to the objector a title good against the world. Willis v. Fai`ivae, 10 A.S.R.2d 121.

Court is reluctant to issue order affecting the rights of absent parties without affording them prior notice and opportunity to be heard. S.W. California Production Credit Association v. The Vessel Conquistador (Mem.), 11 A.S.R.2d 7.

It is not clear that court has the power to alter the rank or priority of liens by approving an ex parte stipulation to which the lienholders were not parties. S.W. California Production Credit Association v. The Vessel Conquistador (Mem.), 11 A.S.R.2d 7.

Not being vested with prosecutorial discretion, courts can approve a consent-decree provision limiting the defendants' liability to ASG for past violations, but it is inappropriate for a court to enter an order prohibiting the prosecution of future violations of law. American Samoa Government v. StarKist Samoa, Inc., 16 A.S.R.2d 27.

That judgment debtor did not receive certain funds when he had expected to receive them, that some of the expected receipts were subjected to a tax lien and to a pre-judgment garnishment in another case, and that the judgment debtor applied the remainder to his living and business expenses in addition to his judgment debt, did not excuse his noncompliance with a court order to notify the court in advance should it appear that he would be unable to make a scheduled payment on the judgment debt. Association of Apartment Owners v. Hudson (Mem.), 12 A.S.R.2d 81.

Rule that a judgment binds parties "and their privies" is merely a corollary of the proposition that a buyer or other assignee receives only the title his assignor had the right to convey. Puailoa v. Estate of Lagafuaina (Mem.), 12 A.S.R.2d 84.

A rule that anyone who buys land is bound by the results of lawsuits against anyone else who should ever buy land from the same seller would carry the privity rule beyond the limits of its logic; in practice it would encourage litigants to bring suit not against the parties whose claims they really wish to contest, but against the least effective and attractive available members of some class to which the real adverse parties

happen also to belong. Puailoa v. Estate of Lagafuaina (Mem.), 12 A.S.R.2d 84.

Proposition that a litigant may be bound by the result of a prior lawsuit to which neither he nor anyone on whom his claim depends was a party would carve a gaping hole in the rule that no one can be denied property without having had a day in court. Puailoa v. Estate of Lagafuaina (Mem.), 12 A.S.R.2d 84.

Where wrongful death complaint had omitted the name of the decedent's mother, but the pleadings as a whole could be construed to ask for recovery on behalf of both mother and father, both of whom had an equal right to recover for their son's death, judgment awarding damages to the father alone would be construed as being in favor of mother and father jointly. Te`o v. Continental Insurance Co. (Mem.), 13 A.S.R.2d 42.

Parties who did not object to offer for registration of land in accordance with statutory procedure were bound by the result in the ensuing registration proceedings, although they were not parties to the proceeding, because registration proceedings have in rem effect. A.S.C.A. §§ 37.0101 et seq. Tufono v. Vaeao, 13 A.S.R.2d 47.

Funds that are in the judgment debtor's possession, freely available for his personal expenses and actually used by him for such expenses, are similarly available for garnishment and the satisfaction of his debts. United Airlines v. Pritchard, 15 A.S.R.2d 56.

A judgment creditor's rights do not depend upon whether the debtor has obtained money by earning it or because it was lent or given to him. United Airlines v. Pritchard, 15 A.S.R.2d 56.

Garnishment may not be evaded by placing in the debtor's hands possession and control of a fund freely available to him but not to his creditors. United Airlines v. Pritchard, 15 A.S.R.2d 56.

Claims for costs incurred in securing vessel while it was in custodia legis prior to judicial sale are recoverable from the proceeds of the sale and have priority over the claims of the litigants. 46 U.S.C. § 31326. United Airlines Employee Credit Union v. M/V Sans End, 15 A.S.R.2d 95.

Creditor who already obtained a judgment and a writ of execution and levied upon the property of judgment creditor prior to the notice of ASG's tax lien, prevails against the ASG as a judgment lien creditor with respect to such property. 26 U.S.C. § 6323(a); A.S.C.A. § 11.0401 et seq. Shantilal Brothers, Ltd. v. KMST Wholesale, 15 A.S.R.2d 115.

Concerning an unwritten contract, which affords no contractual or legal basis for variation from the rule that each party pays his own attorney fees, plaintiff was entitled to recover only the principal amount plus six per cent pre-judgment interest. Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

Former counsel's failure to communicate a judgment to a client, if true, might or might not give rise to a cause of action for malpractice, but this does not give the court jurisdiction it does not have. Taulaga v. Patea, 17 A.S.R.2d 206.

A judgment of the Trial Division remains in the jurisdiction of the Trial Division, and attempts to enforce the judgment should be made at the trial level, not in the Appellate Division. Paisano's Corp. v. Blue Pacific Management Corp., 25 A.S.R.2d 75.

The general rule is to award prejudgment interest, although this award always lies soundly within the court's discretion. However, it is also true that when certain "peculiar" circumstances exist, the discretion to deny prejudgment interest is sustained. These peculiar circumstances have fallen into three categories: (1) "plaintiff's delay in bringing suit," (2) "the existence of a genuine dispute regarding ultimate liability or the complexity of the factual and legal issues to be resolved," and (3) "judgment in an amount substantially less than that claimed. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

The court has inherent equitable power to give priority to costs arising out of the administration of property within its jurisdiction. Korea Deep Sea Fisheries Assn. v. M/V Corona #1, 27 A.S.R.2d 53.

Where it appears that a judgment is void, and a party has moved the court to aid in the enforcement of that judgment, the court must examine the validity of the judgment, whether the examination is on subject matter grounds or other grounds, including the lack of capacity to sue. Interocean Ships, Inc. v. Samoa Gases, 30 A.S.R.2d 170.

A judgment that is void may be collaterally attacked. Interocean Ships, Inc. v. Samoa Gases, 30 A.S.R.2d 170.

A judgment for a corporation that has lost the capacity to sue, as when it no longer exists as an entity or has merged into another corporation, is void. Interocean Ships, Inc. v. Samoa Gases, 30 A.S.R.2d 170.

The court may void a judgment even after the parties have subsequently entered into a settlement, even though the decision, as a practical matter, invalidates the settlement. Interocean Ships, Inc. v. Samoa Gases, 30 A.S.R.2d 170.

When a judgment has been set aside, neither that judgment nor any other former judgment in the case ever again becomes the judgment of the court unless the trial court expressly reinstates it and, in effect, renders a new judgment on the later date. Interocean Ships, Inc. v. Samoa Gases, 3 A.S.R.3d 190 (Trial

Div. 1999).

Where filing date was day prior to date purportedly signed by judges, Court determined that latter date was inadvertent, typographical error and inconsequential to enforceability of order. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

Where date signed by judges differs from date of filing, the date of filing controls. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

§ 10(3) —Orders in Aid of Judgment

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. Dullabhbhai K. Patel & Co., Ltd., 3 A.S.R.2d 99.

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. Dullabhbhai K. Patel & Co., Ltd., 3 A.S.R.2d 99.

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.

When deciding the propriety of an order in aid of judgments, courts are guided by considerations of justice and equity. Carpenters Fiji, Ltd. v. Pen, 29 A.S.R.2d 58.

In the absence of a bankruptcy statute, the law of American Samoa favors orders in aid of judgment which permit the debtor to retain a reasonable amount of income producing property to provide for reasonable living requirements and family obligations. Carpenters Fiji, Ltd. v. Pen, 29 A.S.R.2d 58.

T.C.R.C.P. 18(b) authorizes the concurrent joinder of two claims. However, Rule 18(b) is not applicable to an action, which seeks an order in aid of judgment. Korea Deep Sea Fisheries Association v. Ho Pyo Hong, 31 A.S.R.2d 162.

§ 10(4) —Declaratory Judgments

Court will issue declaratory judgment in appropriate case pursuant to authorizing statute, and will liberally construe statute to assume jurisdiction on merits if possible. Title 11, A.S.C. § 6671 (1973). In re High Chief Title Mauga, 4 A.S.R. 132.

Court will issue declaratory judgment to resolve matai title dispute pursuant to constitutional duty to protect Samoan culture and customs. Rev. Con. of Am. Samoa, Article I, Section 3. In re High Chief Title Mauga, 4 A.S.R. 132.

Court will issue declaratory judgment if facts alleged show substantial controversy between adverse parties, sufficiently immediate and pressing that if jurisdiction is refused, other litigation will likely ensue between same parties. In re High Chief Title Mauga, 4 A.S.R. 132.

Repeated litigation and dissention over matai title status is sufficient to establish case or controversy amenable to declaratory judgment. In re High Chief Title Mauga, 4 A.S.R. 132.

In absence of authorizing statute, court cannot decree declaratory judgment, and Samoa has no statute authorizing declaratory judgments. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Court will assume jurisdiction and declare meaning of statute, if parties dispute same, although pleadings do not seek declaratory relief. R.C.A.S. § 3.1801. Meredith v. Mola, 4 A.S.R. 773.

Court would not exercise its power to render a declaratory judgment where the party seeking the judgment had not exhausted his administrative remedies. Election Office v. Tuika, 9 A.S.R.2d 1.

Court would not exercise its power to render a declaratory judgment where the only relief it could grant would require the court to assume a super-visory role over administrative processes. Election Office v. Tuika, 9 A.S.R.2d 1.

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.

Once a grantee has received and registered a deed to land, a subsequent deed has no effect, and so an injunction properly enjoined a later purchaser from interfering with the prior grantee's use and enjoyment of the land. Sa v. Vollrath, 21 A.S.R.2d 37.

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.

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.

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.

American Samoa's declaratory-judgment statute limits such relief to a 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." A.S.C.A. § 43.1101. Multitauaopele v. Togafau, 26 A.S.R.2d 52.

The court retains the discretion not to grant declaratory relief if "not necessary or proper." A.S.C.A. § 43.1102. Multitauaopele v. Togafau, 26 A.S.R.2d 52.

The test generally applied in determining whether a case presents a justiciable issue which can serve as a basis for a declaratory judgment suit is whether it is relatively certain that coercive litigation will eventually ensue between the same parties if a declaratory judgment is refused. American Samoa Government v. South Pacific Island Airsystems, Inc., 26 A.S.R.2d 132.

Courts will not grant declaratory judgments until administrative remedies have been exhausted unless such administrative remedies are inadequate. Moetoto v. Tauileva, 28 A.S.R.2d 144.

A declaratory judgment is a judgment that calls for a broad adjudication of rights other than those on which the immediate relief is dependent. A judgment is not declaratory if it declares no more than is necessary to sustain the immediate relief prayed for. Lutu v. Ale, 28 A.S.R.2d 43.

Trial court has discretion to refuse declaratory relief when it is not necessary or proper at the time it is sought. Tauia v. American Samoa Gov't, 1 A.S.R.3d 64 (Trial Div. 1997).

In most declaratory relief actions, exhaustion of administrative remedies is a prerequisite to judicial review. Tauia v. American Samoa Gov't, 1 A.S.R.3d 64 (Trial Div. 1997).

Although it would be helpful to have a determination as to whether a tenancy in the entirety issue applies to the territory, under A.S.C.A. § 43.1101 the court must have a true case or controversy before it in order to issue a declaratory judgment. Fiame v. Fiame, 4 A.S.R.3d 95 (Trial Div. 2000).

For there to be a case or controversy amenable to a decision on the merits, it must be relatively certain that coercive litigation will eventually ensue between the same parties if a declaratory judgment is refused. Fiame v. Fiame, 4 A.S.R.3d 95 (Trial Div. 2000).

The High Court will not entertain a claim for declaratory relief which asks the Court to declare that a person is a duly selected and sworn Senator, as the Constitution of American Samoa reserves such matters to the Senate, and such claims are of the type that admit of legislative, rather than judicial, resolution. Fa`amausili v. Am. Samoa Gov't, 6 A.S.R.3d 259 (Trial Div. 2002).

A court may grant declaratory relief even though it chooses not to issue an injunction or mandamus. A declaratory judgment can then be used as a predicate to further relief, including an injunction. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

Under A.S.C.A. § 43.1101, a person is entitled to declaratory relief if he is "interested under a deed, will or other written, or under a contract, or . . . desires a declaration of his rights or duties with respect to another, or in respect to, in, over or upon property." Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

§ 10(5) —Default Judgments

A defendant who has defaulted through failure to answer may nevertheless appear at the hearing of motion for default judgment to contest the amount of damages. T.C.R.C.P. Rule 55(b). Development Bank v. Lava, 5 A.S.R.2d 24.

Failure of co-signor of promissory note to appear in action on the note was "excusable neglect" justifying relief from default judgment where co-signor had always relied on her husband to manage the family's legal affairs, husband had assured her that they would be represented by counsel, and she was unaware of judgment against her until well after its entry. T.C.R.C.P. Rule 60(b). Amerika Samoa Bank v. R. Pritchard Ground Services, Inc., 5 A.S.R.2d 106.

Rule allowing relief from default judgments should be liberally construed; any doubt should be resolved in favor of setting aside the judgment so that the case may be decided on its merits. T.C.R.C.P. Rule 60(b). Amerika Samoa Bank v. R. Pritchard Ground Services, Inc., 5 A.S.R.2d 106.

Court would exercise its discretion to set aside an entry of default where defendant's failure to timely answer was due to administrative oversight, prior to the expiration of time to answer defendant had appeared in opposition to a motion for injunctive relief, plaintiffs' claim involved a substantial sum of money, there was doubt about whether the complaint and

summons were properly served, and plaintiffs were not prejudiced by defendant's delay. Pene v. ASPA, 8 A.S.R.2d 78.

Clerk's entry of default may, in court's discretion, be set aside for good cause. T.C.R.C.P. Rule 55(c). Pene v. ASPA, 8 A.S.R.2d 78.

In cases where a party seeks relief from a default judgment, all but the most egregious neglect will usually be excused in deference to the principle that cases should ordinarily be tried on their merits. T.C.R.C.P. Rule 60(b). Satele v. Uiagalelei, 8 A.S.R.2d 97.

Motions for relief from judgment after trial should not be granted as freely as those seeking relief from default judgments, so as to encourage diligent preparation before trial and so as not to relegate the many hours spent at trial by opposing parties and the court to the status of pre-trial discovery. T.C.R.C.P. Rule 60(b). Satele v. Uiagalelei, 8 A.S.R.2d 97.

While the court must be slow in granting default judgments, mindful of its partiality for trial on the merits, it must also balance this concern with finality of judgments and protection of the judicial process. E-C Rental Services v. Pedro, 26 A.S.R.2d 65.

Default judgments are not favored this may be why a court must hold a hearing on damages before entering a judgment on an unliquidated claim even against a defendant who has been totally unresponsive. In general, however, a litigant must make a strong showing to demonstrate that he or she is entitled to relief from a default judgment under T.C.R.C.P. 60(b). E-C Rental Services v. Pedro, 26 A.S.R.2d 65.

Rule 60(b) relief from a default judgment is an extraordinary remedy and is granted only under exceptional circumstances. Additionally, once granted, a default judgment is accorded a high degree of deference, both in the federal courts and in American Samoa, and the granting or denial of such motions is left largely to the discretion of the court. E-C Rental Services v. Pedro, 26 A.S.R.2d 65.

Traditionally, relief from a judgment of default should be granted where the defaulting party acts with reasonable diligence and tenders a meritorious defense. E-C Rental Services v. Pedro, 26 A.S.R.2d 65.

The standards for relief when a judgment of default has been entered are substantially higher than when an entry of judgment stands alone. E-C Rental Services v. Pedro, 26 A.S.R.2d 65.

Before a default judgment may be entered, a court must scrutinize the evidence itself. Scalise v. Gorniak, 26 A.S.R.2d 85.

Evidence of amount of debt, presented in support of motion for default judgment should consist not of a conclusory affidavit by attorney, but of bank ledgers and other direct evidence from which a court can conclude for itself whether the amount has been correctly calculated. Scalise v. Gorniak, 26 A.S.R.2d 85.

Even though defendant failed to serve copy of answer on the plaintiff, court cannot grant a default judgment in favor of plaintiff in the face of an answer effectively denying liability. Vance Intl. v. Penn, 27 A.S.R.2d 79.

A default judgment is not a matter of right. It is a drastic remedy that should only be granted in extreme situations and a trial court has sound discretion to determine whether default judgment is appropriate. Rakshan v. American Samoa Gov't, 28 A.S.R.2d 151.

T.C.R.C.P. 12(a), providing for default judgments, requires that a defendant serve his answer within 20 days after the service of the summons and complaint against him. Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

Tardy service alone does not entitle a defendant to a default judgment since under T.C.R.C.P. 55(e) no judgment by default shall be entered against the American Samoa Government unless the claimant establishes his claim or right to relief by evidence to be scrutinized by the court; default judgments are drastic remedies used only in extreme situations, as where the adversary process is halted by an unresponsive party; serving an answer a day late is not such an extreme situation. Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

A court should be slow in granting default judgments, mindful of its partiality for trial on the merits, and despite untimely delays on a defendant’s part, it would be inappropriate to allow default judgment. Mulitauaopele v. American Samoa Gov’t and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

In American Samoa, the court must scrutinize the evidence before a default judgment may be entered, even in the case where the amount sought in the complaint is fully liquidated. AV Bingo Supplies v. Pacific Rim Enterprises, 5 A.S.R.3d 101 (Trial Div. 2001).

In motions for default judgment the court looks to direct evidence to determine whether the claimed indebtedness has been correctly calculated. AV Bingo Supplies v. Pacific Rim Enterprises, 5 A.S.R.3d 101 (Trial Div. 2001).

Where plaintiff’s sought default judgment against individual, but evidence presented was unclear as to how such person was liable for supplies to shipped to separate business entity, court would not enter default judgment. AV Bingo Supplies v. Pacific Rim Enterprises, 5 A.S.R.3d 101 (Trial Div. 2001).

The rate of pre-judgment interest which the law presumes, in the absence of a written stipulation by the debtor to a different permissible rate, is 6%. AV Bingo Supplies v. Pacific Rim Enterprises, 5 A.S.R.3d 101 (Trial Div. 2001).

Any claim for pre-judgment interest beyond the statutorily-mandated 6% rate is usurious and unenforceable. AV Bingo Supplies v. Pacific Rim Enterprises, 5 A.S.R.3d 101 (Trial Div. 2001).

In American Samoa, the court must scrutinize the evidence before a default judgment may be entered. Cummins Engine Co., Ltd. v. Bay Area Diesels, Inc., 6 A.S.R.3d 99 (Trial Div. 2002).

Before default judgment may be granted, the evidence on file must satisfy the court that the calculation of the debt in question is accurate. Cummins Engine Co., Ltd. v. Bay Area Diesels, Inc., 6 A.S.R.3d 99 (Trial Div. 2002).

Where default judgment on a debt is sought, direct evidence of the debt, such as invoices and receipts, is necessary to sufficiently establish the amount—a conclusory affidavit will not suffice. Cummins Engine Co., Ltd. v. Bay Area Diesels, Inc., 6 A.S.R.3d 99 (Trial Div. 2002).

§ 10(6) —Interlocutory & Collateral Orders

Counsel who wished to readvance an argument that had been rejected by the court should have done so by filing a timely motion to reconsider the court's interlocutory order, not by simply ignoring the order. Lutu v. Semeatu, 13 A.S.R.2d 88.

Where defendant asserts a right which is or includes a right not to bear the burden of the suit itself, regardless of the outcome, he may immediately appeal a denial of that right under the collateral order exception. Kim v. American Samoa Government, 17 A.S.R.2d 193.

Generally, an interlocutory order during the course of a judicial proceeding is not a final decision that can be immediately appealed to the High Court, but is reviewable only by means of appeal from an adverse judgment in the main proceeding. Kim v. American Samoa Government, 17 A.S.R.2d 193.

An interlocutory order is final and thus appealable if it finally determines claims of right separable from and collateral to rights asserted in the main action, too important to be denied review, and too independent of the cause itself to require that appellate review be deferred until the whole case is adjudicated. Kim v. American Samoa Government, 17 A.S.R.2d 193.

To fall within collateral order exception, an order must: (1) conclusively resolve the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from the final judgment in the main case. Kim v. American Samoa Government, 17 A.S.R.2d 193.

A collateral order is generally regarded as effectively unreviewable and therefore final --- even if a later appeal from an adverse judgment in the principal action is possible --- when substantial rights would be lost if appeal were delayed until the main stream of the litigation is terminated. Kim v. American Samoa Government, 17 A.S.R.2d 193.

Defendant's appeal of an interlocutory order denying his asserted absolute right to appointment of an interpreter on request falls within the collateral order exception since he is asserting a right not to be tried under such circumstances, and such right is effectively unreviewable, since denial of an interpreter generally requires a showing of prejudice to obtain a reversal. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

An interlocutory appeal of an agency action or ruling is available only if review of the final agency decision would not provide an adequate remedy. A.S.C.A. § 4.1040(c). Sala v. American Samoa Government, 20 A.S.R.2d 80.

An interlocutory order during the course of a trial or other judicial proceeding is generally not a "final decision" within the meaning of A.S.C.A. § 3.0309 and similar statutes. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

An interlocutory order falling within the collateral order exception can be appealed. To fall within the exception, an order must (1) conclusively resolve the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from the final judgment in the main case. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

A collateral order is generally regarded as unreviewable where substantial rights would be lost if appeal were delayed until the main stream of the litigation is terminated. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

American Samoa statutes and rules of court provide no authority for bringing a motion to reconsider a non-final interlocutory order in a pending case. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

The requirement that a pre-trial order be final or fall within the collateral order exception to the finality rule before it may be appealed applies to interim orders before they may be reconsidered. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

§ 10(7)—Res Judicata & Collateral Estoppel

Fact which is in issue in former suit and determined therein by court of competent jurisdiction cannot be raised in later action by same parties or their privies whether the former and latter cause of action be identical or different. Sapela v. Mageo, 1 A.S.R. 143.

Where issue of adverse possession has been correctly determined by previous decision, court will not reconsider it upon motion for new trial. Taliutafa v. Toaga, 2 A.S.R. 218.

Where plaintiff in former suit represented class in which petitioner of present suit is included, former decision becomes law of case and applies to present petitioner so that new trial is not necessary. Taliutafa v. Toaga, 2 A.S.R. 218.

Privity involves person so identified in interest with another that he represents same legal right; privity in relation to doctrine of res judicata is privity as it exists in relation to subject matter of litigation. Toomata v. Vea, 2 A.S.R. 564.

Material facts or questions which were issue in former action, and were admitted or judicially determined, are conclusively settled by judgment rendered therein, and such facts or questions become res judicata and may not again be litigated in subsequent action between same parties, whether second action is on same or different cause of action. Toomata v. Vea, 2 A.S.R. 564.

Doctrine of judicial estoppel makes it mandatory upon court to find that party is member of certain family since this fact had been previously determined in prior litigation. Toomata v. Vea, 2 A.S.R. 564.

Judgment determining property rights binds only those who were parties and persons in privity with them. Mulu v. Taliutafa, 3 A.S.R. 82.

Rights of person not party to suit nor in privity with party are not affected by prior judgment concerning land presently in dispute, nor is such judgment res judicata with respect to him. Tialavea v. Aga, 3 A.S.R. 272.

Court is bound by prior decision between same parties which found that disputed lands were communal family lands. Faamuli v. Leiato, 3 A.S.R. 308.

Party may be estopped from taking inconsistent position in subsequent judicial proceeding. Scanlan v. Steffany, 3 A.S.R. 583.

Where suit is dismissed by plaintiff voluntarily, he is not estopped from taking inconsistent position in subsequent proceedings. Scanlan v. Steffany, 3 A.S.R. 583.

Party may not be estopped from maintaining inconsistent position in subsequent judicial proceeding unless he was successful in prior judicial proceeding. Scanlan v. Steffany, 3 A.S.R. 583.

Court will not dismiss application to register land where prior decision evicted applicant from land where there are two new parties to action who were not parties to previous case. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Court will not dismiss application to register land where prior decision held that applicant should be evicted from land and enjoined from returning since present case is different kind of action. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Where no judgment for prior court decision can be found, decision cannot constitute res judicata against any of parties in present case, but transcript may be used as evidence in determining ownership of land. Aumoeualogo v. Mamoe, 4 A.S.R. 742.

Parties and their privies are barred from relitigating same cause of action, since first judgment settles all matters that were or might have been determined therein. Tuitasi v. Lualemaga, 4 A.S.R. 798.

In subsequent suit between parties and privies involving different cause of action, parties are only barred from relitigating matters determined in first proceeding and not those that might have been determined. Tuitasi v. Lualemaga, 4 A.S.R. 798.

Person not party to nor in privity with litigant in prior action may invoke res judicata against prior litigant or privy in earlier action. Tuitasi v. Lualemaga, 4 A.S.R. 798.

Person not party nor in privity is denied due process if judgment in prior action binds him. Tuitasi v. Lualemaga, 4 A.S.R. 798.

To be in privity and barred by res judicata, non-party must be so identified in interest with party to former litigation that he represents same legal right in respect to subject matter involved. Tuitasi v. Lualemaga, 4 A.S.R. 798.

Plea of res judicata is affirmative defense that must be pleaded and proved by proponent, unless appearing affirmatively in pleadings of party against whom asserted. Tuitasi v. Lualemaga, 4 A.S.R. 798.

Defense of res judicata is properly raised by motion to dismiss. Tuitasi v. Lualemaga, 4 A.S.R. 798.

Where private parties litigate land dispute, and Government is not party to dispute, court's determination of ownership in one of parties does not preclude greater right in Government nor does it determine rights of Government in land. Mageo v. Government, 4 A.S.R. 874.

Under principle of res judicata, judgment or decree of court of competent jurisdiction on merits concludes parties and privies to litigation and constitutes bar to new suit involving same cause of action. Willis v. Taupo, 4 A.S.R. 934.

Where another member of family brings second suit identical to one previously denied against same defendant, he is barred by res judicata. Willis v. Taupo, 4 A.S.R. 934.

Where plaintiff brought action for eviction and this remedy was denied, he cannot again bring same action concerning the same land against same defendant. Willis v. Taupo, 4 A.S.R. 934.

Under principle of res judicata, any right, fact, or matter in issue and directly adjudicated on or necessarily involved in determination of action in which judgment is rendered is conclusively settled and cannot again be litigated between parties and privies whether or not claim or subject matter of two suits is same. Willis v. Taupo, 4 A.S.R. 934.

Basis of res judicata is that there should be end to litigation and that party should not be harassed twice by opponent. Willis v. Taupo, 4 A.S.R. 934.

Where previous decision determined predecessor title holders, court will not ignore determination in order to accept unsupported statement of contestant to contrary. Taufaasau v. Manuma, 4 A.S.R. 947.

Land title action was barred by res judicata when ownership of same tract had been resolved between same families over same issues by earlier final judicial resolution. Taulaga M. v. Patea S., 4 A.S.R.2d 186.

A trial court decision that was not appealed and that adjudicated ownership of a tract of land acquired the effect of res judicata and bound the court in later dispute between the same parties over the same tract of land. Te'o v. Sotoa, 5 A.S.R.2d 90.

Party who unsuccessfully sought title to a tract of land in previous action and failed to appeal may not later resurrect same claim to same land. Sialega v. Taito, 5 A.S.R.2d 99.

Since corporation unrepresented by counsel was presumed to be a relatively sophisticated litigant, court would sign "stipulated judgment" agreed to by the corporation as long as its officers understood that the stipulated judgment was substantially greater than would be taken against the corporation if it simply did not appear. Wattie Exports Limited v. Pacific Industries, Inc., 6 A.S.R.2d 30.

Garnishee bank that had elected not to retain counsel and whose employee attended garnishment hearing but did not request to testify could not argue in collateral attack on resulting judgment that it had been denied an opportunity to be heard. Amerika Samoa Bank v. Haleck, 6 A.S.R.2d 54.

Losing candidate for matai title and his supporters, who from the time of the adverse judgment had attempted to prevent the reunification of the family and compliance by the prevailing candidate with the traditional prerequisites for formal ceremonial assumption of the title, would not prevail in a subsequent suit seeking removal of the prevailing candidate on the ground that he had not undergone such a ceremony. In re Matai Title Sotoa, 6 A.S.R.2d 91.

After a final judgment, rule of res judicata bars relitigation by the parties of questions raised by the pleadings or of related questions that might have been raised and thus ordinarily precludes court from reopening the proceeding in order to consider evidence and arguments for a reduction or increase in the amount of the judgment. Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 84.

Trial court decision adjudicating land ownership that was not appealed became res judicata and bound the court in a later dispute between the same parties over the same tract of land. Estate of Sotoa v. Te`o, 8 A.S.R.2d 165.

Judgment in prior case, between same parties and involving same land as the present case, was res judicata and therefore bound the parties and the court notwithstanding losing party's contention that the judgment did not accord with Samoan custom. Aoelua v. Tela, 10 A.S.R.2d 20.

Where judgment in prior case, between same parties but involving different land, had rejected one party's contention that he was the owner according to Samoan custom of all lands occupied by the other party, court deciding subsequent case must reject this contention notwithstanding the party's contention that the prior judgment did not accord with Samoan custom. Aoelua v. Tela, 10 A.S.R.2d 20.

Judicial decision stating that a certain tract (1) was "the property of" a named party, (2) that she should have the rents during her lifetime, and (3) that she should make a will saying who she wanted to receive the rentals after her death, adjudicated the question of title to the property as between the parties to the case and their successors in interest. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

Res judicata applies only where the parties and the subject matter of the earlier case are identical to those of the case at hand. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

Collateral estoppel applies only against a party who was represented in earlier litigation; a party who wins a lawsuit is not automatically entitled to a similar judgment against people who were not parties to the earlier litigation and who are not successors in interest of anybody who was. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

When more than one lawsuit arises from a single chain of events and the first lawsuit decides mixed questions of law and fact, the doctrine of stare decisis precludes relitigation only by parties who have already litigated the questions or who had a fair chance to do so in the first lawsuit. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

Trial court decision whose application to persons who were not parties had been reversed by appellate court as a denial of due process should not be mechanically imposed upon such persons in subsequent litigation brought against them by the original plaintiff. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

Appellant is collaterally estopped from denying the separate and independent nature of two matai titles where the identical factual issue was decided in prior litigation between the same parties and the issue was essential to resolution of the prior controversy. Tela v. Aoelua, 12 A.S.R.2d 40.

Prior judicial decision regarding the registration of land is res judicata, even if it was wrongly decided; arguments that the prior decision was contrary to custom and violative of treaty either were or should have been presented to the court deciding that case, and it would be totally contrary to the principles of finality underlying the judicial process to relitigate a matter that was already fully litigated. Tela v. Aoelua, 12 A.S.R.2d 40.

Statute providing that land should not be registered when a competing application for registration is pending neither renders void a final judgment entered in violation of its terms, nor otherwise permits a collateral attack on that judgment. A.S.C.A. § 37.0101. Tela v. Aoelua, 12 A.S.R.2d 40.

Since res judicata requires an existing final judgment rendered upon the merits, the dismissal of a prior action with prejudice for failure to prosecute is not res judicata where the court amended its order to clarify that it was not a judgment on the merits. Patau v. Rosendahl Corp., 14 A.S.R.2d 79.

Barring land claims by res judicata or collateral estoppel is improper if the parties or their predecessors-in-title were not parties in the previous case. Afualo v. Fanene, Pualioa v. Afualo, 15 A.S.R.2d 48.

Even under the mutuality doctrine, which has largely been abandoned, the government could sue a convicted criminal for civil damages, and the defendant would be estopped to deny the facts entailed by his conviction. Galea`i v. Atofau, 16 A.S.R.2d 76.

Collateral estoppel applies whether defendant's conviction resulted from a trial or from a guilty plea, even if induced by a plea bargain. Galea`i v. Atofau, 16 A.S.R.2d 76.

With the abandonment of the mutuality requirement, individual victims of crime can now benefit from collateral estoppel in the same ways and to the same extent that the government has always done. Galea`i v. Atofau, 16 A.S.R.2d 76.

Majority rule gives judgments based on guilty pleas the same collateral effect as other criminal convictions and, as such, are conclusive of all issues that would have been resolved by a conviction following a trial. Galea`i v. Atofau, 16 A.S.R.2d 76.

The traditional requirement is that a party should be estopped only with respect to those matters that were genuinely at issue and genuinely decided in the earlier case. Galea`i v. Atofau, 16 A.S.R.2d 76.

At least when a defendant's admission to a crime was made upon the advice of competent counsel, collateral estoppel applies with respect to issues which were distinctly and directly put at issue by the pleadings, which were central rather than peripheral to the proceeding, and which were essential to the outcome. Galea`i v. Atofau, 16 A.S.R.2d 76.

Neither a guilty plea nor a verdict after trial estops the defendant with respect to any issue not squarely resolved by the judgment; with respect to these elements a plaintiff must present evidence other than the guilty plea, and a defendant is free to controvert any such evidence. Galea`i v. Atofau, 16 A.S.R.2d 76.

Samoan communal land belongs to families rather than individuals, and a judgment against the family is binding on the family despite the succession of matai-title holders through time. Taulaga v. Patea, 17 A.S.R.2d 34.

A person who takes an interest in real property from one who litigated the property's title is in privity with him and so is bound by res judicata. Puailoa v. Estate of Lagafuaina, 19 A.S.R.2d 40.

Res judicata applies only to a "final" judgment between the "parties" or those in privity with them. Restatement (Second) of Judgments §17 (1988). Puailoa v. Estate of Lagafuaina, 19 A.S.R.2d 40.

Even if erroneous, a court's decision as to whether a parcel of land is a person's individual land or a family's communal land is binding on later courts. Puailoa v. Estate of Lagafuaina, 19 A.S.R.2d 40.

A court order requiring the Registrar to issue a land-registration certificate did not bar a plaintiff from litigating the issue of whether a registration of somebody else's property, affirmatively identified as such by the applicant in his registration documents, is nevertheless a valid registration,

when neither this issue nor the plaintiff was previously before the court. Ava v. Logoai, 19 A.S.R.2d 75.

An objection to a proposed lease, when found to be nothing more than an attempt to revive a previously litigated ownership question, will not be entertained due to res judicata. Utu v. Alaimalo, 22 A.S.R.2d 92.

Because a guilty plea in a prior criminal action necessarily eliminates a full and contested presentation of evidence on the issues and may only indicate a compromise or an expectation of a more advantageous disposition of a criminal accusation, the policy underlying collateral estoppel would not be truly served by making a guilty plea conclusive in a civil action. Amisone v. Talaeai, 23 A.S.R.2d 52.

A case does not have res judicata or collateral estoppel effect when the parties and subject matter in a later case are different. Reid v. Puailoa, 23 A.S.R.2d 101.

While in rem and in personam claims may be joined, res judicata applies from an in personam action against a shipowner to an in rem action against his ship (and vice versa); thus, one may not sue twice on the legal fiction that a ship and her owner are two different parties. Southwest Marine of Samoa, Inc. v. M/V Kwang Myong #71, 23 A.S.R.2d 156.

In a state where the welfare of the child is the primary consideration in shaping a custody decree and where the custody decree is not irrevocable or unchangeable, the custody decrees of that state's courts are ordinarily not res judicata in that state or elsewhere, except as to the facts before the court at the time of judgment. In re A Minor Child, 28 A.S.R.2d 33.

The sum and substance of the whole doctrine of res judicata is that a matter once judicially decided is finally decided. American Samoa Gov't v. Meredith, 28 A.S.R.2d 92.

A collateral attack on a condemnation judgment will be heard only when the judgment is attacked as void, and not merely technically defective. American Samoa Gov't v. Estate of Fuimaono Tuinanau, 28 A.S.R.2d 187.

The doctrine of res judicata precludes relitigation of the legal and factual issues that were settled between the same parties in prior litigation. American Samoa Gov't v. Meredith, 1 A.S.R.3d 14 (App. Div. 1997).

The doctrine of res judicata precludes relitigation of issues that could have been raised but may not have been raised in the prior litigation. American Samoa Gov't v. Meredith, 1 A.S.R.3d 14 (App. Div. 1997).

Where doctrine of res judicata barred action, equitable claims, claims regarding oral representations made by government officials, and claims that the government forfeited its title need not be reached. American Samoa Gov't v. Meredith, 1 A.S.R.3d 14 (App. Div. 1997).

Under the judicially-developed doctrine of collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision is conclusive in a subsequent suit based on a different cause of action involving a party to the prior litigation. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 120 (Trial Div. 1997).

Collateral estoppel, like the related doctrine of res judicata, relieves parties of the cost and vexation of multiple lawsuits, conserves judicial resources, and encourages reliance on adjudication by preventing inconsistent decisions. However, the doctrines are distinct in that res judicata applies only between parties and their privies to the prior action, while collateral estoppel may be invoked by a stranger to the prior action against a party to that action. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 120 (Trial Div. 1997).

Stranger plaintiffs may, under certain circumstances, use the doctrine of collateral estoppel offensively, to estop a defendant from relitigating the issues which the defendant previously litigated and lost against another plaintiff. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 120 (Trial Div. 1997).

A trial court has broad discretion in determining when offensive collateral estoppel is appropriate, and must consider the following factors: (1) whether the new plaintiff could have easily joined the previous action; (2) whether the defendant had sufficient incentive in the earlier action to litigate the matter with vigor; (3) whether the application of collateral estoppel would be unfair to the defendant for other reasons; (4) whether the issues in the two actions are identical; (5) whether the court's holding in the earlier action was actually litigated and. necessary to a determination on the merits; (6) whether the judgment in the earlier action was final. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 120 (Trial Div. 1997).

The burden of proof is on the party against whom the doctrine of collateral estoppel is sought to be applied to produce some evidence indicating that the party seeking to apply the doctrine adopted a "wait and see" attitude so as to avoid the binding force of a potentially adverse ruling in the previous action. This is true even where the plaintiff has not adequately explained the failure to join the previous litigation. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 120 (Trial Div. 1997).

Where future suits are foreseeable at the time of the first action, the defendant cannot claim that there was a lack of incentive to litigate the issue so as to avoid the application of the doctrine of collateral estoppel. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 120 (Trial Div. 1997).

Issue preclusion in the context of the doctrine of collateral estoppel only applies when the issue raised is the same issue that was decided in an earlier case. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 120 (Trial Div. 1997).

The doctrine of issue preclusion prevents relitigation of all issues of fact or law that were actually litigated and necessarily decided in the prior proceeding. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 120 (Trial Div. 1997).

Issue preclusion only applies to final judgments on the merits. For purposes of issue preclusion, final judgment includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect. The fact that the losing party in the earlier case may still appeal the ruling to a higher appellate court does not render the judgment non-final. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 120 (Trial Div. 1997).

A judgment in a prior case, between the same parties, or those in privity with them, which involves the same land title issue, is res judicata and binds the parties and the court. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

Res judicata is a rule of substantive law and not of practice or procedure. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

Res judicata cannot be set aside by employing A.S.C.A. § 3.0242(b). Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

Where a prior case previously adjudicated the same issues between the same families and was resolved in a final judgment as to the communal nature and ownership of the land, the communal nature and ownership of the land is res judicata in a subsequent case. Taylor v. Solaita, 3 A.S.R.3d 218 (Land & Titles Div. 1999).

Full faith and credit requires this court to respect the res judicata effect of an earlier judgment in deciding the same issues presented in an action currently litigated. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Res judicata applies to a "final" judgment between the "parties" or those in privity with them. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Where earlier, final judgment determined that vessel owners' association was legal entity with vested ownership interest in vessels, and where plaintiffs in instant action and association were parties in the prior action, association was estopped from relitigating same issues in instant action. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Where case involves the same parties and issue regarding land ownership and court has previously adjudicated the land at issue to be communal land of a certain family, court will recognize the res judicata effect of the previous decision to reinforce the holding that the land at issue is that family's communal land. Tuigamoa v. Tu`ugaolo, 5 A.S.R.3d 239 (Land & Titles Div. 2001).

Res judicata, or claim preclusion, applies when (1) there has been a final judgment on the merits (2) in a prior action involving the same parties or their privies and (3) the prior action involved the same claim. Alai`asa v. Te`o, 5 A.S.R.3d 266 (Land & Titles Div. 2001).

A judgment will have preclusive effect if the same parties are involved or if a non-party was in privity with a party to the previous action. Alai`asa v. Te`o, 5 A.S.R.3d 266 (Land & Titles Div. 2001).

Privity is a term that describes the relationship between a party and a nonparty that is deemed close enough to warrant the application of claim or issue preclusion to the party. Alai`asa v. Te`o, 5 A.S.R.3d 266 (Land & Titles Div. 2001).

Res judicata requires that the subject matter of the earlier case be identical to that of the case at hand. Alai`asa v. Te`o, 5 A.S.R.3d 266 (Land & Titles Div. 2001).

Res judicata prevents not only the relitigation of matters actually determined in a previous, final case, but also precludes the court from hearing other matters which could properly have been raised and determined in that action, whether or not such matters were in fact considered. Alai`asa v. Te`o, 5 A.S.R.3d 266 (Land & Titles Div. 2001).

A person who takes an interest in real property from one who litigated the property's title is in privity with him and is bound by res judicata. Alai`asa v. Te`o, 5 A.S.R.3d 266 (Land & Titles Div. 2001).

Collateral estoppel, or issue preclusion, bars the relitigation of issues actually adjudicated in previous litigation between the same parties. Ulifaleilupe v. Uiagalelei, 6 A.S.R.3d 61 (App. Div. 2002).

To foreclose relitigation of an issue under collateral estoppel: 1) the issue at stake must be identical to the one alleged in the prior litigation; 2) the issue must have been actually litigated in the prior litigation; and 3) the determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in the earlier action. Ulifaleilupe v. Uiagalelei, 6 A.S.R.3d 61 (App. Div. 2002).

The party claiming issue preclusion has the burden of proving each element necessary to bar relitigation of the issue. Ulifaleilupe v. Uiagalelei, 6 A.S.R.3d 61 (App. Div. 2002).

The Trial Division of the High Court is not bound by an erroneous salary calculation determined by the American Samoa Government Wage and Hour Board. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

The doctrine of res judicata holds that a final judgment on the merits in an action bars a later action involving the same parties, or their privies, and the same issues. Tiapula v. Isumu Leapagatele's Children, 6 A.S.R.3d 324 (Land & Titles Div. 2002).

§ 10(8) —Merger

The general rule of merger provides that when a final and personal judgment is rendered in favor of the plaintiff, the plaintiff cannot thereafter maintain an action on the original claim or part of the original claim, although he may be able to maintain an action upon the judgment. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Defense of merger was inapplicable when Court treated action as action upon personal judgment rather than action in rem on maritime lien. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

§ 11 Post Judgment Motions & Appeals

§ 11(1) —Motion for New Trial or Reconsideration

§ 11(1)(a)—General Provisions

A motion for a new trial may be styled a motion for "reconsideration", as long as it is filed within the ten-day deadline and clearly apprises the trial court of the particular errors claimed in regards to its decision. Lualemana v. Asifoa, 17 A.S.R.2d 151.

Motion for reconsideration or new trial will be denied when parties agree to a settlement. Willis v. Fai`ivae, 18 A.S.R.2d 61.

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.

The purpose of requiring a motion for new trial, which sets forth with particularity the grounds for reversal, is to avoid unnecessary appeals by giving the trial court the opportunity to correct any errors it may have made. Soli Corporation v. Amerika Samoa Bank, 25 A.S.R.2d 40.

It is unimportant whether a motion is styled a motion for new trial or a motion to reconsider as long as it is timely and clearly informs the court of claimed errors. Soli Corporation v. Amerika Samoa Bank, 25 A.S.R.2d 40.

To appeal a decision of the trial division, a motion for new trial must be filed within 10 days after a judgment or order is entered. A.S.C.A. § 43.0802 and A.C.R. Rule 4(a)(1). The denial of a motion for relief from judgment under T.C.R.C.P. Rule 60 qualifies as an order under the foregoing rules. Soli Corporation v. Amerika Samoa Bank, 25 A.S.R.2d 40.

Arguments that could have been made at trial may not be made for the first time either on a motion for new trial or on appeal. In re Matai Title "Tuaolo", 28 A.S.R.2d 137.

A party moving for reconsideration or new trial must do more than reiterate the trial court's reasons for a decision and then make a blind assertion that we were incorrect. It is the attorney's, not the court's, job to advocate, do legal research, and construct the legal theory upon which a losing party might oppose our decision. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 204.

On a motion for a new trial, the court will not consider arguments that the moving party failed to raise during the original trial. Clifton v. Voyager, 31 A.S.R.2d 12.

The court will not accept arguments on issues raised for the first time in a motion for a new trial if they could have been properly raised at trial. This is true even in the case of an interesting and possibly important argument. Clifton v. Voyager, 31 A.S.R.2d 12.

American Samoa statutes and rules of court provide no authority for bringing a motion to reconsider a non-final interlocutory order in a pending case. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

A motion for reconsideration or new trial is a necessary precondition for filing an appeal. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

Pre-trial orders governing discovery, not falling within finality exception or collateral order exception, may only be challenged on appeal from final decision. Motion to reconsider order denying motion to compel discovery was denied. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 88 (Trial Div. 2001).

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 statutory ten-day deadline, then Appellate Division lacks jurisdiction to entertain appeal. Suluai v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 216 (Trial Div. 2002).

The common practice of American Samoa courts is to consider their orders—which often contain a recitation of the facts, procedural history, and legal reasoning—as judgments

for purposes of filing post-judgment motions. Am. Samoa Gov't v. NTV Electronics, 6 A.S.R.3d 289 (Trial Div. 2002).

All civil cases in American Samoa are bench trials, and there is no mechanism or rule that envisions a motion for a mistrial; thus, a motion for mistrial in a civil action in American Samoa will be treated as a motion for a new trial. Development Bank of American Samoa v. Tuika, 7 A.S.R.3d 86 (Trial Div. 2003).

A trial court in American Samoa should explicitly state its disposition of a prejudgment new trial motion, even if it does not explain its reasons. Development Bank of American Samoa v. Tuika, 7 A.S.R.3d 86 (Trial Div. 2003).

There is no basis for reconsideration of a denial of a summary judgment motion. RDL, Inc. v. American Samoa Community College, 7 A.S.R.3d 103 (Trial Div. 2003).

§ 11(1)(b)—Time for Filing

Court rules require a "motion to alter or amend" a judgment to be served on opposing parties within ten days of judgment. T.C.R.C.P. Rule 59. Olotoa v. Bartley, 3 A.S.R.2d 21.

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.

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.

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.

Events subsequent to the announcement of judgment, such as the issuance of a written opinion, receipt by counsel of notice of the judgment, or the correction of an error or omission in the judgment, do not extend the time for filing motions for new trial. Judicial Memorandum, 4 A.S.R.2d 172.

A correction so substantial as to create a new judgment, or a statement from the bench indicating informally what the judgment will be but reserving formal announcement of judgment until a later date, would cause the statutory period for filing motions for new trial to begin on the date of the correction or of the formal announcement rather than on the date of the initial announcement. Judicial Memorandum, 4 A.S.R.2d 172.

Counsel uncertain of the date by which motion for new trial must be filed should request the court's guidance rather than assume the filing date has been extended. Judicial Memorandum, 4 A.S.R.2d 172.

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.

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.

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 Mulitauaopele, 17 A.S.R.2d 75.

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.

A motion for a new trial may be styled a motion for "reconsideration", as long as it is filed within the ten-day deadline and clearly apprises the trial court of the particular errors claimed in regards to its decision. Lualemana v. Asifoa, 17 A.S.R.2d 151.

A motion for a new trial is deemed filed when presented to the clerk for filing, absent valid reasons for rejecting it. Rocha v. Rocha, 20 A.S.R.2d 63.

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.

It is unimportant whether a motion is styled a motion for new trial or a motion to reconsider as long as it is timely and clearly informs the court of claimed errors. Soli Corporation v. Amerika Samoa Bank, 25 A.S.R.2d 40.

A.S.A.C. § 26.0320(h) requires that "[w]ithin 10 days after receipt of the decision the applicant or any other interested party may file a written motion for reconsideration." McGuire v. Zoning Board, 26 A.S.R.2d 59.

Memoranda supporting motion for a new trial must be filed no later than 10 days after the judgment to provide the adverse party an opportunity to respond. A.S.C.A. § 43.0802(a). Korea Deep Sea Fisheries v. M/V Corona, 27 A.S.R.2d 120.

Court will not entertain a motion to alter or amend a judgment when adverse party has been served with the motion later than 10 days after entry of judgment. T.C.R.C.P. 59(e). Korea Deep Sea Fisheries v. M/V Corona, 27 A.S.R.2d 120.

T.C.R.C.P. Rule 6(a) sets forth the applicable time to file motions for reconsideration or new trial under A.S.C.A. § 43.0802(a). PAL Air International, Inv. v. Porter, 1 A.S.R.3d 1 (App. Div. 1997).

The relief afforded by T.C.R.C.P. Rule 6(a), extending the period for time computations to the next business day when the last day falls on a Saturday, Sunday, or legal holiday, applies to the filing period for motions for a new trial. Bank of Hawaii v. Neru, 1 A.S.R.3d 69 (Trial Div. 1997).

Where a party timely submits a motion for new trial on grounds that the court abused its discretion in an evidentiary finding, but fails to timely file its brief and arguments, the motion will not be considered. Masaniai v. The Country Club, 2 A.S.R.3d 142 (Trial Div. 1998).

Under A.S.C.A. § 43.0802(a), a motion for new trial must be filed within 10 days after the announcement of the judgment, and a late filing is not excused on the ground that the meaning of the judgment was not made clear until later. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

Under A.S.C.A. § 43.0802(a), a motion for reconsideration must be filed within 10 days after the announcement of the judgment, and where a late filing is not excusable, the court lacks jurisdiction to consider it. Alai`asa v. Fanene, 2 A.S.R.3d 186 (Land & Titles Div. 1998).

Where party filed his motion for reconsideration on last day of 10-day period specified in A.S.C.A. § 43.0802(a), but failed to serve opposing parties until one day later, filing was nonetheless proper. Pita v. Garrett, 3 A.S.R.3d 213 (Land & Titles Div. 1999).

The 10-day time limit in which a party must file a motion for reconsideration or new trial is a mandatory time limit and is jurisdictional. Faumuina v. Tautolo, 5 A.S.R.3d 219 (Land & Titles Div. 2001).

Where court partially granted motion for reconsideration or new trial, the court's order granting such motion effected a new judgment and the time limit for filing a subsequent motion for new trial ran from the date of that order. Faumuina v. Tautolo, 5 A.S.R.3d 219 (Land & Titles Div. 2001).

The new trial motion and appellate deadlines may begin to run despite the fact that no written judgment has issued. Am. Samoa Gov't v. NTV Electronics, 6 A.S.R.3d 289 (Trial Div. 2002).

Where the court issues a judgment separate from its order, such is made clear in the court's order, and the time to move for a new trial, and to appeal, begins running when the separate judgment is entered into the docket. Am. Samoa Gov't v. NTV Electronics, 6 A.S.R.3d 289 (Trial Div. 2002).

Where court clerk stamped order amending judgment and docketed the same as court's amended judgment pursuant to longstanding practice of court, such filing did not violate T.C.R.C.P. 58 or T.C.R.C.P. 54(a) and motion for reconsideration filed fourteen days later was properly considered tardy and dismissed. Am. Samoa Gov't v. NTV Electronics, 6 A.S.R.3d 289 (Trial Div. 2002).

A motion for a new trial shall be filed within 10 days after the announcement of the judgment or sentence. In this context, the word 'within' is interpreted to include only the final limit and not the starting point. Development Bank of American Samoa v. Tuika, 7 A.S.R.3d 86 (Trial Div. 2003).

A motion for a new trial may be made no later than 10 days after the judgment, and it may also be made before the judgment. Development Bank of American Samoa v. Tuika, 7 A.S.R.3d 86 (Trial Div. 2003).

§ 11(1)(c)—Particularity Requirement

A motion for new trial should be sufficiently thorough and specific to inform the court and opposing counsel of the particular grounds for the requested relief. T.C.R.C.P. Rule 7(b)(1). Judicial Memorandum, 4 A.S.R.2d 172.

A motion for new trial must set forth "with particularity" the grounds on which the trial court decision should be reversed. T.C.R.C.P. 7(b)(1). Taulaga v. Patea, 17 A.S.R.2d 34.

The purpose of the particularity requirement is to avoid unnecessary appeals by giving the trial court itself a chance to correct any errors it may have made. T.C.R.C.P. 7(b)(1). Taulaga v. Patea, 17 A.S.R.2d 34.

A motion for a new trial must clearly apprise the trial court of the specific errors being alleged; a general statement that the court erred as a matter of fact, law, or custom does not fulfill this requirement. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

A motion for a new trial may be styled a motion for "reconsideration", as long as it is filed within the ten-day deadline and clearly apprises the trial court of the particular errors claimed in regards to its decision. Lualemana v. Asifoa, 17 A.S.R.2d 151.

It is unimportant whether a motion is styled a motion for new trial or a motion to reconsider as long as it is timely and clearly informs the court of claimed errors. Soli Corporation v. Amerika Samoa Bank, 25 A.S.R.2d 40.

In the context of a motion for a new trial, the purpose of this particularity requirement is to avoid unnecessary appeals by giving the trial court itself a chance to correct any errors it may have made. In re Matai Title "Lolo", 26 A.S.R.2d 46.

When the grounds in a motion for new trial are stated too generally, the motion may be rendered null. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 167.

T.C.R.C.P. Rule 7(b) requires that motions, unless made during a hearing or trial, shall be made in writing and state with particularity the grounds therefore. This rule is especially important in motions for a new trial to put the trial judge and the opposing party on fair notice of the particular errors that will be alleged on appeal and to avoid unnecessary appeals by giving the trial judge a chance to see the errors of his ways. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 167.

On a motion for new trial or rehearing the moving party must state with particularity the grounds of a motion. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 28 A.S.R.2d 170.

A party must cite the court to specific allegations of error, accompanied by legal citation where appropriate, or a motion for new trial or reconsideration shall be denied. In extreme instances, we may even treat the motion as a nullity, cutting off the party's right to further appeal. In re Minor Child, 30 A.S.R.2d 22.

In making a motion for new trial, an attorney must do more than present the court with unresearched and unsupported conclusory assertions. Failure to do so will subject the attorney to personal sanctions under T.C.R.C.P. 11. In re Minor Child, 30 A.S.R.2d 22.

In order to properly bring motion for new trial, party must fully apprise trial court of asserted errors in its judgment so that it may consider for itself whether any such errors occurred and make appropriate corrections, thereby obviating obvious appeals. Suluai v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 216 (Trial Div. 2002).

§ 11(1)(d)—Grounds for New Trial or Reconsideration

Courts of equity may vacate a judgment obtained by mistake, fraud or false testimony and grant a new trial. Jewett v. McMoor, 1 A.S.R. 611.

Neither surprise at the time of a trial nor mistake as to the nature of the action are sufficient grounds for new trial. Jewett v. McMoor, 1 A.S.R. 611.

Generally, mere fact that damages awarded in original proceeding were excessive will not merit new trial. Jewett v. McMoor, 1 A.S.R. 611.

Court will not grant new trial where there is sufficient, competent evidence to support judgment in the original proceeding. Jewett v. McMoor, 1 A.S.R. 611.

To justify setting aside verdict and granting new trial, court must come to irresistible conclusion that verdict was not the product of free, sound and unbiased exercise of judgment. Jewett v. McMoor, 1 A.S.R. 611.

Party moving for new trial must show by affidavit that alleged newly discovered evidence was not known to movant at time of trial. Jewett v. McMoor, 1 A.S.R. 611.

Cumulative and impeaching evidence are not the kinds of evidence required to justify a new trial on grounds of newly discovered evidence. Jewett v. McMoor, 1 A.S.R. 611.

Rehearing will be granted if showing made that prior decision was based on false testimony which adverse party could not refute at time of prior hearing. Leano v. Leti, 2 A.S.R. 524.

Before court may grant rehearing, it must be satisfied that owing to mistake of law or misunderstanding of facts, decision has done injustice to particular case. Gi v. Mageo, 2 A.S.R. 383.

In order to grant a new trial on basis of newly discovered evidence, court must be convinced that evidence was not available nor could have become available with due diligence before trial and that evidence will probably change result of trial; new trial will not be granted where evidence is merely cumulative. Faagau v. Fuaga, 3 A.S.R. 488.

To warrant getting new trial on grounds of newly discovered evidence, it must appear that evidence will probably change result of trial, that it had been discovered since trial, that it could not have been discovered before trial by exercise of due diligence, that it is material to issue, and that it is not merely cumulative or impeaching. Malaga v. Mase, 3 A.S.R. 518.

Fact trial court presiding judge was called as witness and testified in connection with claims considered by War Damages Commission, of which he was member, is not error which would entitle appellant to new trial where testimony related to ministerial duties performed sixteen years ago which were matters of record. Mageo v. Government, 4 A.S.R. 874.

Where appellant requests new trial on ground of new evidence but, after continuance, fails to produce new evidence, request will be denied. Mageo v. Government, 4 A.S.R. 874.

Where appellant requests new trial, but nothing in record or during hearing on appeal warrants new trial, request will be denied. Mageo v. Government, 4 A.S.R. 874.

Where personality, character, demeanor and credibility of litigants are vital elements in case, appellate court will not try case de novo. Taufaasau v. Manuma, 4 A.S.R. 947.

Litigant could not raise on motion for new trial an issue about which the court had expressed serious concern at trial and which the parties expressly stipulated to exclude from the litigation. Olo v. Tulisua, 6 A.S.R.2d 129.

Defendant's motion for a new trial, made on the ground that he had received no actual notice of the trial date, was denied where it was shown that such notice was given in accord with statutory procedure by delivery to the defendant's home and receipt by his son two months prior to trial. Ava v. Moe, 8 A.S.R.2d 95.

Trial court properly declined to grant motion for reconsideration based on an issue that had not been properly raised at trial. Moea`i v. Alai`a, 12 A.S.R.2d 91.

A motion for new trial or rehearing in a non jury case should be based upon manifest error of law or mistake of fact, and a judgment should not be set aside except for substantial reasons. The burden on the moving party is to show substantial reasons that such relief should be granted. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 28 A.S.R.2d 170.

A party moving for reconsideration or new trial must do more than reiterate the trial court's reasons for a decision and then make a blind assertion that we were incorrect. It is the attorney's, not the court's, job to advocate, do legal research, and construct the legal theory upon which a losing party might oppose our decision. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 204.

The decision to hold a new trial is within the discretion of this court. The court will grant a motion for a new trial only where the moving party can show that the original decision is contrary to the clear weight of the evidence. Clifton v. Voyager, 31 A.S.R.2d 12.

On a motion for a new trial, the court will not consider arguments that the moving party failed to raise during the original trial. Clifton v. Voyager, 31 A.S.R.2d 12.

The court will not accept arguments on issues raised for the first time in a motion for a new trial if they could have been properly raised at trial. This is true even in the case of an interesting and possibly important argument. Clifton v. Voyager, 31 A.S.R.2d 12.

T.C.R.C.P. 59(a) does not specify the grounds for a new trial, but in nonjury actions, a new trial may be granted where the record shows a manifest error of law or fact; and a court may alter or amend judgment under T.C.R.C.P. 59(e) if it has made a clear error of law or fact. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Reconsideration is appropriate if the trial court is presented with newly discovered evidence, committed clear error or the initial decision was manifestly unjust, or if there is an intervening change in controlling law. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 225 (Trial Div. 2000).

Reconsideration of an order is appropriate if the court is presented with newly discovered evidence, or if it committed clear error, or if the initial decision was manifestly unjust, or if there is an intervening change in controlling law. Nua v. Sunia, 4 A.S.R.3d 234 (Trial Div. 2000).

Trial Court Rule of Civil Procedure 59 gives a trial court broad discretion to permit a new trial in the interests of justice. Faumuina v. Tautolo, 5 A.S.R.3d 219 (Land & Titles Div. 2001).

Even when there is substantial evidence supporting the trial court’s decision, a new trial, and attendant reweighing of the evidence, may be conducted where the interests of justice would be furthered. Faumuina v. Tautolo, 5 A.S.R.3d 219 (Land & Titles Div. 2001).

Where new trial was warranted and previous associate judges sitting on case were unavailable, court could properly empanel other associate judges to hear case. Faumuina v. Tautolo, 5 A.S.R.3d 219 (Land & Titles Div. 2001).

In reviewing its previous decision on motion for reconsideration or new trial, Court is not required to guess at or construct legal theory upon which moving party opposes original decision. Suluai v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 216 (Trial Div. 2002).

A motion for reconsideration or new trial should be based upon manifest error of law or mistake of fact, and a judgment should not be set aside except for substantial reasons. Boral Gas of American Samoa, Inc. v. Iaulualo, 7 A.S.R.3d 57 (Trial Div. 2003).

§ 11(2) —Relief from Judgment or Order - Rule 60 Motion

For motions to set aside a judgment, the Ruel provisions stating that collateral attack on the judgment must be made within a reasonable time can rarely time-bar attack based on voidness, but a judgment which the Court has power to make and which affords minimal due process is valid even if incorrect; the issue is essentially one of jurisdiction. Nouata v. Pasene, 1 A.S.R.2d 25 (App. Div. 1980).

A judgment that has become final cannot be disturbed in the absence of new evidence, fraud, surprise, or similar

circumstances. T.C.R.C.P. Rule 60. Willis v. Willis, 4 A.S.R.2d 144.

Territorial statute permitting court to subordinate rules of "practice or procedure" to exigencies of justice and convenience does not give the court power to overturn a final judgment in the absence of new evidence, fraud, surprise, or similar circumstances, since res judicata is a rule of substantive law and not of procedure. A.S.C.A. § 3.0242(b); T.C.R.C.P. Rule 60. Willis v. Willis, 4 A.S.R.2d 144.

Party's untrue statements that his wife had been delinquent in pursuing a divorce action pending in Hawaii constituted "misrepresentation" justifying relief from territorial court decision to lift stay of local divorce proceeding that had been expressly conditioned on diligent pursuit of the Hawaii action. T.C.R.C.P. Rule 60(b). Wray v. Wray, 5 A.S.R.2d 34.

A non-fraudulent misrepresentation may form the basis for relief from judgment within rule permitting such relief in cases of "fraud, misrepresentation, or other misconduct." T.C.R.C.P. Rule 60(b). Wray v. Wray, 5 A.S.R.2d 34.

A court deciding whether a party is entitled to relief from judgment should not consider objections that could have been raised in an appeal. T.C.R.C.P. Rule 60(b). Wray v. Wray, 5 A.S.R.2d 34.

Whether to grant relief from a judgment is a matter within the discretion of the court, and the court should not grant relief when there is no chance that correction of the flaw in the proceedings leading to judgment would yield a different outcome on retrial. T.C.R.C.P. Rule 60(b). Wray v. Wray, 5 A.S.R.2d 34.

A party seeking relief from a judgment must show a "meritorious defense," not a "defense on the merits"; a defense can be meritorious although it concerns jurisdiction, standing, forum non conveniens, or any other issue that might cause a court which had reviewed both parties' positions never to reach "the merits." T.C.R.C.P. Rule 60(b). Wray v. Wray, 5 A.S.R.2d 34.

Doubts about whether to grant relief from a judgment should be resolved in favor of relief when the judgment was a default or otherwise resulted from a proceeding that was not fully litigated. T.C.R.C.P. Rule 60(b) Wray v. Wray, 5 A.S.R.2d 34.

Party's failure to file a timely motion for new trial was due to "excusable neglect" when she had received no notice of the trial and, as her adversary knew, was unable to learn of the trial and the resulting judgment until after the deadline for filing had passed. T.C.R.C.P. Rule 60(b). Wray v. Wray, 5 A.S.R.2d 34.

Motion for relief from judgment was not being used as an impermissible substitute for appeal when motion was based on facts and arguments that party opposing motion withheld from court and opposing counsel at the time of trial. T.C.R.C.P. Rule 60(b). Wray v. Wray, 5 A.S.R.2d 34.

Failure of co-signor of promissory note to appear in action on the note was "excusable neglect" justifying relief from default judgment where co-signor had always relied on her husband to manage the family's legal affairs, husband had assured her that they would be represented by counsel, and she was unaware of judgment against her until well after its entry. T.C.R.C.P. Rule 60(b). Amerika Samoa Bank v. R. Pritchard Ground Services, Inc., 5 A.S.R.2d 106.

Co-signor's allegation that bank had secured her signature on promissory note through specific material misrepresentation was a "meritorious defense" creating the possibility of a different result on retrial which, coupled with her excusable neglect to appear in lawsuit on the note, entitled her to relief from resulting default judgment. T.C.R.C.P. Rule 60(b). Amerika Samoa Bank v. R. Pritchard Ground Services, Inc., 5 A.S.R.2d 106.

Defendant seeking relief from default judgment on the ground that her failure to defend resulted from excusable neglect must not only prove that her neglect was excusable but also allege facts which, if proved upon retrial, would be likely to produce a different outcome. T.C.R.C.P. Rule 60(b). Amerika Samoa Bank v. R. Pritchard Ground Services, Inc., 5 A.S.R.2d 106.

Once a party has established a "meritorious defense" creating the possibility of a different result on retrial, court deciding whether to grant relief from judgment against that party should not assume the truth of opposing party's factual allegations that would, if proven upon retrial, produce the same result as in the judgment from which relief is sought. T.C.R.C.P. Rule 60(b). Amerika Samoa Bank v. R. Pritchard Ground Services, Inc., 5 A.S.R.2d 106.

Rule allowing relief from default judgments should be liberally construed; any doubt should be resolved in favor of setting aside the judgment so that the case may be decided on its merits. T.C.R.C.P. Rule 60(b). Amerika Samoa Bank v. R. Pritchard Ground Services, Inc., 5 A.S.R.2d 106.

In order to secure relief from a judgment, a party has the burden of proving not only that there was a technical flaw in the proceedings but also that the flaw had some effect on the outcome. T.C.R.C.P. Rule 60(b). Amerika Samoa Bank v. Haleck, 6 A.S.R.2d 54.

The court has discretion whether to grant relief from judgment, and denial of a motion for relief should be overturned only if the trial court has abused its discretion. T.C.R.C.P. Rule 60(b). Amerika Samoa Bank v. Haleck, 6 A.S.R.2d 54.

Garnishee bank that failed to respond to a writ of garnishment, to respond meaningfully to an order to show cause why judgment should not be entered against it, to appeal the judgment, and to justify its lapses was not entitled to relief from the judgment entered against it. T.C.R.C.P. Rule 60(b). Amerika Samoa Bank v. Haleck, 6 A.S.R.2d 54.

Circumstances constitute "other reason justifying relief from operation of judgment" where (1) plaintiff had demanded and was owed an amount in excess of $15 million; (2) court granted summary judgment for $5 million against vessel at a time when the vessel could not have been sold for more than $5 million; (3) at time of motion for relief from judgment the vessel had not yet been sold to satisfy the judgment, but could be sold for more than $10 million; (4) judgment was in rem against the vessel only; (5) the owners of the vessel were not sued personally and did not appear in the action; (6) the owners had borrowed $11 million from plaintiff and had made no payments; and (7) the owners would therefore receive a windfall of several million dollars if the vessel were sold for over $10 million and the plaintiff limited to recovery of the prior $5 million judgment. T.C.R.C.P. 60(b). Manufacturers Hanover Trust Co. v. The Tifaimoana, 7 A.S.R.2d 84.

In cases where a party seeks relief from a default judgment, all but the most egregious neglect will usually be excused in deference to the principle that cases should ordinarily be tried on their merits. T.C.R.C.P. Rule 60(b). Satele v. Uiagalelei, 8 A.S.R.2d 97.

Motions for relief from judgment after trial should not be granted as freely as those seeking relief from default judgments, so as to encourage diligent preparation before trial and so as not to relegate the many hours spent at trial by opposing parties and the court to the status of pre-trial discovery. T.C.R.C.P. Rule 60(b). Satele v. Uiagalelei, 8 A.S.R.2d 97.

Even where party seeking relief from judgment on the ground of newly discovered evidence shows that the evidence could not have been discovered with due diligence before trial, the judgment should not be vacated unless the new evidence seems likely to produce a different outcome upon retrial. T.C.R.C.P. Rule 60(b). Satele v. Uiagalelei, 8 A.S.R.2d 97.

Party was not entitled to relief from stipulated judgment on the ground of mutual or unilateral mistake, where: (1) the party was an institution which had agreed to the stipulated judgment after negotiations during which it was advised by counsel; (2) the basis for the alleged mistake was that, at the time of the stipulation, it was wrongly assumed that certain funds were being kept in a bank in accordance with a court order; (3) in fact, the funds had been withdrawn and spent in violation of the court order by an officer of the party seeking relief from the judgment; (4) the officer was the party's chief agent for the safekeeping and disposition of the funds, and a participant in the negotiations leading up to the stipulation; (5) the funds had been spent on expenses of the party seeking relief; and (6) in support of its motion for relief, the party submitted an affidavit from a current officer stating that his predecessor had misunderstood the stipulation, but submitted neither an affidavit from the previous officer nor an explanation of why it could not present one. T.C.R.C.P. Rule 60(b). Bank of Hawaii v. Congregational Christian Church, 9 A.S.R.2d 100.

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.

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.

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.

A motion for relief from judgment cannot be used as a substitute for appeal by one who had a fair chance to appeal and chose not to do so. T.C.R.C.P. Rule 60(b). Gi v. Temu (Mem.), 12 A.S.R.2d 62.

Rule of civil procedure empowering court to relieve a party from a final judgment uses the word "may" and is subject to the court's sound discretion. T.C.R.C.P. Rule 60(b). Taulaga v. Patea, 12 A.S.R.2d 64.

Motions under the first three sections of rule allowing relief from final judgment must be made no more than one year after entry of judgment. T.C.R.C.P. Rule 60(b). Taulaga v. Patea, 12 A.S.R.2d 64.

Sections of rule allowing relief from judgment for specific reasons such as mistake or newly discovered evidence on the one hand, and catch-all provision encompassing "any other reason justifying relief" on the other, are mutually exclusive so that resort to the latter may not be had to escape time limits applicable to motions grounded on the former. T.C.R.C.P. Rule 60(b)(1)-(3), 60(b)(6). Taulaga v. Patea, 12 A.S.R.2d 64.

Where judgment adjudicating title to land had been final for twenty-three years, discretion would be exercised in favor of finality and an end to the needless protraction of litigation; after twenty-three years of settled expectations the equities

were against the reopening of judgment. T.C.R.C.P. Rule 60(b). Taulaga v. Patea, 12 A.S.R.2d 64.

Where trial court denied a motion for relief from judgment while an appeal from the underlying judgment was pending, appellate court could hear an appeal from the denial of relief from judgment, either because: (1) the trial court was not deprived of jurisdiction by the filing of the notice of appeal, so that the appeal from its order denying relief from judgment would be in order; or (2) the trial court lacked jurisdiction after notice of appeal from the judgment, but the appellate court could treat the notice of appeal from the denial of relief from judgment as a motion for a limited remand to the trial court to permit it to consider the motion. T.C.R.C.P. Rule 60(b). Uiagalelei v. Fai`ai, 12 A.S.R.2d 103.

A party may be relieved from judgment on the ground of newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial. T.C.R.C.P. Rule 60(b). Uiagalelei v. Fai`ai, 12 A.S.R.2d 103.

That counsel had not found two reported cases prior to trial, because their captions did not refer to the land involved in the litigation, was insufficient reason not to have discovered evidence consisting of certain statements made at the hearing of these cases; more thorough research could have unearthed the cases before trial, and in any event the evidence disclosed by the cases could have been obtained through normal pretrial discovery. T.C.R.C.P. Rule 60(b). Uiagalelei v. Fai`ai, 12 A.S.R.2d 103.

Relief from an order of dismissal may be granted where a prior judgment upon which the order is based has been amended rather than reversed or vacated if the amendment completely removes the premise on which the order was based. T.C.R.C.P. 60(b)(5). Patau v. Rosendahl Corp., 14 A.S.R.2d 79.

Trial Court Rule providing that a court may relieve a party from an order for any reason justifying relief from the operation of the judgment applies where the prior judgment upon which the order is based is amended to completely remove the premise on which the order was based, when to do so would cause defendant no genuine hardship but to do otherwise would deny plaintiff any access to the courts. T.C.R.C.P. 60(b)(6). Patau v. Rosendahl Corp., 14 A.S.R.2d 79.

Relief from a judgment under Rule 60(b) of the Trial Court Rules of Civil Procedure is not available to a party who could have raised the same claims or defenses by motion for new trial but did not. In re Matai Title Muagututi`a, 15 A.S.R.2d 1.

Relief from final judgments may be granted under certain extraordinary circumstances. T.C.R.C.P. 60(b). Saufo`i v. American Samoa Government, 16 A.S.R.2d 71.

A final decision in a case in which the Court had jurisdiction over the subject matter and the parties, and in which the parties had a fair opportunity to address the issues, has the force of law and binds the parties even though it may be an erroneous decision; such a decision is not rendered "void" even if it conflicts with precedent or a non-jurisdictional statute. T.C.R.C.P. 60(b)(4). Saufo`i v. American Samoa Government, 16 A.S.R.2d 71.

Finding citations of legal authority that could have been discovered by due diligence before judgment does not constitute "excusable neglect." T.C.R.C.P. 60(b)(1). Saufo`i v. American Samoa Government, 16 A.S.R.2d 71.

The court construed a defendant's objection to paying interest as a motion for relief from the judgment. T.C.R.C.P. 60(b). Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

"[O]ther reason[s] justifying relief from the operation of the judgment" were found when a case was not actually litigated, the stipulation resulted from dealings between an attorney and an unrepresented party, the unrepresented party may have believed himself to be stipulating only to pay $9700 "inclusive of interest," and that interpretation was not altogether unreasonable under the circumstances. T.C.R.C.P. 60(b)(6). Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

When judgment has resulted from confession or default, a motion for relief from the judgment is made within a reasonable time, and a minimal showing that a trial might have produced a different outcome is made, a strong presumption arises that the judgment should be set aside "so that cases may be decided on their merits." T.C.R.C.P. 60(b). Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

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.

A Rule 60(b) motion cannot be used to save a litigant from strategic choices that later turn out to be unwise. Lualemana v. Asifoa, 17 A.S.R.2d 151.

Although an untimely motion for reconsideration or new trial is ordinarily denied for lack of jurisdiction, the court construed it as a motion for relief from judgment because the movant claimed that he had not been represented by counsel at trial and had therefore not been notified of the judgment against him. T.C.R.C.P. Rule 60(b). Lualemana v. Asifoa, 17 A.S.R.2d 151.

Although courts have granted relief from judgment when a party did not learn of the judgment prior to the appeal deadline through some fault of the clerk or another court official, it is an abuse of discretion for the court to grant relief when the party missed the appeal deadline through his own or his lawyer's fault. Lualemana v. Asifoa, 17 A.S.R.2d 151.

A motion for relief from judgment cannot be used as a substitute for appeal by one who has missed the deadline for appeal. T.C.R.C.P. 60(b). Jennings v. Jennings, 19 A.S.R.2d 34.

A motion for relief from judgment on the ground of excusable neglect must be brought not more than one year after the judgment was entered or taken. T.C.R.C.P. 60(b). Jennings v. Jennings, 19 A.S.R.2d 34.

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.

An oversight by the Court or a court official, as opposed to one by a party or his counsel, is generally regarded as an "other reason justifying relief from the judgment" under Rule 60(b)(6); motions grounded on such oversights need not be brought within one year, but only within a reasonable time. T.C.R.C.P. 60(b)(6). Jennings v. Jennings, 19 A.S.R.2d 34.

A party who moves for relief from a judgment must prove a substantial likelihood that such relief will lead to a different outcome on the merits. T.C.R.C.P. 60(b). Jennings v. Jennings, 19 A.S.R.2d 34.

If issued by a court having jurisdiction over the parties and the subject matter, an order requiring the Registrar to issue a land-registration certificate is binding on the parties and their successors in interest and can be vacated only in the most extraordinary and compelling of circumstances. T.C.R.C.P. 60(b). Ava v. Logoai, 19 A.S.R.2d 75.

The failure of defendants' former counsel to properly seek a continuance of trial, on the grounds that one of the defendants was seeking medical treatment, does not constitute excusable neglect justifying relief from judgment. T.C.R.C.P. Rule 60(b). Scratch v. Sua, 23 A.S.R.2d 20.

Granting relief from a final judgment is at the trial court's discretion; its ruling will be reversed on appeal only for abuse of discretion. Fed. R. Civ. P. 60(b); T.C.R.C.P. Rule 60(b). Reid v. Puailoa, 23 A.S.R.2d 101.

Motions for relief from a final judgment are primarily granted in regard to default judgments or other situations, such as those involving fraud, in which a failure to consider a case's merits would result in an obvious injustice. Fed. R. Civ. P. 60(b); T.C.R.C.P. Rule 60(b). Reid v. Puailoa, 23 A.S.R.2d 101.

Because of the strong interest in the finality of judgments, relief from a final judgment is rarely available, even if a judgment is subsequently found to be wrong. Fed. R. Civ. P. 60(b); T.C.R.C.P. Rule 60(b). Reid v. Puailoa, 23 A.S.R.2d 101.

A "void" judgment, from which relief may be granted, is one in which a court lacked the power to enter the judgment, as when a court lacked jurisdiction over the parties or the subject matter, violated "due process of law," or engaged in "a plain usurpation of power." Fed. R. Civ. P. 60(b)(4); T.C.R.C.P. Rule 60(b)(4). Reid v. Puailoa, 23 A.S.R.2d 101.

Only the most extraordinary circumstances will support a finding of a void judgment, and even then usually only as to default judgments; as such, changes in precedent and factual errors do not result in voidness. Fed. R. Civ. P. 60(b)(4); T.C.R.C.P. Rule 60(b)(4). Reid v. Puailoa, 23 A.S.R.2d 101.

Relief from a final judgment is available when a prior judgment forming its basis has been reversed or vacated, in the sense of res judicata or collateral estoppel; as such, relief is unavailable if the law used by a court was merely overruled or declared to be erroneous in an unrelated proceeding. Fed. R. Civ. P. 60(b)(5); T.C.R.C.P. Rule 60(b)(5). Reid v. Puailoa, 23 A.S.R.2d 101.

Relief from a final judgment is available if giving it prospective application would be inequitable; an order has prospective application if it compels or prohibits certain future actions or requires a court's supervision of conduct between the parties. Fed. R. Civ. P. 60(b)(5); T.C.R.C.P. Rule 60(b)(5). Reid v. Puailoa, 23 A.S.R.2d 101.

Under the "catch-all" clause, which permits a court to reopen a judgment for "any other reason justifying relief," courts have "broad authority to vacate judgments when doing so is appropriate to accomplish justice. Fed. R. Civ. P. 60(b)(6); T.C.R.C.P. Rule 60(b)(6). Reid v. Puailoa, 23 A.S.R.2d 101.

Obtaining relief under the "catch-all" provision is extremely difficult because the party seeking relief must allege and prove such "extraordinary circumstances" as are sufficient to overcome the overriding interest in the finality of judgments. Fed. R. Civ. P. 60(b)(6); T.C.R.C.P. Rule 60(b)(6). Reid v. Puailoa, 23 A.S.R.2d 101.

The interest in the finality of judgments is especially strong in regards to land titles. Fed. R. Civ. P. 60(b); T.C.R.C.P. Rule 60(b). Reid v. Puailoa, 23 A.S.R.2d 101.

A "void" judgment, from which relief may be granted, is one in which a court lacked the power to enter the judgment, as when a court lacked jurisdiction over the parties or the subject

matter, violated "due process of law," or engaged in "a plain usurpation of power." Fed. R. Civ. P. 60(b)(4); T.C.R.C.P. Rule 60(b)(4). Reid v. Puailoa, 23 A.S.R.2d 144.

Relief from a final judgment is available when a prior judgment forming its basis has been reversed or vacated, in the sense of res judicata or collateral estoppel; as such, relief is unavailable merely if the law used by a court was later overruled or declared to be erroneous in an unrelated proceeding. Fed. R. Civ. P. 60(b)(5); T.C.R.C.P. Rule 60(b)(5). Reid v. Puailoa, 23 A.S.R.2d 144.

Relief from a final judgment is available if giving it prospective application would be inequitable; an order has prospective application if it compels or prohibits certain future actions or requires a court's supervision of conduct between the parties. Fed. R. Civ. P. 60(b)(5); T.C.R.C.P. Rule 60(b)(5). Reid v. Puailoa, 23 A.S.R.2d 144.

Obtaining relief under the "catch-all" provision is extremely difficult because the party seeking relief must allege and prove such "extraordinary circumstances" as are sufficient to overcome the overriding interest in the finality of judgments. Fed. R. Civ. P. 60(b)(6); T.C.R.C.P. Rule 60(b)(6). Reid v. Puailoa, 23 A.S.R.2d 144.

The interest in the finality of judgments is especially strong in regards to land titles. Fed. R. Civ. P. 60(b); T.C.R.C.P. Rule 60(b). Reid v. Puailoa, 23 A.S.R.2d 144.

Granting relief from a final judgment is at the trial court's discretion. Fed. R. Civ. P. 60(b); T.C.R.C.P. Rule 60(b). Reid v. Puailoa, 23 A.S.R.2d 144.

Motions for relief from judgment on the basis of fraud must be made within a "reasonable time" and not more than one year after judgment. T.C.R.C.P. 60(b)(3). Rocha v. Rocha, 24 A.S.R.2d 30.

Relief from judgment under the "catch-all" clause is only available if made within a "reasonable time" and if the grounds do not fall under one of the rule's enumerated subsections. T.C.R.C.P. 60(b)(1)-(6). Rocha v. Rocha, 24 A.S.R.2d 30.

The rules of civil procedure do not limit a court's power to (1) entertain an independent action for relief from a judgment, order, or proceeding, or (2) set aside a judgment for fraud upon the court. Fed. R. Civ. P. 60(b); T.C.R.C.P. 60(b). Rocha v. Rocha, 24 A.S.R.2d 55.

When an adverse party would not be prejudiced, an independent action for equitable relief from judgment may be treated as a motion for relief from final judgment, and vice-versa. Fed. R. Civ. P. 60(b); T.C.R.C.P. 60(b). Rocha v. Rocha, 24 A.S.R.2d 55.

The elements of an independent action for equitable relief from judgment require (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of defendant; and (5) the absence of any adequate remedy at law. Rocha v. Rocha, 24 A.S.R.2d 55.

Because the fraud which is the basis of an independent action for equitable relief from judgment must be "extrinsic," the fraud must have prevented the raising of an argument or the assertion of a claim or defense at trial, or deprived a party of his right to a "day in court"; as such, perjury and false testimony are inadequate grounds for relief. Rocha v. Rocha, 24 A.S.R.2d 55.

As the "saving clause" permitting a court "to set aside a judgment for fraud upon the court" is narrowly construed, only a deliberate scheme to subvert or corrupt the court's impartial functions constitutes "fraud upon the court." Fed. R. Civ. P. 60(b); T.C.R.C.P. 60(b). Rocha v. Rocha, 24 A.S.R.2d 55.

Because of the interest in the finality of judgments, "fraud on the court" (1) is typically confined to the most egregious cases, such as an attorney's exerting improper influence on the court or the bribery of a judge or juror, in which the integrity and impartial functioning of the court is directly impinged; and (2) must be proven by "clear and convincing evidence." Rocha v. Rocha, 24 A.S.R.2d 55.

Relief from a judgment under Rule 60(b) is discretionary and a denial of a Rule 60(b) motion should only be reversed if the trial court has abused its discretion. E-C Rental Services v. Pedro, 26 A.S.R.2d 65.

An order based on a material mistake of fact can be reopened and modified at the court's discretion. Mobile Marine Ltd. v. Ninna Marianne, 28 A.S.R.2d 88.

Despite its broad language, granting relief from a final judgment is generally only available upon a showing of extraordinary circumstances. The movant must allege and prove such extraordinary circumstances as will be sufficient to overcome the overriding interest in the finality of judgments, especially where the reopening of a judgment could unfairly prejudice the opposing party. T.C.R.C.P 60(b)(6). American Samoa Gov't v. Meredith, 28 A.S.R.2d 10.

An oversight by a court official can sometimes justify relief from judgment under T.C.R.C.P. 60(b)(6). American Samoa Gov't v. South Pacific Island Airsystems, Inc., 29 A.S.R.2d 62.

Regardless of whether the appellate court vacates its decision, an appellant is not entitled to vacatur of the decision of the

trial division. Voyager, Inc. v. High Court of Am. Samoa, Trial Div., 29 A.S.R.2d 187.

Under T.C.R.C.P. 60(b), a motion for relief from judgment, must be filed within a reasonable time of judgment (and no later than one year after judgment if based on extrinsic fraud). Masanai v. Patea S. of Vatia, 31 A.S.R.2d 99.

T.C.R.C.P. 60 does not preclude the application of the Statute of Limitations for attacking judgments, nor does it preclude the application of the equitable doctrine of laches. Masanai v. Patea S. of Vatia, 31 A.S.R.2d 99.

When a matai title decree has been vacated and the case remanded, the vacation of the judgment inures to the benefit of all of the losing parties, whether they perfected their appeal or not, because it vacated the underlying judgment and granted all parties rights to a new trial on their interest in the title. Faumuina v. Vaouli, 31 A.S.R.2d 2.

§ 11(3) —Stay of Proceedings

§ 11(3)(a)—General Provisions

In deciding a motion for a stay of judgment pending a decision on the appeal, the Justice of the High Court who did not sit on the case at the trial court level ordinarily hears the motion. Asifoa v. Lualemana, 17 A.S.R.2d 10 (App. Div. 1990).

In the absence of a Justice qualified to sit as a member of the Appellate Division, a motion for a stay of judgment was properly referred to the judge who presided at trial. A.C.R. 27(c). Asifoa v. Lualemana, 17 A.S.R.2d 10 (App. Div. 1990).

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 (App. Div. 1990).

To minimize the costs imposed on the prevailing party by a delay in executing a money judgment, a court can require a supersedeas bond and award post-judgment interest. T.C.R.C.P. 62(d). Asifoa v. Lualemana, 17 A.S.R.2d 10 (App. Div. 1990).

Ordinarily, a judgment of the High Court is automatically stayed for ten days in order to allow the losing party an opportunity to move for a new trial. T.C.R.C.P. 62(a). In re Matai Title Mulitauaopele, 17 A.S.R.2d 71.

If a party wishes a stay beyond the automatic ten-day period, pending consideration of his motion for new trial or pending appeal, the Court may in its discretion grant such a motion. T.C.R.C.P. 62(b), (d). In re Matai Title Mulitauaopele, 17 A.S.R.2d 71.

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.

In determining whether to stay execution of a judgment pending appeal, the court considers: (1) the likelihood of appellant prevailing in the appeal, (2) whether appellant will suffer irreparable harm if a stay is not granted, (3) whether appellee will suffer irreparable harm if a stay is granted, and (4) whether the public interest would be affected by a stay. Asifoa v. Lualemana, 17 A.S.R.2d 100.

The High Court of American Samoa has no authority, statutory or otherwise, to order a stay of admiralty proceedings in a federal district court. Fa'atasiga v. M/V Ocean Pearl, 19 A.S.R.2d 59.

The High Court refused to approve parties' stipulation to lift a stay of an action in federal district court when no such stay was issued because of the lack of statutory authority to do so. Fa'atasiga v. M/V Ocean Pearl, 19 A.S.R.2d 59.

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, 24 A.S.R.2d 81.

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.

A motion to stay execution of judgment pending appeal is properly initiated in the trial court pursuant to A.C.R. Rule 8(a). Euta v. Etimani, 25 A.S.R.2d 54.

A judgment cannot be stayed pending appeal, pursuant to A.C.R. Rule 8(a) except by court order for cause shown. A.S.C.A. § 43.0803; T.C.R.C.P. Rule 62(a); Euta v. Etimani, 25 A.S.R.2d 54.

Although A.C.R. Rule 8(a) contemplates than an application for a stay of execution pending appeal must ordinarily be made in the first instance to the trial court, a hearing at the appellate level was granted in this case in view of the immediate availability of a full appellate panel. Alamoana Recipe Inc., v. American Samoa Gov't, 25 A.S.R.2d 46.

A petitioner is entitled to a stay of enforcement only on showing 1) a substantial likelihood of ultimately prevailing on the merits and 2) great or irreparable injury if a stay is not issued before a full and final determination can be made. G.H.C. Reid & Co., Ltd. v. American Samoa Government, 26 A.S.R.2d 139.

An application for a stay of proceedings pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940 will not be granted merely because the applicant is in the military or at a particular duty station. 50 U.S.C.A. App. § 501 et seq. Nunu v. Nunu, 27 A.S.R.2d 146.

To deny an application for a stay of proceedings pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940, the court must reach the opinion that the applicant will not be prejudiced by his military service. 50 U.S.C.A. App. § 501 et seq. Nunu v. Nunu, 27 A.S.R.2d 146.

In exercising our discretion as to whether or not to grant a stay under the Soldiers' and Sailors' Civil Relief Act of 1940, the court is not required to make explicit factual findings, nor to assign a rigid burden of proof. 50 U.S.C.A. App. § 501 et seq. Nunu v. Nunu, 27 A.S.R.2d 146.

A motion for a stay pending appeal is premature in the absence of an appeal. T.C.R.C.P. 62(b). In re Matai Title "Tuaolo", 28 A.S.R.2d 137.

A motion for a stay pending appeal is evaluated according to four criteria: (1) the likelihood that appellant will prevail in the appeal; (2) irreparable harm to the appellant if the stay is not granted; (3) irreparable harm to appellees if the stay is granted; and (4) whether the public interest would be affected by the stay. G.M. Meredith & Associates v. Blue Pacific Management Corp., 29 A.S.R.2d 54.

Equitable principles and broad powers apply equally well to circumstances where a judgment debtor seeks a stay of execution. Carpenters Fiji, Ltd. v. Pen, 29 A.S.R.2d 58.

Even though the usual appeal in a matai title case is fact-oriented and, given the clearly erroneous standard applicable to preponderance of evidence issues, is unlikely to result in reversal, a stay is often the better option, as time tends to heal family divisions inevitably existing when the court is called upon to select a successor matai. In re Matai Title "Mulitauaopele" of the Village of Laulii, 30 A.S.R.2d 62.

Judgments of the court in non-criminal actions cannot be stayed pending appeal except for cause shown. A.S.G. v. Atualevao, 31 A.S.R.2d 29.

Under A.C.R. 8(a), a party must apply to the trial court for a stay of execution of the judgment pending appeal. A.S.G. v. Atualevao, 31 A.S.R.2d 29.

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial. G.H.C. Reid & Co. v. K.M.S.T., 1 A.S.R.3d 100 (Trial Div. 1997).

The court will not grant a stay of judgment pending appeal automatically or casually. Instead, because a stay of execution is essentially a form of injunctive relief, the court will balance the equities and determine whether or not the motion for reconsideration is likely to be successful. G.H.C. Reid & Co. v. K.M.S.T., 1 A.S.R.3d 100 (Trial Div. 1997).

The Court looks at four factors in making its determination whether to grant a stay of execution pending appeal: (1) likelihood that the appellant would prevail in the appeal; (2) irreparable harm to the appellant if a stay is not granted; (3) irreparable harm to appellees if a stay is granted; and (4) whether the public interest would be affected by a stay. Falatea v. Aumoeualogo, 2 A.S.R.3d 52 (App. Div. 1998).

Under T.C.R.C.P. 62(d), a trial court may stay a judgment or order while an appeal is pending, but where no appeal is pending a motion to stay is premature. Alai`asa v. Fanene, 2 A.S.R.3d 186 (Land & Titles Div. 1998).

A court should not automatically or casually grant a stay of judgment pending appeal. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

The court's discretion to grant a stay of judgment pending appeal should be exercised only if cause is shown. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

In determining whether to grant or deny a motion for stay of an injunction pending appeal, the Court should look at both the balance of equities and the likelihood of the appeal's success. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

Where Court could discern no issue on appeal, and where equities weighed evenly for and against a stay of the trial court's judgment, stay was properly denied. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

Where appellant claimed access to evidence supporting application for stay was being hindered by opposing party, Court determined that ruling on stay would be made without prejudice so that appellant could reraise issue if persuasive facts and law were found in materials previously inaccessible by him. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

Although under Fed. R. Civ. P. 62(d), a party appealing the order of a district court involving a money judgment is entitled

to a stay of that judgment as a matter of right upon posting of a supersedeas bond, under A.S.C.A. § 43.0803 and T.C.R.C.P. 62(d)), a stay upon posting of a supersedeas bond is not a matter of right, but is subject to the discretion of the court, and a court should not grant a stay of judgment pending appeal automatically or casually, but for cause shown. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Although under Federal Rule of Civil Procedure 62(d), a party appealing a money judgment is entitled to a stay of that judgment as a matter of right upon posting of a supersedeas bond, under the laws of American Samoa—A.S.C.A. § 43.0803 and T.C.R.C.P. 62(d)—a stay upon posting of a supersedeas bond is not a matter of right, but is rather subject to the discretion of the court which should grant a stay only for cause shown. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 225 (Trial Div. 2000).

A stay of judgment is appropriate where the law is not settled as to an issue in the case, where it will be very difficult for a party to recover sums already paid out, and where, by virtue of a previous court order, the majority of sums at issue have been paid out. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 225 (Trial Div. 2000).

Under T.C.R.C.P. 62(d), the Court possesses the discretion to substitute other types of judgment guarantees for supersedeas bonds if a judgment debtor demonstrates the present ability to pay the judgment and presents to the Court a plan whereby this ability is guaranteed, the Court may substitute this plan for a bond; the party seeking such a departure from a security bond has the burden to demonstrate why a bond is not required. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 225 (Trial Div. 2000).

The court has discretion to stay execution or other process to enforce a judgment pending disposition of a motion for new trial upon appropriate conditions to secure the interests of the prevailing party at trial. Am. Samoa Gov't v. NTV Electronics, 6 A.S.R.3d 216 (Trial Div. 2002).

Factors to consider in deciding whether a stay should be granted include: (1) the likelihood of the movant would prevail on the motion or appeal; (2) irreparable harm to the movant if a stay is not granted; (3) irreparable harm to the other party if a stay is granted; and (4) a stay's effect on the public interest. Am. Samoa Gov't v. NTV Electronics, 6 A.S.R.3d 216 (Trial Div. 2002).

Stay of both judgment and order of garnishment was proper where insurance company judgment-debtor raised serious questions of the sufficiency of evidence in motion for new trial, where garnishment would impede insurance company judgment-debtor's normal business operations and ability to meet its insurer obligations, and where insurance company was willing to post bond in the amount of the judgment. Am. Samoa Gov't v. NTV Electronics, 6 A.S.R.3d 216 (Trial Div. 2002).

At the court's discretion, it may grant a stay, pending appeal, of the execution of judgment in a civil action. In re Matai Title "Mauga", 6 A.S.R.3d 313 (Land & Titles Div. 2002).

The court's discretion to grant the stay pending appeal should be exercised only for cause shown and a stay should not be granted casually. In re Matai Title "Mauga", 6 A.S.R.3d 313 (Land & Titles Div. 2002).

In order to demonstrate good cause for a stay pending appeal, the moving party must establish: 1) failure to grant the stay would cause irreparable harm; 2) a likelihood of success on appeal; and 3) the public interest would be harmed by not granting the stay. In re Matai Title "Mauga", 6 A.S.R.3d 313 (Land & Titles Div. 2002).

§ 11(3)(b)—Likelihood of Appellate Success

The decision to grant or deny a stay pending appeal, similar to that on a preliminary injunction, depends partly on the "balance of equities" and partly on the likelihood that the appeal will be successful. T.C.R.C.P. 62(a),(c). Asifoa v. Lualemana, 17 A.S.R.2d 10 (App. Div. 1990).

An injunction will be stayed in the following situations: there is a strong chance the judgment will be vacated on appeal; compliance with the judgment during the pendency of the appeal would amount to an effective denial of the right to appeal or would otherwise work extraordinary hardship on the appellant; little or no hardship would be imposed on adverse parties by appellant's non-compliance; or some combination of these conditions overcomes the presumption in favor of allowing each party the present enjoyment of his lawful rights. Asifoa v. Lualemana, 17 A.S.R.2d 10 (App. Div. 1990).

In assessing the likelihood of success on appeal, a court may stay an injunction when it has enough doubt about the substantive correctness of its decision, such as when new and difficult questions of law are involved. Asifoa v. Lualemana, 17 A.S.R.2d 10 (App. Div. 1990).

Deciding whether a stay should be granted pending appeal entails three inquiries: (1) whether the losing party, should he prevail on appeal, will have suffered great or irreparable harm in the meantime if a stay should not be granted; (2) the harm, if any, that a stay would impose on the party who prevailed at trial; and (3) the likelihood of success on appeal. In re Matai Title Mulitauaopele, 17 A.S.R.2d 71.

In determining whether to stay execution of a judgment pending appeal, the court considers: (1) the likelihood of appellant prevailing in the appeal, (2) whether appellant will suffer irreparable harm if a stay is not granted, (3) whether appellee will suffer irreparable harm if a stay is granted, and

(4) whether the public interest would be affected by a stay. Asifoa v. Lualemana, 17 A.S.R.2d 100.

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.

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.

A petitioner is entitled to a stay of enforcement only on showing 1) a substantial likelihood of ultimately prevailing on the merits and 2) great or irreparable injury if a stay is not issued before a full and final determination can be made. G.H.C. Reid & Co., Ltd. v. American Samoa Government, 26 A.S.R.2d 139.

A judgment is commonly stayed when the trial court either has applied novel legal principles to situations in which the correct decision may be a close question or has applied settled legal law to situations about which reasonable persons can differ. In re Matai Title "Mulitauaopele" of the Village of Laulii, 30 A.S.R.2d 62.

A court may stay an injunction when it has doubts about the substantive correctness of its decision. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

An appeal which merely suggests that the losing party's arguments and factual position were better and should have prevailed, without showing clear error on the part of the trial court, is not likely to succeed. In re Matai Title "Mauga", 6 A.S.R.3d 313 (Land & Titles Div. 2002).

§ 11(3)(c)—Irreparable Harm/Balance of Equities

The decision to grant or deny a stay pending appeal, similar to that on a preliminary injunction, depends partly on the "balance of equities" and partly on the likelihood that the appeal will be successful. T.C.R.C.P. 62(a),(c). Asifoa v. Lualemana, 17 A.S.R.2d 10 (App. Div. 1990).

An injunction will be stayed in the following situations: there is a strong chance the judgment will be vacated on appeal; compliance with the judgment during the pendency of the appeal would amount to an effective denial of the right to appeal or would otherwise work extraordinary hardship on the appellant; little or no hardship would be imposed on adverse parties by appellant's non-compliance; or some combination of these conditions overcomes the presumption in favor of allowing each party the present enjoyment of his lawful rights. Asifoa v. Lualemana, 17 A.S.R.2d 10 (App. Div. 1990).

Deciding whether a stay should be granted pending appeal entails three inquiries: (1) whether the losing party, should he prevail on appeal, will have suffered great or irreparable harm in the meantime if a stay should not be granted; (2) the harm, if any, that a stay would impose on the party who prevailed at trial; and (3) the likelihood of success on appeal. In re Matai Title Mulitauaopele, 17 A.S.R.2d 71.

In most matai title cases the balance of hardships will militate strongly in favor of granting a stay pending appeal, as the only hardship on the prevailing party is that he must wait a year or so to register the title; on the other hand, if the prevailing party quickly registers the title, holds the traditional installation ceremonies, but has his right to hold the title reversed on appeal, the consequences for the whole family could be disastrous. In re Matai Title Mulitauaopele, 17 A.S.R.2d 71.

Even though the Appellate Division has rarely, if ever, reversed a judgment of the Land and Titles Division in a matai-title case, the "balance of hardships" will generally weigh heavily in favor of granting a stay. In re Matai Title Mulitauaopele, 17 A.S.R.2d 71.

In determining whether to stay execution of a judgment pending appeal, the court considers: (1) the likelihood of appellant prevailing in the appeal, (2) whether appellant will suffer irreparable harm if a stay is not granted, (3) whether appellee will suffer irreparable harm if a stay is granted, and (4) whether the public interest would be affected by a stay. Asifoa v. Lualemana, 17 A.S.R.2d 100.

Where appellants had substantial commercial and subsistence plantings on certain land, the trial court judgment evicting them from such land would be stayed pending appeal, where the issue on appeal was not frivolous, trivial, or presented merely for delay, and executing judgment before appeal would destroy the status quo and harm appellant more than staying judgment pending appeal would harm appellee. Asifoa v. Lualemana, 17 A.S.R.2d 100.

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.

Under T.C.R.C.P. Rule 62(d), the trial court has discretion to stay a judgment pending appeal when a bond or undertaking is given. The decision depends on the likelihood of success on appeal, and on weighing the "balance of equities," meaning to balance the harm to the party prevailing at trial if the stay is granted, against the hardship to the losing party if it is not. Euta v. Etimani, 25 A.S.R.2d 54.

Factors affecting the balance of equities pertaining to a T.C.R.C.P. Rule 62(d) motion for a stay pending appeal may

include: (1) the complexity of the collection process; (2) the time it may take to collect a judgment after affirmance on appeal; (3) the availability of funds to pay the judgment; and (4) the ability to pay the judgment. Euta v. Etimani, 25 A.S.R.2d 54.

A petitioner is entitled to a stay of enforcement only on showing 1) a substantial likelihood of ultimately prevailing on the merits and 2) great or irreparable injury if a stay is not issued before a full and final determination can be made. G.H.C. Reid & Co., Ltd. v. American Samoa Government, 26 A.S.R.2d 139.

In considering the foregoing issues of prejudice in granting a stay pending appeal, great weight will be given to preserving the status quo, and a motion for a stay for that purpose generally ought to be granted if the appeal is not frivolous, nor taken for the purpose of delaying the inevitable. G.M. Meredith & Associates v. Blue Pacific Management Corp., 29 A.S.R.2d 54.

The court will not stay the enforcement of a judgment voiding and setting aside a matai registration and declaring a person ineligible for a matai title when the importance of continuing family deliberations on the successor to the title, free of the requested stay, outweighs the harm to the appealing parties. The harm to the appealing parties is outweighed in the following circumstance: the family will be effectively deprived of meaningful participation in deliberations that could lead to a consensus selection of the next titleholder before the decision on appeal, if a stay is granted; one appealing party is the registrar who will not be incurably hurt without a stay; and the other appealing party is unlikely to suffer perpetual harm because the selection of a successor to the title is not imminent. In re Matai Title "Mulitauaopele" of the Village of Laulii, 30 A.S.R.2d 62.

A motion to stay enforcement of an order awarding worker's compensation benefits will not be granted unless it is shown that irreparable damage must ensue to the employer unless a stay is issued. A.S.C.A. § 32.0652. Star-Kist y Samoa, Inc. v. Comm'r of the American Samoa Gov't Workmen's Comp. Comm'n., 1 A.S.R.3d 67 (Trial Div. 1997).

The fact that the employer might have difficulty recovering the repayment of compensation from the employee if the award to the employee is reversed on appeal, is insufficient reason to grant a stay. Star-Kist y Samoa, Inc. v. Comm'r of the American Samoa Gov't Workmen's Comp. Comm'n., 1 A.S.R.3d 67 (Trial Div. 1997).

A stay is not a matter of right, even if the appellant might suffer irreparable injury, but is subject to judicial discretion and dependent upon the circumstances of the case. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

In balancing the equities involved in staying execution of an injunction pending appeal, the Court must examine: (1) whether the appellant would suffer irreparable harm if the stay was refused; (2) whether the appellee would suffer irreparable harm if the stay was granted; and (3) how a stay would affect the public interest. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

The general principle underlying stays of injunctive relief is that the status quo should be preserved pending appeal. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

A supersedeas bond is required of a petitioner seeking to set aside a judgment and from which the other party may be made whole if the action is unsuccessful; such bond guarantees that an appellant will be able to pay the judgment if it loses the appeal, and it compensates a party for the loss of use of its money during the period of time between entry of the judgment and resolution of appeal. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 225 (Trial Div. 2000).

The court has discretion to grant a stay pending appeal upon the filing of a supersedeas bond approved by the court. Am. Samoa Gov't v. NTV Electronics, 6 A.S.R.3d 216 (Trial Div. 2002).

Where court is considering a stay of a money judgment, the judgment-debtor's ability to pay, the availability of funds to him or her, and other difficulties in the collection process are relevant to the court's deliberations. Am. Samoa Gov't v. NTV Electronics, 6 A.S.R.3d 216 (Trial Div. 2002).

Monetary loss does not constitute irreparable harm. In re Matai Title "Mauga", 6 A.S.R.3d 313 (Land & Titles Div. 2002).

Part of assessing irreparable harm when considering a stay involves the balancing of equities. In re Matai Title "Mauga", 6 A.S.R.3d 313 (Land & Titles Div. 2002).

Where Appellant sought stay of investiture ceremony pending appeal of matai title decision, equities weighed against stay, as investiture ceremony would not affect outcome of appeal and Appellant could nonetheless attend ceremony and avoid family unrest. Contrarily, granting stay would negatively impact a significantly greater number of people which could result in more family turmoil. In re Matai Title "Mauga", 6 A.S.R.3d 313 (Land & Titles Div. 2002).

§ 11(3)(d)—Public Interest

In determining whether to stay execution of a judgment pending appeal, the court considers: (1) the likelihood of appellant prevailing in the appeal, (2) whether appellant will suffer irreparable harm if a stay is not granted, (3) whether appellee will suffer irreparable harm if a stay is granted, and

(4) whether the public interest would be affected by a stay. Asifoa v. Lualemana, 17 A.S.R.2d 100.

Although public interest tends to favor simple solutions without controversy, where court believed that discord would result if the investiture ceremony was delayed, where vast majority of family supported court-sanctioned candidate and were already investing in title investiture ceremony, and where family had previously delayed matai selection process for many years, court determined that public interest could be equally or more greatly harmed by delaying investiture ceremony as by allowing it to continue. In re Matai Title "Mauga", 6 A.S.R.3d 313 (Land & Titles Div. 2002).

§ 11(4) —Appellate Jurisdiction

If appellant files what is construed as written transcript order and timely prepays cost, appeal is perfected, even if clerk fails to timely prepare transcript. In re Matai Title Alalamua, 4 A.S.R. 974.

24 A.S.C. 459 et seq. provides that a compensation award becomes final unless petition for judicial review is filed within thirty days of date award is filed. In re Westerlund v. Scanlan, 4 A.S.R. 998.

Arguments that could have been made at trial may not be made for the first time on a motion for new trial or in an appeal. Olotoa v. Bartley, 3 A.S.R.2d 21.

That appellant disagrees with trial court's judgment of the credibility of the witnesses does not raise an appealable issue. Fagaima v. Fonoti, 3 A.S.R.2d 112.

Appeal should not be dismissed on hypertechnicality, as this would defeat ends of justice, especially if court itself is partially responsible for delay. In re Matai Title Alalamua, 4 A.S.R. 974.

Trial court judgment becomes final on parties who do not appeal or who dismiss their appeals, and they cannot appear in trial court proceedings on remand after successful appeal by other parties. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

Issues not raised in trial court proceeding cannot be raised on appeal from the resulting judgment. Amerika Samoa Bank v. Haleck, 6 A.S.R.2d 54.

Though no party raised question of timeliness, where record indicated that appeal was filed after expiration of the applicable time limit, court would require appellant to show cause why the appeal should not be dismissed. American Samoa Gov't v. Ofa, 6 A.S.R.2d 1.

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.

One month delay in seeking judicial review of denial of the right to run for elective office was unreasonable where (1) the election was to be held two weeks after petitioners first sought judicial relief and (2) one of the petitioners, although absent from the territory, could have secured counsel or instructed his co-petitioner to assert their rights. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Territorial election statutes provide no right of appeal to board of registration from chief election officer's determination that a person is ineligible to run for elective office. A.S.C.A. §§ 4.0101 et seq., 6.0101 et seq. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Contention raised for the first time in oral argument on appeal, which was inconsistent with the contentions made by appellants at trial and in their brief on appeal, need not and should not be addressed by the appellate court. Leota v. Sese, 12 A.S.R.2d 18.

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.

A motion for relief from judgment cannot be used as a substitute for appeal by one who had a fair chance to appeal and chose not to do so. T.C.R.C.P. Rule 60(b). Gi v. Temu (Mem.), 12 A.S.R.2d 62.

Where trial court denied a motion for relief from judgment while an appeal from the underlying judgment was pending, appellate court could hear an appeal from the denial of relief from judgment, either because: (1) the trial court was not deprived of jurisdiction by the filing of the notice of appeal, so that the appeal from its order denying relief from judgment would be in order; or (2) the trial court lacked jurisdiction after notice of appeal from the judgment, but the appellate court could treat the notice of appeal from the denial of relief from judgment as a motion for a limited remand to the trial court to permit it to consider the motion. T.C.R.C.P. Rule 60(b). Uiagalelei v. Fai`ai, 12 A.S.R.2d 103.

Relief from a judgment under Rule 60(b) of the Trial Court Rules of Civil Procedure is not available to a party who could have raised the same claims or defenses by motion for new trial but did not. In re Matai Title Muagututi`a, 15 A.S.R.2d 1.

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.

If an appellant fails to follow the rules and therefore has not perfected his appeal, it is subject to dismissal at the Appellate Division's discretion. A.C.R. 10(b)(5). Alaimalo v. Sivia, 16 A.S.R.2d 117.

It would be inappropriate to grant interim relief on an appealed motion when the court believes it is without jurisdiction of the appeal. Kim v. American Samoa Gov't, 17 A.S.R.2d 1.

Since the rule relating to the timely manner for ordering a transcript of proceedings on appeal is not jurisdictional, the court may grant additional time to comply with its requirements. A.C.R. 10(b). Opapo v. Puailoa, 17 A.S.R.2d 30.

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.

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.

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.

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 Mulitauaopele, 17 A.S.R.2d 75.

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 Gov't v. Falefatu, 17 A.S.R.2d 114.

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.

A motion for reconsideration under Rule 60(b) cannot to be used as a substitute for appeal by one who has missed the deadline for appeal. T.C.R.C.P. 60(b). Lualemana v. Asifoa, 17 A.S.R.2d 151.

Order on appeal is effectively unreviewable when a showing of prejudice to the defense is required to obtain a reversal. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

Former counsel's failure to communicate a judgment to a client, if true, might or might not give rise to a cause of action for malpractice, but this does not give the court jurisdiction it does not have. Taulaga v. Patea, 17 A.S.R.2d 206.

Unlike violations of non-jurisdictional rules, for which the Court has the power to impose sanctions other than dismissal, a would-be appellant's failure to comply with the mandatory steps necessary to give the Court jurisdiction leaves it powerless to grant any relief. Taulaga v. Patea, 17 A.S.R.2d 206.

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.

On appeal, a party should not make an objection to evidence after it has already been admitted without objection at the trial level. Solomona v. Governor of American Samoa, 18 A.S.R.2d 14.

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.

A motion for relief from judgment cannot be used as a substitute for appeal by one who has missed the deadline for appeal. T.C.R.C.P. 60(b). Jennings v. Jennings, 19 A.S.R.2d 34.

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.

A mere disagreement with a trial court's factual findings does not raise a legal issue. Rakhshan v. American Samoa Gov't, 20 A.S.R.2d 115.

The Chief Justice's rulemaking authority under A.S.C.A. § 46.0501 does not include the power to amend unambiguous legislative enactments setting out the prerequisites to appeal. Fa'amaoni v. American Samoa Government, 20 A.S.R.2d 127.

If there is no timely motion for reconsideration or new trial within the statutory ten-day deadline the court has no jurisdiction to entertain an appeal, regardless of any argument, equitable or otherwise. Fa'amaoni v. American Samoa Government, 20 A.S.R.2d 127.

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.

Attempts to, in essence, appeal a final and unappealable decision may be sanctioned by either the trial or appellate courts. Toluao v. Fuimaono, 21 A.S.R.2d 12.

Statutory provision providing for judicial review of Workmen's Compensation Commission orders excludes other avenues of judicial review but does not preclude reconsideration proceedings at the administrative level. A.S.C.A. §§ 32.0652-32.0653. Harris v. Commissioner of the American Samoa Gov't Workmen's Compensation Commission, 24 A.S.R.2d 124.

Filing a motion for new trial is a mandatory jurisdictional prerequisite for appeal. Soli Corporation v. Amerika Samoa Bank, 25 A.S.R.2d 40.

To appeal a decision of the trial division, a motion for new trial must be filed within 10 days after a judgment or order is entered. A.S.C.A. § 43.0802 and A.C.R. Rule 4(a)(1). The denial of a motion for relief from judgment under T.C.R.C.P. Rule 60 qualifies as an order under the foregoing rules. Soli Corporation v. Amerika Samoa Bank, 25 A.S.R.2d 40.

A judgment of the Trial Division remains in the jurisdiction of the Trial Division, and attempts to enforce the judgment should be made at the trial level, not in the Appellate Division. Paisano's Corp. v. Blue Pacific Management Corp., 25 A.S.R.2d 75.

Mere disagreement with the appellate court's interpretation of statutes, rules, and case authorities is not a basis for rehearing. Soli Corp. v. Amerika Samoa Bank, 25 A.S.R.2d 94.

Appeals of the High Court's decisions are accomplished by suing the Secretary of the Interior in his official residence in Washington, D.C. Alamoana Recipe, Inc., v. American Samoa Gov't, 25 A.S.R.2d 97.

Parties are restricted on appeal to contesting the lower court's final judgments; they cannot assert positions outside those parameters. Foster v. Lutali, 26 A.S.R.2d 16.

Final decisions of the District Court may be appealed to the High Court. A.S.C.A. § 3.0309. Toleafoa v. American Samoa Gov't, 26 A.S.R.2d 20.

Appeals to the High Court from the Zoning Board "may be taken in like manner to appeals under the Administrative Procedure Act." McGuire v. Zoning Board, 26 A.S.R.2d 59.

Judicial review is available to a "person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case." McGuire v. Zoning Board, 26 A.S.R.2d 59.

When a statute prescribes administrative remedies, which must be exhausted before judicial review is allowed, these procedures are jurisdictional. McGuire v. Zoning Board, 26 A.S.R.2d 59.

It is inappropriate for the Trial Division to revisit a principle settled by the Appellate Division. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

A security or bond is not ordinarily required when land disputes are under appeal. Craddick Development, Inc. v. Craddick, 29 A.S.R.2d 64.

Arguments that a decision regarding land is contrary to Samoan custom or violative of treaty should be presented to the court deciding the case at the time that it is heard, and do not serve as a basis for later reversing a decision that has been fully litigated. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

Arguments regarding the specificity of the trial court's findings should not be raised for the first time on appeal. Appellants who fail to raise such objections via motion to amend findings or a motion to make further findings will be said to have waived these issues for appeal. Tuaolo v. Fruean, 1 A.S.R.3d 33 (App. Div. 1997).

Where party had every opportunity to raise due process argument at initial hearing, his failure to do so then constituted lack of diligence, and such was proper grounds for denying petition when argument later raised. Fuavai v. District Court, 2 A.S.R.3d 56 (App. Div. 1998).

The Appellate Division of the High Court has jurisdiction over an appeal from a conviction for Careless Driving Causing Property Damage in the District Court based upon a stenographic record pursuant to A.S.C.A. § 3.0309. Vaapuu v. American Samoa Gov't, 3 A.S.R.3d 1 (App. Div. 1999).

Where judgment at end of first trial phase determined ownership of land at issue it had resolved an ultimate issue and appeal from said judgment was ripe. Pita v. Garrett, 3 A.S.R.3d 213 (Land & Titles Div. 1999).

A decision is final for purposes of appeal if it effectively ends litigation on the merits and leaves little for the court to do but execute the judgment. Pita v. Garrett, 3 A.S.R.3d 213 (Land & Titles Div. 1999).

The High Court has jurisdiction to review only the "final decisions" of the District Court. Lafaele v. American Samoa Gov't, 4 A.S.R.3d 35 (App. Div. 2000).

A pre-trial or interlocutory order is final if it resolves an issue separate and distinct from the question of guilt or innocence. Lafaele v. American Samoa Gov't, 4 A.S.R.3d 35 (App. Div. 2000).

In order to be appealable under the collateral order exception, a pre-trial or interlocutory order must: (1) conclusively resolve the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from the final judgment in the main case. Lafaele v. American Samoa Gov't, 4 A.S.R.3d 35 (App. Div. 2000).

Pre-trial orders denying bail reduction, denying dismissal of an indictment on double jeopardy grounds, or denying dismissal of an indictment on speech or debate grounds all involve an asserted right, the legal and practical value of which would be destroyed if not resolved before trial, and are therefore directly appealable. Lafaele v. American Samoa Gov't, 4 A.S.R.3d 35 (App. Div. 2000).

The District Court's pre-trial order denying a defendant's right to a jury trial is not a "final" order which may be appealed at that time, and thus the Appellate Court is without jurisdicion to review the matter unless and until a final decision is reached at the District Court level. Lafaele v. American Samoa Gov't, 4 A.S.R.3d 35 (App. Div. 2000).

The requirement that a pre-trial order be final or fall within the collateral order exception to the finality rule before it may be appealed applies to interim orders before they may be reconsidered. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

As a general rule, pre-trial orders governing discovery are neither final decisions, nor fall within the collateral order exception. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

A party affected by a court's interim discovery ruling may challenge the decision on appeal from the final decision in the case. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

Court declined to reconsider pre-trial discovery ruling, granting motions to quash and for protective order, since said ruling was reviewable upon appeal from final decision in case. Progressive Ins. Co., Ltd. v. Southern Star Int'l, Inc., 5 A.S.R.3d 57 (Trial Div. 2001).

Pre-trial orders governing discovery, not falling within finality exception or collateral order exception, may only be challenged on appeal from final decision. Motion to reconsider order denying motion to compel discovery was denied. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 88 (Trial Div. 2001).

Review of a final administrative decision for errors of law is a matter ordinarily within the exclusive jurisdiction of the Appellate Division of the High Court. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

A civil appeal is limited to the issues which were raised in the motion for new trial. The appellate court has no jurisdiction to consider any other issues. In re Matai Title "Mauga", 6 A.S.R.3d 313 (Land & Titles Div. 2002).

§ 11(5) —Petition for Rehearing

There is no right to a new trial or a new appeal before the same judge or judges that heard the original trial or appeal. Star-Kist Foods, Inc., v. The M/V Conquest, 6 A.S.R.2d 42.

The fact that an associate judge who heard a case at trial also heard the case on appeal, a violation of A.S.C.A. § 3.1007(b), was not a basis for reconsideration of the appeal where a quorum existed without the violating judge, the violating judge's vote was not outcome determinative, the decision of the court was unanimous, and the complaining party waited until after the decision was rendered to object. Soli Corp. v. Amerika Samoa Bank, 25 A.S.R.2d 94.

If a party fails to object to the presence of an associate judge on the appellate panel until after the decision has been rendered, this failure constitutes a waiver of the objection. Soli Corp. v. Amerika Samoa Bank, 25 A.S.R.2d 94.

Rule 40 does not permit reconsideration of the same matters addressed in the original appeal "in the absence of demonstrable mistake." Toleafoa v. American Samoa Government, 26 A.S.R.2d. 71.

General allegations and bald-faced assertions do not provide the particularity which Rule 40 requires. Toleafoa v. American Samoa Government, 26 A.S.R.2d. 71.

A petition for rehearing "shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition." A.C.R. 40. Toleafoa v. American Samoa Government, 26 A.S.R.2d. 71.

A rehearing is not a matter of right, but a privilege granted at the discretion of the appellate court. Fanene v. Fanene, 30 A.S.R.2d 115.

The function of a rehearing is to correct errors of law or fact that the appellate court may have overlooked, leading to material errors. Fanene v. Fanene, 30 A.S.R.2d 115.

A rehearing is not a matter of right, but is a privilege granted at the discretion of the appellate court. A.C.R. 40. Tuaolo v. Fruean, 1 A.S.R.3d 40 (App. Div. 1997).

A petition for rehearing must specify with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended. Fuavai v. District Court, 2 A.S.R.3d 56 (App. Div. 1998).

The court may deny a petition for rehearing where the grounds for said petition are new arguments, raised only for the first time on review. Fuavai v. District Court, 2 A.S.R.3d 56 (App. Div. 1998).

§ 11(6) —Appellate Procedures

§ 11(6)(a)—Generally

Since Chief Justice is required to sit in hearing of appeal, there can be no denial of due process by fact he hears appeal even though he also was trial judge, and law revising appellate procedure to make trial judge ineligible to sit on appeal does not become effective prior to July 1, 1962. Scanlan v. Steffany, 3 A.S.R. 583.

Function of appellate court in damages case is not to take evidence but to determine whether grounds of appeal are meritorious. Faatamala v. Haleck, 4 A.S.R. 888.

Substitution of "Courts of American Samoa" for "United States court" should be made when applying United States Supreme Court Rules. Fanene v. Government, 4 A.S.R. 957.

When applying United States Federal Rules of Civil Procedure to courts of American Samoa, "Trial Division of the High Court of American Samoa" should be substituted for "District Court" and "Appellate Division of the High Court of American Samoa" substituted for "United States Supreme Court." Fanene v. Government, 4 A.S.R. 957.

Strict compliance with court rules is generally required, exceptions to be made only for most diligent and deserving appellants. In re Matai Title Alalamua, 4 A.S.R. 974.

Where defendant's trial in District Court was continued so that he could appeal the District Court's denial of his motion to appoint an interpreter, his motion to strike additional facts included by the District Court in the record on appeal was consolidated for argument with the merits of the appeal. Kim v. American Samoa Gov't, 17 A.S.R.2d 1.

An appeal that raises no legal issues is an abuse of process and if brought by a lawyer would violate his or her duty not to bring a frivolous appeal. Rakhshan v. American Samoa Gov't, 20 A.S.R.2d 115.

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 Gov't, 23 A.S.R.2d 51.

A motion for leave to proceed on appeal in forma pauperis must be filed in the first instance in the Trial Division and be accompanied by an affidavit setting forth appellant's financial inability, his belief in redress, and the issues on appeal. H.C.R. 24(a). Schuster v. American Samoa Gov't, 24 A.S.R.2d 137.

Because an appeal in a civil case is only permitted after an entry of judgment, a single justice of the High Court may dismiss an appeal for lack of a trial-court judgment. A.C.R. 2, 3, 4, 27(c). Shadow Yacht v. Tago, 24 A.S.R.2d 163.

To appeal a decision of the trial division, a motion for new trial must be filed within 10 days after a judgment or order is entered. A.S.C.A. § 43.0802 and A.C.R. Rule 4(a)(1). The denial of a motion for relief from judgment under T.C.R.C.P. Rule 60 qualifies as an order under the foregoing rules. Soli Corporation v. Amerika Samoa Bank, 25 A.S.R.2d 40.

A motion to stay execution of judgment pending appeal is properly initiated in the trial court pursuant to A.C.R. Rule 8(a). Euta v. Etimani, 25 A.S.R.2d 54.

Appeals to the High Court from the Zoning Board "may be taken in like manner to appeals under the Administrative Procedure Act." McGuire v. Zoning Board, 26 A.S.R.2d 59.

Within 30 days from the service of the petition for appellate review, an agency is to send the court the record of the proceedings in the matter under review. A.S.C.A. § 4.1042; A.C.R. 17(a). McGuire v. Zoning Board, 26 A.S.R.2d 59.

The decision of an appellate court will stand unless the petitioner can present an argument demonstrating that the appellate court "overlooked or misapprehended" particular "points of law or fact." A.C.R. 40. Tuaolo v. Fruean, 1 A.S.R.3d 40 (App. Div. 1997).

Certiorari is a discretionary form of review, not one of right. Fuavai v. District Court, 2 A.S.R.3d 41 (App. Div. 1998).

Appellant's ability to demonstrate compliance with appellate procedures held immaterial where Court's original ruling, highlighting alleged procedural deficiencies, also contained alternate, substantive basis for denial of stay. Falatea v. Aumoeualogo, 2 A.S.R.3d 52 (App. Div. 1998).

An appellant has the burden of showing that the trial court erred. Mulitauaopele v. Maiava, 29 A.S.R.2d 116.

§ 11(6)(b)—Notice of Appeal

Previous statute requires notice of appeal to be filed within seven days after judgment is rendered. (CAS 10). Betham v. Faumuina, 3 A.S.R. 537.

Appeal may be dismissed on grounds that notice was not filed with express authority. Betham v. Faumuina, 3 A.S.R. 537.

In interest of justice where counsel for appellants lack formal legal training, appellate court may permit arguments outside scope of grounds set out in notice of appeal. Mageo v. Government, 4 A.S.R. 874.

Notice of appeal filed thirty-one days after entry of judgment but seven days after denial of motion for reconsideration is a timely filing within rule establishing schedule requirements for appeals in civil cases. A.C.R. Rule 4(a)(1). Gray, Cary, Ames & Frye v. HGN Corp., 6 A.S.R.2d 64.

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.

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.

The court does not have jurisdiction to extend time for filing a notice of appeal. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 29 A.S.R.2d 62.

The court will only extend time for filing a notice of appeal upon reasonable certainty that the aggrieved party has not received the relevant order. Furthermore, the court must be satisfied that the aggrieved party acted expeditiously as soon as he did receive notice. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 29 A.S.R.2d 62.

Delay of three days after allegedly receiving notice indicates that one did not act as expeditiously as soon as notice was received. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 29 A.S.R.2d 62.

Under A.S.C.A. § 43.0802(b) and A.C.R. 4(a)(1) a notice instituting an appeal of a judgment or order of the Land and Titles Division cannot be filed until, and must be filed within ten days after, the court denies a motion for reconsideration or new trial. Alai`asa v. Fanene, 2 A.S.R.3d 186 (Land & Titles Div. 1998).

Statutory requirement of filing an appeal within 10 days after denial of motion for new trial is mandatory. Alai`asa v. Peka, 5 A.S.R.3d 12 (App. Div. 2001).

§ 11(6)(c)—Appellate Briefs

Matter will be decided against party to an appellate proceeding who, without good cause, fails to file a brief within the time prescribed by rule. Tupuola v. Tu'ufuli, 1 A.S.R.2d 80 (App. Div. 1983).

Where failure of pro se appellants to file brief within time period prescribed by rule was partly due to negligence of appellants but also partly due to the inadvertent omission of the rule in question from the copy of the court rules made available to the public in the court library, appellants' "motion for clarification" filed prior to the deadline would be construed as a timely motion for extension of time in which to file the brief. Appellate Court Rules 3(c), 31(a). Pene v. American Samoa Power Authority (Mem.), 11 A.S.R.2d 27.

An appellant's brief is due forty days after the record is filed. A.C.R. 31(a). Alaimalo v. Sivia, 17 A.S.R.2d 25.

An appeal is subject to dismissal if the appellant does not file a brief. A.C.R. 31(c). Alaimalo v. Sivia, 17 A.S.R.2d 25.

Parties who decline to file an appellees' brief risk having their positions go unrecognized by the court. Rakhshan v. American Samoa Gov't, 20 A.S.R.2d 115.

A violation of the timing requirements of A.C.R. 31(a) does not result in mandatory dismissal of the appeal; dismissal is discretionary with the Appellate Division, which may consider the circumstances related to the untimely filing, and any prejudice resulting to the Appellees. Ulufaleilupe v. Uiagalelei, 3 A.S.R.3d 22 (App. Div. 1999).

When delay is not the result of negligence on the part of Appellant's counsel or his client, and package was misplaced, not simply delayed in normal course of mailing from a remote location, outright dismissal of the litigant's claims would be unduly harsh. Ulufaleilupe v. Uiagalelei, 3 A.S.R.3d 22 (App. Div. 1999).

Although Appellee had ample time to respond to the untimely-filed Appellant's brief, but did not do so, and the merits of the appeal could not be considered, the client will not be significantly prejudiced by holding the case over to the next appellate session. Ulufaleilupe v. Uiagalelei, 3 A.S.R.3d 22 (App. Div. 1999).

§ 11(6)(d)—Appellate Motions

Motion to enlarge the time prescribed by appellate court rules in which to file brief must be served on all other parties to the appeal. Appellate Court Rules 27, 31. Leota v. Sese, 10 A.S.R.2d 155.

Motion filed without service on all other parties as required by appellate court rule would ordinarily be denied without prejudice to the right of moving party to file a new motion in compliance with the rule. Appellate Court Rule 27. Leota v. Sese, 10 A.S.R.2d 155.

Where ex parte motion to enlarge time was filed so late that a new motion with service on other parties could probably not be timely filed, a single judge hearing the motion to enlarge time would provisionally extend the time period subject to the rights of other parties to move for reconsideration of the extension and to review by the full appellate court. Appellate Court Rules 27, 31. Leota v. Sese, 10 A.S.R.2d 155.

Motion for extension of time in which to file appellate briefs must be filed with proof of service on the opposing party. Appellate Court Rule 27(a). Hawaiian Airlines v. American Samoa Gov't ex rel. Neru (Mem.), 11 A.S.R.2d 116.

Requests for extensions of time should be made before rather than after expiration of the time period in question. Hawaiian Airlines v. American Samoa Gov't ex rel. Neru (Mem.), 11 A.S.R.2d 116.

Where effect of an extension of time to file appellee's brief would be to deny appellant its opportunity to be heard at an impending session of the Appellate Division, the extension would not be granted. Hawaiian Airlines v. American Samoa Gov't ex rel. Neru (Mem.), 11 A.S.R.2d 116.

Appellate court cannot entertain an ex parte motion for stay of immigration order, since applicable rule requires that notice be given to all parties. Appellate Court Rule 18. Rakhshan v. Immigration Board, 12 A.S.R.2d 72.

At its discretion and within certain prescribed limits, the Court, sitting as a trial court, may grant an ex parte motion for an extension of time if the motion is made before the expiration of the period originally prescribed; this is in contrast to the Appellate Division, which may not grant ex parte motions for extensions. T.C.R.C.P. 6(b); A.C.R. 25 & 26. Willis v. Fai`ivae, 16 A.S.R.2d 101.

A request for enlargement of the time provided for any of the actions required to perfect an appeal should be made in the form of a motion, with copies served on adverse parties. A.C.R. 25(b), 26(b). Alaimalo v. Sivia, 16 A.S.R.2d 117.

Even if an appellant makes a timely motion for extending the time for ordering a transcript and filing a brief, the court will only grant extensions which will not prejudice the appellee. Alaimalo v. Sivia, 17 A.S.R.2d 25.

A motion to extend the time to order a transcript and file a brief was denied due to the length of the delay in making the motion and the consequent prejudice to the appellees, as well as the very slight possibility that the appeal would succeed on the merits. Alaimalo v. Sivia, 17 A.S.R.2d 25.

A motion for leave to proceed on appeal in forma pauperis must be filed in the first instance in the Trial Division and be accompanied by an affidavit setting forth appellant's financial inability, his belief in redress, and the issues on appeal. H.C.R. 24(a). Schuster v. American Samoa Gov't, 24 A.S.R.2d 137.

§ 11(6)(e)—Failure to Raise Issue Below

Where defendant and counsel do not object to use of term “King” to describe witness during trial, they cannot object to it on appeal. Lualemana v. Filo, 3 A.S.R. 642.

Appellate court will not permit witness to testify on appeal where she could have testified at trial and no effort was made to have her testify nor was any continuance requested to enable her to testify. Leapaga v. Masalosalo, 4 A.S.R. 868.

Issues, other than jurisdictional, not raised in trial court will not be considered on appeal. (RPAD, Rule 7A) Taufaasau v. Manuma, 4 A.S.R. 947.

Appellate court must rely upon record of Trial Division of the High Court in considering appeal, and where assumption of appellant is not supported by record, court cannot accept it. Taufaasau v. Manuma, 4 A.S.R. 947.

The post-trial and appellate stages of a proceeding, which with a few extraordinary exceptions must be based upon the record made at trial, are not the appropriate forum for counsel to request corrections of English translation of Samoan testimony. Lea'e v. Lea'e (Mem.), 3 A.S.R.2d 56.

Appellate review is confined to the record. On a party's request, "the court shall receive briefs and hear oral argument"; and the court has the discretion to receive evidence to supplement the record. A.S.C.A. § 4.1043(a). McGuire v. Zoning Board, 26 A.S.R.2d 59.

§ 11(6)(f)—Transcripts

A court reporter is to produce a transcript within a thirty days after receiving an order for it. A.C.R. 11(b). Rocha v. Rocha, 17 A.S.R.2d 15.

A party who wishes to order only part of a transcript should clearly designate the parts he is ordering; if unclear, the risks of any uncertainty must be borne by the party requesting the transcript. A.C.R. 11(b). Rocha v. Rocha, 17 A.S.R.2d 15.

Party to appeal, other than a party to a criminal or administrative agency proceeding who has been given leave to proceed in forma pauperis, must bear the cost of preparing such portion of the transcript as he wishes to include the record on appeal. Appellate Court Rules 10(b)4, 24. Pene v. American Samoa Power Authority, 10 A.S.R.2d 61.

Litigants who demanded costs of litigation, compensatory and punitive damages on account of mental distress said to have been caused by a brief disconnection of their electricity, and an injunction against future disconnections, and whose electricity had been disconnected after they had stopped paying their electric bill in retaliation for conduct of the electric company in an unrelated land dispute, had no constitutional right to a free trial transcript for use on appeal. Pene v. American Samoa Power Authority, 10 A.S.R.2d 61.

Appellants who cannot afford to pay for a trial transcript lose only the right to urge that the trial court's findings of fact were unsupported by the evidence; they remain free to seek the correction of such errors of law as may appear from the facts as found by the trial court, or to negotiate with opposing parties an agreed statement of the evidence in lieu of a transcript. Appellate Court Rules 10(b)(1), 10(b)(2), 10(d). Pene v. American Samoa Power Authority, 10 A.S.R.2d 61.

An appellant must place a written order for a partial transcript, as well as having a copy of the order filed with the clerk of court and served on the appellee, within 10 days after receiving the reporter's or clerk's estimate. A.C.R. 10(b)(1). Alaimalo v. Sivia, 16 A.S.R.2d 117.

At the time of ordering transcripts, a party must deposit cash equal to the estimated cost, and counsel must file a copy of the reporter's receipt with the clerk of court. A.C.R. 10(b)(4). Alaimalo v. Sivia, 16 A.S.R.2d 117.

A transcript order or a notice of intention to proceed without a transcript must be made within ten days after receiving the court reporter's estimate of the cost of the transcript. A.C.R. 10(b). Alaimalo v. Sivia, 17 A.S.R.2d 25.

Within ten days after receiving the court reporter's estimate of the cost of the transcript, an appellant must give notice to the court and appellees of the issues intended to be presented on appeal. A.C.R. 10(b)(1). Alaimalo v. Sivia, 17 A.S.R.2d 25.

An appeal is subject to dismissal at the discretion of the Appellate Division if an appellant did not comply with the provisions of A.C.R. 10(b). A.C.R. 10(b)(5). Alaimalo v. Sivia, 17 A.S.R.2d 25.

A motion to extend the time to order a transcript and file a brief was denied due to the length of the delay in making the motion and the consequent prejudice to the appellees, as well as the very slight possibility that the appeal would succeed on the merits. Alaimalo v. Sivia, 17 A.S.R.2d 25.

Since the rule relating to the timely manner for ordering a transcript of proceedings on appeal is not jurisdictional, the court may grant additional time to comply with its requirements. A.C.R. 10(b). Opapo v. Puailoa, 17 A.S.R.2d 30.

Order extending the time to comply with Appellate Court Rule 10(b) was affirmed, and motion to dismiss for failure to timely comply was denied, where the resulting delay was less than thirty days, the appeal would not have been perfected for the current appellate session even with timely compliance, and appellee suffered no real prejudice by the delay. Opapo v. Puailoa, 17 A.S.R.2d 30.

An appellant has ten days to file an order for a transcript, to deposit with the reporter an amount of cash equal to the estimated cost of the transcript, and to file with the Clerk of the High Court the receipt for such deposit. A.C.R. 10(b)(1), (4). Aoelua v. Aoelua Family, 18 A.S.R.2d 1.

An order for a transcript must be in writing, must be filed with the Clerk, and must be served on the appellee. A.C.R. 10(b)(1). Aoelua v. Aoelua Family, 18 A.S.R.2d 1.

The only way to secure an extension of time in which to order a transcript is to file a motion with notice to the opposing parties, although the appellant would then bear the heavy burden of explaining why the motion was not filed before the expiration of the deadline. Aoelua v. Aoelua Family, 18 A.S.R.2d 1.

Within ten days after receiving the reporter's or clerk's estimate of the transcript's cost, an appellant must file a written order for a transcript or file a certificate that no parts of the transcript are to be ordered; the appellate court may, on its own motion, dismiss the appeal for a failure to do so. A.C.R. 10(b)(1), 10(b)(5). Toluao v. Fuimaono, 21 A.S.R.2d 12.

§ 11(7) —Costs of Appeal

Attorney fees may be awarded to an appellee where the appellant has taken a frivolous appeal. Tuika v. Ala`ilima, 8 A.S.R.2d 163.

Party to appeal, other than a party to a criminal or administrative agency proceeding who has been given leave to proceed in forma pauperis, must bear the cost of preparing such portion of the transcript as he wishes to include the record on appeal. Appellate Court Rules 10(b)4, 24. Pene v. American Samoa Power Authority, 10 A.S.R.2d 61.

Litigants who demanded costs of litigation, compensatory and punitive damages on account of mental distress said to have been caused by a brief disconnection of their electricity, and

an injunction against future disconnections, and whose electricity had been disconnected after they had stopped paying their electric bill in retaliation for conduct of the electric company in an unrelated land dispute, had no constitutional right to a free trial transcript for use on appeal. Pene v. American Samoa Power Authority, 10 A.S.R.2d 61.

Appellant who ordered production of a trial transcript and later attempted to countermand the order would be required to pay pro rata share of the cost of producing the transcript, where (1) another appellant had requested an estimate of the cost of a transcript; (2) court reporter, in reliance on first appellant's order for a transcript, had served both appellants with an estimate that assessed half the cost against each appellant; (3) second appellant had then ordered a transcript within the ten-day period prescribed by appellate court rule for parties to decide what parts of the transcript would be necessary; (4) first appellant's countermand of his order took place well after the expiration of the ten-day period. Appellate Court Rule 10(b)(1). Moea`i v. Alai`a, 10 A.S.R.2d 103.

At the time of ordering transcripts, a party must deposit cash equal to the estimated cost, and counsel must file a copy of the reporter's receipt with the clerk of court. A.C.R. 10(b)(4). Alaimalo v. Sivia, 16 A.S.R.2d 117.

To minimize the costs imposed on the prevailing party by a delay in executing a money judgment, a court can require a supersedeas bond and award post-judgment interest. T.C.R.C.P. 62(d). Asifoa v. Lualemana, 17 A.S.R.2d 10.

An appellant has ten days to file an order for a transcript, to deposit with the reporter an amount of cash equal to the estimated cost of the transcript, and to file with the Clerk of the High Court the receipt for such deposit. A.C.R. 10(b)(1), (4). Aoelua v. Aoelua Family, 18 A.S.R.2d 1.

A party who desires costs to be assigned shall state them in an itemized and verified bill of costs which shall be filed with the clerk, with proof of service, within 14 days after the entry of judgment. A.C.R. 39(d). Pene v. Bank of Hawaii, 18 A.S.R.2d 75.

Attempts to, in essence, appeal a final and unappealable decision may be sanctioned by either the trial or appellate courts. Toluao v. Fuimaono, 21 A.S.R.2d 12.

Losing litigants should not be encouraged to bring hopeless appeals simply to delay the effect of a judgment, but in a legitimate appeal the effects of delay in collecting a judgment can partially be neutralized by an undertaking and an award of post-judgment interest. Euta v. Etimani, 25 A.S.R.2d 54.

§ 11(8)—Findings of Law – De Novo Review

The appellate court reviews a grant of summary judgment de novo. Thompson v. National Pacific Insurance, 20 A.S.R.2d 85.

In de novo review, the appellate court must review the record in light of its own independent judgment without giving special weight to the prior decision. Amerika Samoa Bank v. Pacific Reliant Industries, 20 A.S.R.2d 102.

When an appellate court finds that a trial court's decision was correct and supported on one ground, it may not consider the alternative grounds upon which the decision was based. Amerika Samoa Bank v. Pacific Reliant Industries, 20 A.S.R.2d 102.

An appellate court reviews a trial court's interpretation of law de novo. Nelson & Robertson Pty., Ltd. v. Diocese of Pago Pago, 21 A.S.R.2d 6.

Questions of law are reviewed de novo. In de novo review, the appellate court must review the record in light of its own independent judgment without giving special weight to the prior decision. Misaalefua v. Hudson, 1 A.S.R.3d 23 (App. Div. 1997).

Questions of law or mixed questions of law and fact are reviewed de novo. Korea Deep Sea Fisheries Assn. v. Ho Pyo Hong d/b/a Koreansa Shipping Agency, 3 A.S.R.3d 24 (App. Div. 1999).

An appellate court reviews questions of law de novo. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

An appellate court reviews questions of law de novo but may not set aside the findings of fact of the Trial Division unless they are clearly erroneous. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

§ 11(9)—Findings of Fact – Clearly Erroneous

Appellate court will not upset findings of fact by trial court unless clearly erroneous. Faagau v. Fuaga, 3 A.S.R. 488.

Appellate Division will not reverse findings of fact of Trial Division unless clearly erroneous. Tiumalu, v. Tiumalu, 3 A.S.R. 502.

Finding of fact of Trial Court will be set aside upon appeal if contradicted by decisions in previous High Court cases which Trial Court failed to take judicial notice of. Leasiolagi v. Faumui, 3 A.S.R. 509.

Appellate Division of High Court may affirm, modify, reverse or set aside judgment or order appealed from, but cannot set aside findings of fact by Trial Division unless clearly erroneous (CAS 213) Malaga v. Mase, 3 A.S.R. 518.

Appellate court will not reverse findings of trial court unless clearly erroneous. Lualemana v. Magalei, 4 A.S.R. 849.

Appellate court is bound by the findings of fact of trial court unless clearly erroneous. Leapaga v. Masalosalo, 4 A.S.R. 868.

Appellate division is bound by findings of fact of trial division unless clearly erroneous. (CAS 3.0503) Mageo v. Government, 4 A.S.R. 874.

Trial court, which is judge of facts, is in better position than appellate court to ascertain circumstances at time ordinance was promulgated. Mageo v. Government, 4 A.S.R. 874.

Evidence before appellate court of land formed by accretion which was not presented during trial to determine extent of land condemned will not upset fact finding of trial court. Mageo v. Government, 4 A.S.R. 874.

Where finding of trial court is substantiated in record, appellate court will not reverse unless clearly erroneous. Faatamala v. Haleck, 4 A.S.R. 888.

Appellate court will not set aside fact findings of trial division unless clearly erroneous. (CAS 3.0503) Faatamala v. Haleck, 4 A.S.R. 888.

Assignment of error that evidence was not sufficient to support decision of trial court must show particulars in which it is insufficient. Faatamala v. Haleck, 4 A.S.R. 888.

Appellate court may affirm, modify, set aside or reverse any judgment or order appealed from or remand for new trial, but it may review facts as well as law only in appeal from district courts. (CAS 3.0503) Tigi v. Government, 4 A.S.R. 894.

Appellate court will not set aside findings of fact by Trial Division unless clearly erroneous. (CAS 3.0503) Fuga v. Mageo, 4 A.S.R. 899.

Where trial court could reasonably come to conclusion that land surveyed was property of defendant, appellate court will not upset finding. Fuga v. Mageo, 4 A.S.R. 899.

Appellate Division of the High Court will not set aside findings of fact of trial court unless clearly erroneous. (CAS 3.0503) Utu v. Aumoeualogo, 4 A.S.R. 906.

Where evidence presented to trial court supports findings of fact, appellate court will not upset findings. Utu v. Aumoeualogo, 4 A.S.R. 906.

Where trial court finds land transaction void as fraudulent attempt to evade law, appellate court will not upset fact finding. Ross v. Scanlan, 4 A.S.R. 913.

Appellate Division is bound by findings of fact of trial court unless clearly erroneous. (CAS 3.0503) Willis v. Government, 4 A.S.R. 926.

Appellate court will presume that matters in record were considered by trial court. Willis v. Government, 4 A.S.R. 926.

Where there is evidence supporting the findings of fact of the trial court and there is no clearly erroneous findings of fact, appellate court will affirm judgment of trial court. Willis v. Government, 4 A.S.R. 926.

Where findings of trial court are based upon agreed facts, appellate court may review conclusions or inference of fact, as well as rulings of law. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 938.

Trial court, when presented with no disputable issues of fact, must apply law to facts before it, and not make finding of fact contradictory to evidence before it. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 938.

Trial court must decide case on basis of evidence before it and not on basis of "assumption" or "wholly unjustifiable mental gymnastics." Bottling Corporation of Samoa v. Lee, 4 A.S.R. 938.

Appellate court will not set aside findings of fact by Trial Division of the High Court unless clearly erroneous. (CAS 3.0503) Taufaasau v. Manuma, 4 A.S.R. 947.

Where ground for appeal is that evidence does not warrant finding of fact by trial court, statement of grounds shall specify what element has not been satisfactorily proved or what finding is clearly erroneous. (RPAD, Rule 7A) Taufaasau v. Manuma, 4 A.S.R. 947.

Appellant has burden of showing decision appealed from was clearly erroneous and that, in absence of such error, trial court would have reached decision more favorable to him. Taufaasau v. Manuma, 4 A.S.R. 947.

No other grounds of appeal other than those set out in notice of appeal shall be considered unless error is so manifest that the court will take notice of it on its own initiative. Taufaasau v. Manuma, 4 A.S.R. 947.

Where on appeal appellant goes into matters that are not in record, were not raised in cross-examination at trial, and were not specified in notice of appeal, he fails to meet burden of showing error in decision of trial court. Taufaasau v. Manuma, 4 A.S.R. 947.

Where trial court was aware of facts and issues with respect to forcefulness and character of potential matai title holder and where its decision indicates careful evaluation of this

testimony, appellate court will not find decision clearly against weight of evidence. Taufaasau v. Manuma, 4 A.S.R. 947.

The Appellate Division can set aside the findings of the trial court only if they are clearly erroneous. Willis v. Willis, 2 A.S.R.2d 102 (App. Div. 1986).

The standard of appellate review of judicial findings is the "clearly erroneous" standard set forth in *United States v. United States Gypsum Co.*, 333 U.S. 364 (1948). In re Matai title "Aoelua," 2 A.S.R.2d 104 (1986).

Appellate court will not reverse trial court's finding with regard to hereditary right of candidates for matai title where judgment is supported by substantial evidence. In re Matai Title Togiola, 3 A.S.R.2d 127.

In the absence of evidence of contrary Samoan custom, appellate court would not reverse trial court judgment that candidate for matai title could cumulate two separate claims to ancestry from original titleholder in determining the degree of his blood relationship to titleholder. In re Matai Title La'apui, 4 A.S.R.2d 7.

A trial court's findings of fact must not be disturbed on appeal unless they are clearly erroneous. In re Matai Title Tauaisafune, 6 A.S.R.2d 59.

When factual determinations rest upon credibility of witnesses the appellate court must defer to the judgment of the trial judge, who had firsthand opportunity to consider the witnesses and their submitted proofs. In re Matai Title Tauaisafune, 6 A.S.R.2d 59.

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.

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.

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.

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.

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.

Parties who readvanced on appeal the evidence and factual contentions they presented to the trial court did not thereby establish that the contrary findings of the trial court were clearly erroneous. Satele v. Fai`ai, 9 A.S.R.2d 20.

Question of the extent of land awarded to a party by an earlier court decision was one of fact, and trial court's resolution of this question should be upheld on appeal unless clearly erroneous. Willis v. Fai`ivae, 12 A.S.R.2d 37.

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.

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.

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.

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.

Whether or not a dissatisfied litigant had himself presented substantial evidence in trial is not the test for clear error; rather, the question is whether there was substantial evidence to support the trial court's conclusions. Moea`i v. Alai`a, 12 A.S.R.2d 91.

When determining whether trial court finding of facts is clearly erroneous, appellate court must give due regard to trial court's opportunity to weigh credibility of witnesses. T.C.R.C.P. 52(a). Moea`i v. Alai`a, 12 A.S.R.2d 91.

The Workmen's Compensation Commission's findings of fact and inferences derived therefrom are to be upheld by the High Court if supported by "substantial evidence," using a reasonableness standard. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

Appellate court may set aside findings of the trial court only if they are clearly erroneous. Uiagalelei v. Ulufale, 17 A.S.R.2d 158.

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.

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.

On appeal, a trial court's factual determinations are reviewed for clear error, and questions of law or mixed questions of law and fact are reviewed de novo. Roman Catholic Diocese of Samoa Pago Pago v. Avegalio, 20 A.S.R.2d 70.

Where an appellate court cannot say that a decision of the trial court was clearly erroneous, that decision will be allowed to stand. Roman Catholic Diocese of Samoa Pago Pago v. Avegalio, 20 A.S.R.2d 70.

It is not the appellate court's function to decide factual issues de novo. Afoa v. Asi, 20 A.S.R.2d 81.

The test for clear error is whether there is substantial evidence supporting the trial court's conclusions—not whether a dissatisfied litigant himself presented substantial evidence. Afoa v. Asi, 20 A.S.R.2d 81.

An appellate court is not obliged to search the record for error. EW Truck and Equipment Co. v. Coulter, 20 A.S.R.2d 88.

An appellate court should not, and on unsubstantiated assertions of error cannot, substitute its judgment for that made by the trier of fact at the conclusion of trial. EW Truck and Equipment Co. v. Coulter, 20 A.S.R.2d 88.

A finding is "clearly erroneous" only when the entire record produces the firm and definite conviction that the trial court committed error. EW Truck and Equipment Co. v. Coulter, 20 A.S.R.2d 88.

On appeal, a trial court's findings of fact are clearly erroneous only when the entire record produces a definite and firm conviction that a mistake has been made. Iosia v. National Pacific Insurance Ltd., 20 A.S.R.2d 123.

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.

On appeal, the test is not whether facts in the record are sufficient to support a decision for the appellant but whether sufficient evidence supported the trial court's decision. Afualo v. Puailoa, 21 A.S.R.2d 115.

On appeal, the relevant test is not whether facts in the record were sufficient to support a decision for an appellant, but whether sufficient evidence existed to support the trial court's decision. Taeleifi v. Willis, 21 A.S.R.2d 118.

Because an appellate court uses the "clearly erroneous" standard of review, it is possible for trial courts to make different factual findings in cases with different parties. Reid v. Puailoa, 23 A.S.R.2d 101.

Factual findings of the Land and Titles Division will not be disturbed unless the appellate court finds them to be clearly erroneous. A.S.C.A. § 43.0801(b). A factual finding is clearly erroneous when, despite evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Toeaina v. Malae, 25 A.S.R.2d 31.

A trial court's determination of negligence is reviewed under the "clearly erroneous" standard, not by a de novo reweighing of the evidence at the appellate level. The test for clear error is not whether a dissatisfied litigant has presented evidence of superior evidentiary support to sustain his version of the facts, but whether the trial court's findings are substantially supported. Moananu v. Alofipo, 25 A.S.R.2d 37.

In matters of fact, the Appellate Division reviews only for clear error, pursuant to A.S.C.A. § 43.0801(b). Mulitauaopele v. Mulitauaopele, 25 A.S.R.2d 43.

The question of whether a litigant's conduct was a substantial factor is for the trial court to determine unless testimony is so undisputed and uncontradictory that reasonable men could not differ. Crispin v. American Samoa Gov't, 25 A.S.R.2d 49.

Factual findings of the Trial Division will not be reversed on appeal unless they are clearly erroneous. A.S.C.A. § 43.0801(b). Euta v. Etimani, 25 A.S.R.2d 54.

The standard of review applied to a courts denial of a request for recusal is, in accordance with A.S.C.A. § 43.0801(b), "clearly erroneous." In re Matai Title "Faumuina", 26 A.S.R.2d 1.

An appellate court will not set aside a trial court's findings in the absence of clear error. A.S.C.A. § 43.0801(b). The test is not whether facts in the record may support a decision for an appellant, but whether sufficient evidence supported the trial court's decision. Toleafoa v. American Samoa Gov't, 26 A.S.R.2d 20.

The court will not second-guess decisions properly in the jury's province, particularly decisions with firm foundations. American Samoa Gov't v. Snow, 26 A.S.R.2d 78.

The Appellate Division of this court can set aside findings of the trial court only if they are clearly erroneous, and may not simply re-weigh the facts presented at trial. Uiagaleleli v. Ulufale, 26 A.S.R.2d 118.

The findings of the trial court may not be set aside on appeal unless clearly erroneous. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

On an appeal on a stenographic record from a traffic conviction in the District Court the trial court's findings of fact are reviewed for clear error. A.S.C.A § 46.2403(b). Vaapuu v. American Samoa Gov't, 3 A.S.R.3d 1 (App. Div. 1999).

It can not be said the trial court's finding appellant guilty of Careless Driving Causing Property Damage was clearly erroneous where the evidence showed without dispute that the collision occurred outside of Appellant's lane as marked by the solid white line painted on the pavement some 12-16 inches from the (gravel) shoulder of the roadway. Vaapuu v. American Samoa Gov't, 3 A.S.R.3d 1 (App. Div. 1999).

A trial court's factual determinations are reviewed for clear error. Korea Deep Sea Fisheries Assn. v. Ho Pyo Hong d/b/a Koreansa Shipping Agency, 3 A.S.R.3d 24 (App. Div. 1999).

A trial court's factual determinations are reviewed for clear error. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

Trial court's findings of fact can be set aside only if clearly erroneous. In Re Matai Title Tagoilelagi, 3 A.S.R.3d 66 (App. Div. 1999).

Under A.S.C.A. § 43.0801(b), the court is prohibited from setting aside findings of fact by the land and titles division unless such findings are clearly erroneous. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

An appellate court will not set aside a trial court's findings of fact in the absence of clear error. Timu v. McMoore, 6 A.S.R.3d 41 (App. Div. 2002).

This court will not disturb the trial court's findings when they are supported by substantial evidence, even if a contrary finding would also be supported by substantial evidence. Timu v. McMoore, 6 A.S.R.3d 41 (App. Div. 2002).

Findings of fact of trial court may not be set aside by appellate court unless clearly erroneous, i.e., not supported by substantial evidence in record. Williams v. Tupuola, 6 A.S.R.3d 44 (App. Div. 2002).

When factual issue comes down to credibility of witnesses, appellate court must defer to trial court's judgment. Williams v. Tupuola, 6 A.S.R.3d 44 (App. Div. 2002).

An appellate court reviews questions of law de novo but may not set aside the findings of fact of the Trial Division unless they are clearly erroneous. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

A trial court finding of fact is clearly erroneous when "the entire record produces the definite and firm conviction that the court below committed a mistake, according particular weight to the trial judge's assessment of conflicting and ambiguous facts." TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

§ 11(10)—Credibility of Evidence and Witnesses

Trial court is judge of facts and credibility of witnesses as well as of law, and appellate court will not find error in trial court's determination of which witnesses to believe. Willis v. Government, 4 A.S.R. 926.

Appellate court should not substitute its own judgment of the credibility of witnesses for the judgment of the trial court. National Pacific Insurance Co. v. Oto, 3 A.S.R.2d 94.

When factual determinations rest upon credibility of witnesses the appellate court must defer to the judgment of the trial judge, who had firsthand opportunity to consider the witnesses and their submitted proofs. In re Matai Title Tauaisafune, 6 A.S.R.2d 59.

Credibility of witnesses is uniquely the prerogative of the trial court. Utuutuvanu v. Mataituli, 12 A.S.R.2d 88.

Trial court does not merely determine which version of events is more researched, less contradicted, or better sounding story, but also assesses the credibility of the live witnesses before it. Moea`i v. Alai`a, 12 A.S.R.2d 91.

When determining whether trial court finding of facts is clearly erroneous, appellate court must give due regard to trial court's opportunity to weigh credibility of witnesses. T.C.R.C.P. 52(a). Moea`i v. Alai`a, 12 A.S.R.2d 91.

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.

If internally consistent, a trial court's findings based on its decision to give credibility to the testimony of a particular witness(es), each having told a coherent and facially plausible story not contradicted by extrinsic evidence, can virtually

never be clear error. Roman Catholic Diocese of Samoa Pago Pago v. Avegalio, 20 A.S.R.2d 70.

It is for the trial court to resolve conflicts in the evidence, and to judge the credibility of the witnesses. The Appellate Division will not overturn the trial court's resolution of conflicting evidence, when substantial evidence supports its ruling. Reine v. Taotoai, 25 A.S.R.2d 136.

In reviewing a decision of the Land and Titles Division or the Trial Division, the Appellate Division utilizes a "clear error" standard. This standard of review applies to the lower court's evaluation of witnesses' credibility. Paolo v. Utu, 26 A.S.R.2d 18.

The reviewing court gives weight to the trial judge's assessment of conflicting and ambiguous facts. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

Credibility of witnesses is uniquely the prerogative of the trial court. Timu v. McMoore, 6 A.S.R.3d 41 (App. Div. 2002).

Standard of clear error applies to lower court's evaluation of witnesses' credibility. Williams v. Tupuola, 6 A.S.R.3d 44 (App. Div. 2002).

Credibility determinations are the prerogative of the trial court and an appellate court will not upset those determinations. Ulifaleilupe v. Uiagalelei, 6 A.S.R.3d 61 (App. Div. 2002).

Family history and tradition, standing alone, does not constitute substantial evidence when there is direct evidence to the contrary. Ulifaleilupe v. Uiagalelei, 6 A.S.R.3d 61 (App. Div. 2002).

§ 11(11)—Administrative Agency Decisions

SEE ADMINISTRATIVE LAW § 5 – JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

Court should grant an interlocutory stay of an administrative board decision only if there is a substantial likelihood that the petitioner will prevail on the merits and the petitioner will be greatly or irreparably injured if the stay is not granted. Leti v. Immigration Board, 8 A.S.R.2d 107.

That a different conclusion might also have been supported by the evidence is insufficient to warrant reversal of the Workmen's Compensation Commission's conclusions. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

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.

If made upon unlawful procedure, a decision of the Immigration Board may be reversed, modified, or remanded for further proceedings by the Appellate Division of the High Court. A.S.C.A. § 41.0212(3). Farapo v. American Samoa Gov't, 23 A.S.R.2d 136.

A court utilizes a "clearly erroneous" standard of review in reviewing Workmen's Compensation Commission orders. Harris v. Commissioner of the American Samoa Gov't Workmen's Compensation Commission, 24 A.S.R.2d 124.

Appeals of Zoning Board decisions proceed in like manner to appeals under the Administrative Procedures Act, in that the administrative record must be submitted within 30 days and the court is confined to that record, though it may receive evidence to supplement the record. Ala`ilima v. Zoning Board, 25 A.S.R.2d 146.

The court is not to reweigh the evidence on factual questions and is to give "appropriate weight to the agency's experience, technical competence, and specialized knowledge." A.S.C.A. § 4.1043(b). McGuire v. Zoning Board, 26 A.S.R.2d 59.

A.S.C.A. § 4.1040 provides for appellate review of a final administrative decision in a "contested case." In such cases, the Appellate Division may reverse or modify an agency decision if it is contrary to law or based on factual findings which are "clearly erroneous," or if it is otherwise arbitrary, capricious or abusive of discretion. A.S.C.A. § 4.1043-44. Pen v. Lavata`i, 30 A.S.R.2d 10.

Certain administrative functions, such as the determination of whether an alien should be deported according to existing immigration and probably the determination of whether an alienation of land is improvident within the meaning of A.S.C.A. § 37.0203(c), are beyond the reach of any judicial review because they are committed to agency discretion by law. Pen v. Lavata`i, 30 A.S.R.2d 10.

An administrative decision does not concern a contested case under A.S.C.A § 4.1040 when a party was not represented at Land Commission hearings and could not contest the lease. Pen v. Lavata`i, 30 A.S.R.2d 10.

Appellate courts lack subject matter jurisdiction to consider issues that were not presented to the administrative agency. Pen v. Lavata`i, 30 A.S.R.2d 10.

Under A.S.C.A. § 4.1041(b) a stay of an administrative decision may be issued on appropriate terms without an evidentiary hearing. B.H.P. Petroleum South Pac., Inc. v. American Samoa Gov't, 2 A.S.R.3d 1 (App. Div. 1998).

Under A.S.C.A. § 4.1043(a) and (b), the Appellate Division is authorized to hear testimony and receive evidence, and in reviewing an agency's determination, must give appropriate weight to the agency's experience, technical competence, and specialized knowledge. Coleman v. Fuimaono, 2 A.S.R.3d 44 (App. Div. 1998).

Judicial power in American Samoa, like the United States, is limited review of presently pending cases or controversies. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

Where respondent had not filed an answer in response to petition for review of order, such omission did not require court to give judgment in petitioner's favor, as rule requiring timely filing of answer imposed no sanction for its violation. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

Courts reviewing federal agency actions under the Administrative Procedures Act are limited to compelling agency actions or holding actions unlawful. Courts cannot grant monetary relief. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

In American Samoa, pecuniary relief is not available in judicial review of administrative proceedings. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

If a disappointed bidder wishes for monetary relief, the proper course of action is not through appellate review of administrative proceedings, but rather through such means as a trial de novo. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

Where party had moved for reconsideration or new trial before Administrative Law Judge and had also petitioned for judicial review, motion for new trial needed to be decided before judicial review could take place. Forsgren v. American Samoa Gov't, 5 A.S.R.3d 13 (App. Div. 2001).

When administrative law matter becomes ripe for review by denial of party's motion for reconsideration or new trial, petitioner should thereafter file entire record of the administrative proceeding, including transcripts of hearings, within 30 days of request to proceed. Forsgren v. American Samoa Gov't, 5 A.S.R.3d 13 (App. Div. 2001).

Agency jurisdiction is generally the power granted to a particular department, board or commission of government to effectively administer the laws enacted by the Legislature under that agency's authority. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The Administrative Procedures Act of 1969 (A.S.C.A. § 4.1001 et seq) establishes the general procedures which all A.S.G. departments, boards, and commissions must follow when empowered to act as agencies with rule-making or contested case decision making authority. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Under the Administrative Procedures Act, hearings are to be conducted under minimal due process requirements and relaxed rules of procedure and evidence, which are set forth in A.S.C.A. §§ 4.2025-4.1037. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

According to A.S.C.A. § 4.1032(5), administrative hearings are conducted by a "hearings officer", otherwise known as an "administrative law judge". Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The Administrative Procedures Act affords an aggrieved party the right, upon exhausting the administrative decision making process, to limited judicial review of an agency's final decision by the Appellate Division of the High Court. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Under the Administrative Procedures Act, the High Court must, in most instances confine its review of administrative decisions to the record and decision as developed and issued by the agency. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Under the Administrative Procedures Act, the Court may not substitute its judgment on the weight of the facts for that of the agency and the Court is required to give appropriate weight to the agency's experience, technical competence and specialized knowledge. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 11(12)—Abuse of Discretion

Trial judge asking of leading questions rests in his discretion and will not be controlled by appellate court unless abused. Ross v. Scanlan, 4 A.S.R. 913.

A trial court's decision to exclude spectators from the courtroom during testimony of a particular witness must not be disturbed on appeal unless the decision was an abuse of discretion. Masaniai v. American Samoa Gov't, 6 A.S.R.2d 114.

Court may exercise its discretion to deny an extraordinary writ where petitioners have unduly delayed in asserting their rights. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Although courts have granted relief from judgment when a party did not learn of the judgment prior to the appeal deadline through some fault of the clerk or another court official, it is an abuse of discretion for the court to grant relief when the

party missed the appeal deadline through his own or his lawyer's fault. Lualemana v. Asifoa, 17 A.S.R.2d 151.

A failure to follow the clear meaning of A.S.C.A. § 1.0409(d) results in prejudice to all involved. The legislature has required that the judiciary issue written findings of fact and conclusions of law. The trial court has no discretion to ignore that legislative mandate. In re Matai Title "Faumuina", 26 A.S.R.2d 1.

The burden is on appellant to produce a record which shows the court abused its discretion. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

Trial court's decision to grant or deny continuance will only be overturned upon clear showing of abuse of discretion. Williams v. Tupuola, 6 A.S.R.3d 44 (App. Div. 2002).

Trial court did not abuse its discretion in granting substitution of parties and in denying continuance. There was ample evidence that change caused unfair surprise and no prejudice was demonstrated. Williams v. Tupuola, 6 A.S.R.3d 44 (App. Div. 2002).

A trial court's decision to bifurcate resolution of issues is reviewed for abuse of discretion. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

A trial court does not abuse its discretion by considering apportionment during the damages phase of the trial rather than the liability phase. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

§ 11(13)—Harmless and Reversible Error

Error of Trial Court will not mandate reversal of judgment where case has been properly disposed of and there is nothing upon which error can operate. Dwyer v. McDonald, 1 A.S.R. 652.

Where appellant has local counsel to represent her at hearing on appeal, court's refusal to grant continuance to permit her time to bring counsel from United States was not error. Betham v. Faumuina, 3 A.S.R. 537.

Fact judge wrote opinion using his notes and reporter's notes does not constitute error. Scanlan v. Steffany, 3 A.S.R. 583.

Argumentative remarks on appeal do not constitute grounds for reversing or setting aside decision of trial court. Mageo v. Government, 4 A.S.R. 874.

Where error in trial court proceedings is in favor of appellant, there is no grounds for reversal. Faatamala v. Haleck, 4 A.S.R. 888.

Where court refuses to permit witnesses requested by counsel to testify about blood relationship, but court decides issue in favor of party requesting witness, then refusal is not prejudicial error. Utu v. Aumoeualogo, 4 A.S.R. 906.

Trial court holding that no candidate prevailed on issue of best hereditary right was not substantial error justifying reversal by appellate court, where (1) trial court found that there were "minute distinctions" among candidates' blood relationship to original titleholder, and (2) candidate who prevailed at trial would clearly have had the best hereditary right under traditional rule that hereditary right to title depends on blood relationship to any holder of the title. In re Matai Title Le'iato, 3 A.S.R.2d 133.

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.

Where trial court, in deciding that a trusteeship devolved upon the appellee in his capacity as a successor in matai title to the original trustee, had failed to consider a plausible argument raised at trial to the effect that the trusteeship should instead have devolved upon the original trustee's successors in the office of district governor, but the appellee had recently assumed the office of district governor, the question whether the trusteeship devolved upon the holders of the office of district governor of the matai title was moot in the context of the case and remand to trial court was inappropriate. Mose v. Tufele, 12 A.S.R.2d 31.

Argument that trial court had incorrectly referred to disputed land by appellee's name for it, rather than by the different name used by appellant, would not advance the merits of appellant's case where appellee prevailed on the basis of competent evidence quite unrelated to the name of the land. Utuutuvanu v. Mataituli, 12 A.S.R.2d 88.

Denial of an interpreter generally requires a showing of actual prejudice to the defense to justify reversal on appeal. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

Even if the trial court's decision concerning the value of the marital estate was perhaps mistaken in some particulars, it was not clearly erroneous. Rocha v. Rocha, 20 A.S.R.2d 63.

The trial court did not commit manifest error when it refused to allow a proffered expert to testify in terms of a hypothetical, based upon test results of a person whose qualifications were never properly presented, particularly when the final decision could be a matter of life and death. EW Truck and Equipment Co. v. Coulter, 20 A.S.R.2d 88.

A trial court's errors require reversal unless it is more probable than not that the prejudice resulting from the error did not materially affect the verdict. T.C.R.C.P. 52(a). Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

§ 12 Conflict of Laws

SEE CONSTITUTIONAL LAW § 3(4) – CONFLICT OF LAWS

§ 12(1) —Law of the Forum

Deregulation of airlines does not leave territorial court free to look only to the territorial law of contracts in deciding cases relating to lost baggage, since detailed federal regulations apply to baggage liability and since even in areas not expressly regulated the continued federal interest in air transportation suggests that federal common law should provide the rule of decision. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

In the absence of citation of authorities concerning applicable foreign law, the foreign law is presumed not to differ from that of the forum. Pritchard v. Purcell, 11 A.S.R.2d 16.

Even if petitioner could prove her marriage void under applicable foreign law, action for annulment would be subject to equitable defenses and limitations applicable to annulment actions in the forum. Pritchard v. Purcell, 11 A.S.R.2d 16.

The High Court cannot enjoin proceedings in other jurisdictions in a limitation-of-liability proceeding, because the federal statute restricts jurisdiction to federal district courts and because neither the territorial legislature nor the court's rules can extend the court's jurisdiction to encompass proceedings in other jurisdictions. 46 U.S.C. §§ 145, 181 et seq.; T.C.R.C.P. Rule F(1). In re Complaint of Voyager, Inc., 23 A.S.R.2d 47.

Full faith and credit requires that a forum should respect an earlier judgment to the extent that issues presented therein received a res judicata determination. U.S. CONST., Art. IV, § 1. In re A Minor Child, 28 A.S.R.2d 33.

Under the full faith and credit clause, a forum state has as much leeway to modify or depart from a foreign judgment as does the state in which it was rendered. U.S. Const., Art. IV, § 1. In re A Minor Child, 28 A.S.R.2d 33.

In a conflict of law situation, the law of the forum with the most significant relationship to the transaction and the parties will be applied in contract situations. Pal Air Int'l, Inc. v. Porter, 30 A.S.R.2d 104.

In determining which forum has the most significant relationship to a transaction and the parties for determination of what law to apply in a contract action, five factors are of primary consideration: (a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties. Pal Air Int'l, Inc. v. Porter, 30 A.S.R.2d 104.

§ 12(2) —Foreign Courts and Judgments

Statutes enacted in other jurisdictions, or applying to different but related subjects than those before the court, are among the factors courts should consider in applying and fashioning judge-made law. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

Unless presented with evidence that foreign law differs from local law, courts will assume that it does not. Theo H. Davies & Co. v. Pacific Development Co., 6 A.S.R.2d 5.

Territorial court would defer as a matter of comity or full faith and credit to the lawful orders of a court of the United States properly exercising its jurisdiction even if there were no federal statute requiring it to do so. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 6 A.S.R.2d 62.

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.

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.

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.

Since Oregon court had no jurisdiction to transfer title to land in American Samoa, judgment attempting to do so was entitled to full faith and credit only if the question of jurisdiction had been fully and fairly litigated in the court which rendered the original judgment. Godinet v. Godinet (Mem.), 11 A.S.R.2d 156.

Court may modify a foreign alimony judgment, at least with respect to those portions of the judgment that have already come due, notwithstanding the entitlement of the foreign judgment to full faith and credit. Godinet v. Godinet (Mem.), 11 A.S.R.2d 156.

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.

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.

Judgments of the courts of foreign nations may be recognized in American Samoa under the doctrine of comity, by which a nation recognizes in its territory the legal acts of another nation with due regard both to international duty and convenience and to the rights of persons protected by its laws. In re Petition of Puailoa, 13 A.S.R.2d 22.

Recognition of any particular judgment of a foreign court depends on wide ranging local policy considerations, including whether the foreign proceeding comports with due process requirements. In re Petition of Puailoa, 13 A.S.R.2d 22.

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.

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.

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.

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.

Where a party to a divorce decree issued by the High Court which provided for custody and support of the parties' minor children and a property settlement later sought to modify the decree when the parties no longer lived in American Samoa, the Court declined to exercise jurisdiction on the issues of child support and custody, since the courts of domicile or residence could more effectively enforce terms ensuring the children's welfare and best interests and had a more substantial interest in doing so. Mahoney v. Mahoney, 16 A.S.R.2d 109.

The High Court of American Samoa has no authority, statutory or otherwise, to order a stay of admiralty proceedings in a federal district court. Fa'atasiga v. M/V Ocean Pearl, 19 A.S.R.2d 59.

A foreign divorce decree was not recognized when (1) the decree was not properly authenticated, (2) the foreign jurisdiction lacked a legitimate interest in the parties' marital status, (3) the sole purpose of seeking a divorce in a foreign court was to evade American Samoa's laws, and (4) the divorce proceedings were ex parte and did not give reasonable notice to the defendant. Stevens v. Stevens, 21 A.S.R.2d 76.

The High Court cannot enjoin proceedings in other jurisdictions in a limitation-of-liability proceeding, because the federal statute restricts jurisdiction to federal district courts and because neither the territorial legislature nor the court's rules can extend the court's jurisdiction to encompass proceedings in other jurisdictions. 46 U.S.C. §§ 145, 181 et seq.; T.C.R.C.P. Rule F(1). In re Complaint of Voyager, Inc., 23 A.S.R.2d 47.

In enforcing a foreign judgment, the High Court may not relitigate the merits of the original action or consider a defense that could have been raised in the original action. Euta v. Etimani, 25 A.S.R.2d 54.

The High Court of American Samoa is empowered to enforce a judgment of any United States court or other court entitled to full faith and credit in American Samoa under the Uniform Enforcement of Foreign Judgments Act. A.S.C.A. §§ 43.1701-09. DeStael v. Strasburg, 25 A.S.R.2d 96.

§ 13 Writs

§ 13(1) —General Provisions

Appellate Division of High Court has power to issue writ of prohibition against Trial Division, following common law practice, based on statute authorizing court "to issue all writs . . . not inconsistent with law or with the rules made by the Chief Justice." 5 A.S.C. 403 (1973). Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

The writ of mandamus is meant to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief, and if the defendant owes the plaintiff a clear, indisputable, and non-discretionary duty. Lutu v. Ale, 28 A.S.R.2d 43.

Certiorari is a discretionary form of review, not one of right. Fuavai v. District Court, 2 A.S.R.3d 41 (App. Div. 1998).

§ 13(2) —Procedural Details

Standard of review in a mandamus proceeding, where respondent has apparently performed the duty that petitioner seeks to enforce, is whether that duty was performed in accordance with law. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Court may exercise its discretion to deny an extraordinary writ where petitioners have unduly delayed in asserting their rights. Siofele v. Shimasaki, 9 A.S.R.2d 3.

The party seeking a writ of mandamus bears the burden of showing a clear and indisputable right to it. Mulitauaopele v. Maiava, 24 A.S.R.2d 134.

A single justice of the Appellate Division may grant or deny any request for relief, including a petition for an extraordinary writ, except to dismiss or otherwise determine an appeal or other proceeding; this decision may be reviewed by a full panel of the Appellate Division. A.C.R. 27(c). Soli Corp. v. Amerika Samoa Bank, 24 A.S.R.2d 166.

The writ of mandamus is one of a number of common-law writs referred to as extraordinary writs or extraordinary remedies. The standard for issuance does not change, regardless of what the court calls the writ. Mulitauaopele v. Maiava, 29 A.S.R.2d 116.

A party should file a writ seeking extraordinary relief, such as a writ for certiorari, in a timely fashion. If the law does not specify the time limit for filing the particular writ, the filing should occur within a reasonable time. Fuavai v. District Court, 2 A.S.R.3d 41 (App. Div. 1998).

Where rules did not provide time limit for filing a writ of certiorari to the High Court, the analogous rule for review of an agency's decision under the Administrative Procedures Act (30 days) would be used due to the similarities between the review of an agency's decision under the APA and the High Court's review of a District Court's judgment of contempt. Fuavai v. District Court, 2 A.S.R.3d 41 (App. Div. 1998).

Review under certiorari is limited to whether a judicial body acted within the scope of its authority, and does not address errors of law or fact committed by an inferior tribunal within the limits of its jurisdiction. Fuavai v. District Court, 2 A.S.R.3d 41 (App. Div. 1998).

§ 13(3) —Elements

§ 13(3)(a)—Generally

Court will grant mandamus to compel performance of a ministerial act or mandatory duty where the petitioner has a specific, well-defined legal right, respondent has a corresponding specific, well-defined duty, and there is no other adequate remedy. Siofele v. Shimasaki, 9 A.S.R.2d 3.

The extraordinary writ of mandamus will not be issued unless (1) other forms of relief are unavailable, (2) the alleged duty is clearly mandatory and not discretionary, and (3) defendant owes the duty to the plaintiff. Mulitauaopele v. Maiava, 24 A.S.R.2d 97.

The extraordinary writ of mandamus will not be issued unless: (1) the plaintiff has a plain right to have the act performed; (2) the defendant has a plain duty to perform it; and (3) there is no other adequate remedy available to the plaintiff. Lutu v. Ale, 28 A.S.R.2d 43.

The writ of mandamus is meant to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief, and if the defendant owes the plaintiff a clear, indisputable, and non-discretionary duty. Lutu v. Ale, 28 A.S.R.2d 43.

The standard for issuing the alternative writ of mandamus is that the petitioner must make out a prima facie case for granting the peremptory writ. Porter v. Registrar of Vital Statistics, 28 A.S.R.2d 175.

Mandamus will not issue unless (1) the plaintiff has a plain right to have the act performed; (2) the defendant has a plain duty to perform it; and (3) there is no other adequate remedy available to the plaintiff. Mulitauaopele v. Maiava, 29 A.S.R.2d 116.

The writ of mandamus is one of a number of common-law writs referred to as extraordinary writs or extraordinary remedies. The standard for issuance does not change, regardless of what the court calls the writ. Mulitauaopele v. Maiava, 29 A.S.R.2d 116.

A writ of mandamus is an extraordinary writ and will not issue unless: (1) the plaintiff has a plain right to have the act performed; (2) the defendant has a plain duty to perform it;

and (3) there is no other adequate remedy available to the plaintiff. American Samoa Gov't v. Adams, 29 A.S.R.2d 180.

Where writs of execution and garnishment did not conform to and follow the judgment, Clerk of Courts properly directed to strike surplusage before issuing them. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 87 (Trial Div. 1997).

A writ of mandamus is an extraordinary writ and will not issue unless: (1) the plaintiff has a plain right to have the act performed; (2) the defendant has a plain duty to perform it; and (3) there is no other adequate remedy available to the plaintiff. Adams v. Reavis, 1 A.S.R.3d 146 (Trial Div. 1997).

Where statute did not authorize, but instead prohibited, work release of inmate, writ of mandamus would not lie. Adams v. Reavis, 1 A.S.R.3d 146 (Trial Div. 1997).

§ 13(3)(b)—Plaintiff's Specific Legal Right

Appellate Division has authority analogous to U.S. Supreme Court to insure orderly administration of justice by issuing writ of prohibition to determine Trial Division's in rem admiralty jurisdiction. Vessel Fijian Swift v. Trial Division, 4 A.S.R. 983.

A writ of mandamus is appropriate only if the claim is clear and certain and the duty of the officer is ministerial and so plainly prescribed as to be free from doubt. Lutu v. Ale, 27 A.S.R.2d 138.

A.S.C.A. § 10.0603 does not contemplate or give any direction regarding the disclosure of financial records to individual members of either house, and falls well short of creating the "plain duty" and "plain right" required for the issuance of a writ of mandamus. Lutu v. Ale, 28 A.S.R.2d 43.

Where the right to view a public record is established, mandamus may compel disclosure of the record by whoever is preventing such disclosure. Lutu v. Ale, 28 A.S.R.2d 43.

A writ of mandamus will not issue to enforce rights that are common to everyone and enjoyed by the public at large. Lutu v. Ale, 28 A.S.R.2d 43.

§ 13(3)(c)—Defendant's Indisputable Duty

Court will issue mandatory injunction compelling public official to perform purely ministerial duty involving no discretion, such as certifying election of senate candidate. Meredith v. Mola, 4 A.S.R. 773.

Court lacks power to issue writ of mandamus compelling Governor to perform duties which are partly discretionary and partly ministerial. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 938.

Administrative body's failure to act may be addressed through extraordinary writ proceedings. T.C.R.C.P. Rule 88. Siofele v. Hall, 12 A.S.R.2d 9.

Two week period without formal response from bar association to petitioner's letter requesting reinstatement was not the sort of "failure to act" which might be remedied by extraordinary writ proceedings, especially where petitioner did not file a formal application or provide requested information to the bar association. Siofele v. Hall, 12 A.S.R.2d 9.

A writ of mandamus will not be issued if the application or interpretation of a statute is discretionary. Mulitauaopele v. Maiava, 24 A.S.R.2d 134.

A writ of mandamus is appropriate only if the claim is clear and certain and the duty of the officer is ministerial and so plainly prescribed as to be free from doubt. Lutu v. Ale, 27 A.S.R.2d 138.

A.S.C.A. § 10.0603 does not contemplate or give any direction regarding the disclosure of financial records to individual members of either house, and falls well short of creating the "plain duty" and "plain right" required for the issuance of a writ of mandamus. Lutu v. Ale, 28 A.S.R.2d 43.

A writ of mandamus may not compel the reversal of a decision of a legislative leader, exercising the proper discretion of his legislative capacity, but where the required act of a legislative leader is purely ministerial, mandamus may lie to compel it. Lutu v. Ale, 28 A.S.R.2d 43.

The petitioner will fail the second prong of the test for issuing an alternative writ of mandamus unless he/she establishes that the duty of respondent is purely "ministerial." A duty is ministerial only if it is clearly proscribed and does not involve an exercise of judgment or discretion. Porter v. Registrar of Vital Statistics, 28 A.S.R.2d 175.

Determining whether an act is discretionary is a necessary incident to determining whether the defendant has a "plain duty" to perform the act under the second criterion of the three-part test. Mulitauaopele v. Maiava, 29 A.S.R.2d 116.

§ 13(3)(d)—Other Avenues of Relief Exhausted

Where statute provided for appeal to board of registration from a denial of voter registration by election officer, and for judicial review of an adverse decision of the board of registration, court would not issue writ of mandamus to election officer ordering him to register prospective voter who had not appealed to board of registration. A.S.C.A. §§ 6.0224, 6.0230. Siofele v. Shimasaki, 8 A.S.R.2d 81.

A prerequisite to granting a writ of mandamus is the absence of other adequate relief. American Samoa Government v. District Court, 10 A.S.R. 2d 18.

Where statutory right of appeal from alleged errors of law by district court provided government with an adequate remedy, government's petition to High Court for writ of mandamus should be denied. A.S.C.A. § 46.2405. American Samoa Government v. District Court, 10 A.S.R. 2d 18.

The extraordinary writ of mandamus is only available if other forms of relief are unavailable. Soli Corp. v. Amerika Samoa Bank, 24 A.S.R.2d 166.

§ 14 Garnishment

SEE SECURED TRANSACTIONS § 7 – GARNISHMENT OF FUNDS

Where owner of mortgaged property retained the right to use and possession of the property until default, and where there was no evidence of default on the debt secured by the mortgage, garnishment by unsecured judgment creditor of rents derived from the property did not interfere with the rights of the mortgagee. A.S.C.A. § 37.1005. Landrigan v. Opelle, 5 A.S.R. 2d 155.

Where evidence established that debtor retained most of the proceeds of property given to secure obligation to creditor rather than using the proceeds to repay the obligation, garnishment of those proceeds to satisfy debt to a third party judgment creditor would not interfere with the rights of the secured creditor. Landrigan v. Opelle, 5 A.S.R. 2d 155.

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.

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.

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.

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.

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.

It is generally unlawful to garnish more than 25% of an individual's disposable earnings, or to deduct earnings unless the employee has agreed in writing. 15 U.S.C. § 1673; A.S.C.A. § 32.0333. Sa'aga v. Sa'aga, 20 A.S.R.2d 18.

An application for an order directing the Government of American Samoa to show cause why it should not be held liable for a judgment remains unsupported if it is not accompanied by evidence that the Governor has given prior approval to the garnishment of the Government pursuant to A.S.C.A. § 43.1803(b). Development Bank of American Samoa v. Mau, 25 A.S.R.2d 17.

Where writs of execution and garnishment did not conform to and follow the judgment, Clerk of Courts properly directed to strike surplusage before issuing them. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 87 (Trial Div. 1997).

Judgment may not be rendered against garnishee who has not been notified of controversion pleading and of time and place of trial. Coffelt v. Pacific Rim Consulting & Inspecting Corp., 5 A.S.R.3d 168 (Trial Div. 2001).

Judgment may not be entered against garnishee until principal debtor defendant on underlying debt has been given seven days' written notice of controversion proceeding and trial date. Coffelt v. Pacific Rim Consulting & Inspecting Corp., 5 A.S.R.3d 168 (Trial Div. 2001).

Where Court found principal defendant controlled garnishee as his alter ego, based on organizational and operational history of corporate garnishee, and principal defendant's general authority to handle affairs of purported sole owner and operator of garnishee, service of controversion pleading and notice of trial on principal defendant satisfied requirement of notification to garnishee. Coffelt v. Pacific Rim Consulting & Inspecting Corp., 5 A.S.R.3d 168 (Trial Div. 2001).

Where Judgment creditor failed to prove by preponderance of evidence that garnishee was indebted to principal defendant or had any of principal defendant's property at time writ of garnishment was served on garnishee, Court properly dismissed judgment creditor's controversion proceeding and terminated his garnishment proceeding. Coffelt v. Pacific Rim Consulting & Inspecting Corp., 5 A.S.R.3d 168 (Trial Div. 2001).

§ 15 Alternative Dispute Resolution

§ 15(1) —Mediation

RESERVED

§ 15(2) — Voluntary Arbitration

RESERVED

§ 15(3) — Compulsory Arbitration

RESERVED

§ 15(4) —Condemnation Proceedings

SEE REAL PROPERTY § 1(3) —Eminent Domain

A.S.C.A. § 43.1011 does not provide a clear standard of review of arbitrated condemnation proceedings. American Samoa Gov't v. .Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

§ 15(5) —Appeal of Arbitrator's Decision

A.S.C.A. § 43.1011 does not provide a clear standard of review of arbitrated condemnation proceedings. American Samoa Gov't v. .Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

A.S.C.A. § 4.1044 provides for a remand where substantial rights of the petitioner have been prejudiced because the arbitrators' decision violates of applicable constitutional or statutory provisions, or if it is made upon unlawful procedure. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

In reviewing an arbitration award, the reviewing Court need not determine the applicable standard of review where it is apparent that the arbitrators failed to follow the specific statutory procedures. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

A.S.C.A. § 43.1010 requires that the arbitration award contain findings or conclusions of the panel; reflecting how the award was determined. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

Where an award does not contain specific, written findings or conclusions of the panel, but merely arrives at amount, the award should be remanded. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

CONSTITUTIONAL LAW

§ 1 Judicial Review
2 Justiciable Case or Controversy
2(1) —Standing
2(2) —Ripeness
2(3) —Mootness
2(4) —Political Questions
2(5) —Advisory Opinions
3 Constitutional and Statutory Interpretation
3(1) —General Provisions
3(2) —Legislative Intent
3(3) —Statutory Construction
3(4) —Conflict of Laws
6 Separation of Powers
7 Full Faith and Credit
6 Due Process
7 Individual Rights
7(1) —Generally
7(2) —Equal Protection
7(3) —Freedom of Speech, Press, and Religion
7(4) —Takings and Just Compensation
7(5) —Cruel and Unusual Punishment
7(6) —Discrimination
9 Contracts
10 Habeas Corpus

§ 1 Judicial Review

In deciding whether questions asked a witness by members of a legislative committee were relevant to the committee's charter, a court should impose no stricter standard than it would impose on itself in a similar case. Senate Select Investigating Committee v. Horning, 3 A.S.R.2d 14.

Only in extraordinary circumstances will a court compel the testimony of the chief executive of the jurisdiction in which the court sits. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Where evidence indicated that decision to terminate probationary employee was made by appropriate executive official with governor's approval rather than by advisory board, court would not question the decision. A.S.C.A. §§ 7.0102, 7.0206, 7.0211. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Judiciary must not substitute its own judgment for that of executive branch on what is in "the best interest of the government." A.S.C.A. § 7.0211. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Where court had ordered that prisoner not be allowed to leave correctional facility without permission of the court except for emergency medical treatment, prison officials had no authority to allow prisoner to appear in court for post conviction motions without requesting permission of court. American Samoa Gov't v. Masaniai, 5 A.S.R.2d 152

While the judiciary cannot ordinarily employ writ of habeas corpus to review prison management or the conditions of a prisoner's otherwise lawful confinement, exceptional prison circumstances rising to the level of constitutional deprivations are within the court's jurisdiction. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

Territorial government is bound by court orders in proceedings to which it is a party and should not issue legal opinions that counsel disobedience to such orders. American Samoa Gov't v. Satele, 7 A.S.R.2d 154.

Where statute provided for appeal to board of registration from a denial of voter registration by election officer, and for judicial review of an adverse decision of the board of

registration, court would not issue writ of mandamus to election officer ordering him to register prospective voter who had not yet appealed to board of registration. A.S.C.A. §§ 6.0224, 6.0230. Siofele v. Shimasaki, 8 A.S.R.2d 81.

First amendment prohibits court from assuming jurisdiction to review church electoral processes or other disputes concerning church policy and church administration. U.S. Const. amend. 1. Ofa v. Tongan Wesleyan Church, 8 A.S.R.2d 110.

Statute explicitly recognizing power of Chief Justice to make exceptions to rules is clearly not inconsistent with constitutional provision for judicial independence. Rev'd Const. Am. Samoa art. III § 2; A.S.C.A. § 46.0501. American Samoa Gov't v. Tile, 8 A.S.R.2d 120.

Reasonable legislative regulation of judicial procedure does not necessarily conflict with judicial independence. Rev'd Const. Am. Samoa art. III § 2; A.S.C.A. § 46.0501. American Samoa Gov't v. Tile, 8 A.S.R.2d 120.

Court could grant review by mandamus of chief election officer's determination that petitioner was ineligible to run for elective office, where statutory scheme was silent as to appeals procedure and circumstances appeared to render any alternative review procedures inadequate. T.C.R.C.P. Rules 87, 88. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Court would not compel chief election officer to find the petitioner a bona fide resident where petitioner was not on the current voter registration lists, was not present in the territory during the period at issue, refused to supply additional information requested by the chief election officer, and was identified as a registered voter in another jurisdiction during the period at issue. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Where the identity of a church's governing body is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy, but instead should attempt to apply "neutral principles of law." Tele`a v. Savea, 11 A.S.R.2d 110.

Where territorial government had confined and sought judicial commitment of a person whose psychiatric condition could not be adequately treated within the territory, but had refused to refer him for treatment outside the territory because of the relatively short duration of his presence in the territory, court would order immediate referral for treatment; the respondent had a right to treatment not because of his residential status but because of the government's decision to take him into its custody and to confine him pending recovery or remission. American Samoa Gov't v. Tofiga, 14 A.S.R.2d 30.

Even if a statute creates unintended hardships, the responsibility to rewrite a statute belongs to the Legislature and not the High Court. Nelson & Robertson Pty., Ltd. v. Diocese of Pago Pago, 21 A.S.R.2d 6.

Although a failure to exhaust administrative remedies does not absolutely preclude judicial action, such action is permissible only in exceptional circumstances, including the exception for violations of statutory or constitutional rights. Sala v. American Samoa Gov't, 21 A.S.R.2d 50.

To file suit regarding disciplinary matters, a public employee need not await a final agency decision only if a preliminary agency decision clearly and unambiguously violates a statutory or constitutional right of the employee or if the prescribed administrative process is clearly inadequate to prevent irreparable injury. Sala v. American Samoa Gov't, 21 A.S.R.2d 50.

Though the Immigration Board's documents are confidential by statute, this statute may not be used to deny constitutionally guaranteed due-process rights, nor does it prohibit the Court from ordering the Attorney General to produce these records when needed. U.S. Constitution Amend. V; Rev. Const. Am. Samoa Art. I, § 2; A.S.C.A. § 41.0307. Farapo v. American Samoa Gov't, 23 A.S.R.2d 136.

A court's mandate is to decide controversies between adverse parties and their respective viewpoints, not to decide which policies, public or otherwise, are best; such policy decisions properly belong to other branches of government. Lutali v. Foster, 24 A.S.R.2d 53.

In light of the constitutional doctrine of separation of powers, a court will not inquire into the wisdom of public policy but will sustain a challenged action as long as it does not violate the Constitution. Mulitauaopele v. Maiava, 24 A.S.R.2d 134.

The requirement that a statute must have a rational basis is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In Re Matai Title I`aulualo, 25 A.S.R.2d 155.

The Revised Constitution of American Samoa requires that the land alienation laws be changed by specific political procedures, and not by judicial fiat. REV. CONST. AMER. SAMOA, Art. I, § 3. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

§ 2 Justiciable Case or Controversy

§ 2(1) —Standing

Where plaintiffs were two banks, one of which had lent money and the other of which had guaranteed the loan, at least one plaintiff clearly had standing to sue and the addition of another plaintiff who may or may not have had standing did not necessitate reversal of the trial court's decision that defendants

were liable to one or the other of the plaintiffs. Pritchard v. Amerika Samoa Bank, 8 A.S.R.2d 157.

Neither administrative agency nor court may dispense with requirements designed to ensure that case admits of judicial resolution: that there be a genuine dispute between the claimant and the agency on at least one specific and identifiable question of law and fact. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

A person who does not own the land for which a land-use permit was denied has no standing to raise the question as to whether special enabling legislation was necessary to allow the Governor to promulgate the coastal zone management regulations affecting the rights of private property owners. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

To establish standing to enforce environmental laws, (1) a party must show that he has suffered an injury-in-fact, and (2) the alleged injury must arguably be within the statute's zone of interests. Le Vaomatua v. American Samoa Government, 23 A.S.R.2d 11.

Although an organization may represent members who are injured, a mere "interest in a problem" is insufficient to establish standing. Le Vaomatua v. American Samoa Government, 23 A.S.R.2d 11.

A court may refuse to determine the merits of a claim on the ground that, even though the claim may be correct, the litigant advancing it is not entitled to its judicial determination. Standing concerns the party, and not the issue to be adjudicated. Jennings v. Thompson, 25 A.S.R.2d 77.

The doctrine of standing is derived from the "case or controversy" requirement in Article III of the United States Constitution. This limitation imposed by a standing requirement is based on the separation of powers which underlies the federal government. Because the government and constitution of American Samoa are based on the U.S. model, those principles generally apply to the judiciary of this territory. Multitauaopele v. Togafau, 26 A.S.R.2d 52.

To establish standing, a party must demonstrate (1) "injury in fact," meaning an invasion of a legally protected interest that is "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical;" (2) a causal relationship between the injury and the challenged conduct, meaning that the injury "fairly can be traced to the challenged action of the defendant," and has not resulted "from the independent action of some third party not before the court; and (3) a likelihood that the injury will be redressed by a favorable decision, meaning that the "prospect of obtaining relief from the injury as a result of a favorable ruling" is not "too speculative." Multitauaopele v. Togafau, 26 A.S.R.2d 52.

The test for standing is whether or not the plaintiffs have alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues. Senate v. Lutali, 26 A.S.R.2d 125.

It is well established that it is not enough to qualify, for standing purposes, merely as a taxpayer. A party must establish that the alleged conduct would result in a tax increase or cause other irreparable injury. This injury must be different than that endured by the citizenry en masse. Additionally, there must be a logical nexus between the alleged wrongful behavior and the harm suffered. Senate v. Lutali, 26 A.S.R.2d 125.

The test for standing is whether or not the plaintiffs have alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues. Senate v. Lutali, 26 A.S.R.2d 125.

It is well established that it is not enough to qualify, for standing purposes, merely as a taxpayer. A party must establish that the alleged conduct would result in a tax increase or cause other irreparable injury. This injury must be different than that endured by the citizenry en masse. Additionally, there must be a logical nexus between the alleged wrongful behavior and the harm suffered. Senate v. Lutali, 26 A.S.R.2d 125.

A party has no standing to sue without an injury-in-fact, or a direct stake in the controversy. Plaintiff must have a substantial, direct, and immediate interest in the suit. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 167.

The mere fact that a person has standing to bring an action does not mean that they have a property interest at stake. Mulitauaopele v. Maiava, 29 A.S.R.2d 116.

The requirements for standing are that the plaintiff have suffered an injury in fact, that the injury be fairly traceable to the challenged action, and that the injury be fairly redressable by a favorable decision. Mulitauaopele v. Maiava, 29 A.S.R.2d 116.

A plaintiff possesses standing to sue if he is able to show: (1) an injury to a legally protected interest that is concrete and particularized, and actual or imminent, not conjectural or hypothetical; (2) an injury that is causally related to the defendant's challenged conduct, and not resulting from independent action by some third party not before the court; and (3) the prospect of achieving redress for the injury from a favorable decision that is not too speculative. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

Chairman of Immigration Board possessed capacity to sue where suit brought on his own behalf and where suit sought to prevent

executive branch officials from usurping his powers. Chairman was real party in interest and did not need separate, statutory authority to sue. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

Chairman of Immigration Board was able to show standing to sue for declaratory relief where he claimed that defendants had usurped his powers by issuing amnesty to more than 2,000 previously undocumented aliens. Plaintiff's injury was concrete, particularized, actual, related to the defendants' challenged conduct and could be redressed by a favorable court ruling. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

To determine whether a given individual or organization has standing to seek judicial review of a final administrative decision, the petitioner must demonstrate that he, she or it has (a) suffered an "injury in fact" and (b) is arguably within the statute's "zone of interests." McGuire v. Zoning Board, 3 A.S.R.3d 15 (App. Div. 1999).

In order to satisfy the "injury in fact" requirement for purposes of standing, a plaintiff need only be able to identify an injury and demonstrate that he or she is actually among the injured. McGuire v. Zoning Board, 3 A.S.R.3d 15 (App. Div. 1999).

Where petition alleged that variance would result in drain on water supply and constitute threat to pedestrian traffic, such allegations were sufficient to satisfy the "injury in fact" requirement for standing purposes. McGuire v. Zoning Board, 3 A.S.R.3d 15 (App. Div. 1999).

Although it would be helpful to have a determination as to whether a tenancy in the entirety issue applies to the territory, under A.S.C.A. § 43.1101 the court must have a true case or controversy before it in order to issue a declaratory judgment. Fiame v. Fiame, 4 A.S.R.3d 95 (Trial Div. 2000).

For there to be a case or controversy amenable to a decision on the merits, it must be relatively certain that coercive litigation will eventually ensue between the same parties if a declaratory judgment is refused. Fiame v. Fiame, 4 A.S.R.3d 95 (Trial Div. 2000).

The Court has an obligation to ensure that the parties have standing, even if they are willing to stipulate to such. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

The three requirements that a plaintiff must demonstrate in order to establish standing are: (1) an injury in fact (2) caused by the subject of the suit (3) that can be redressed by the Court. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

While legislators possess standing to challenge an executive action that nullifies an opportunity to vote, they do not possess standing to challenge the executive's failure to obey a statute. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

With regard to standing, an action may be brought by one who possesses a grievance shared by many persons so long as it is not common to the public as a whole. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

Where individual had lost substantial sums to poker machines, allowed to operate in violation of the law, he had standing to bring suit. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

The court will rule on the constitutionality of a criminal statute if: (1) the issue is fit for judicial consideration, and (2) withholding of consideration will cause substantial hardship to the parties. Am. Samoa Gov't v. Tuilagi, 7 A.S.R.3d 61 (Trial Div. 2003).

In evaluating standing, a court must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party. If needed, a court may also look beyond the pleadings themselves. Agaoleatu v. McMoore, 7 A.S.R.3d 64 (Trial Div. 2003).

The principles of standing articulated by the Federal courts generally apply to the judiciary of this territory. Agaoleatu v. McMoore, 7 A.S.R.3d 64 (Trial Div. 2003).

To show standing, a party must demonstrate that it has suffered an "injury in fact," meaning an invasion of a legally protected interest that is "concrete and particularized." Agaoleatu v. McMoore, 7 A.S.R.3d 64 (Trial Div. 2003).

A claim simply alleging that two individuals, one a member of the legislature, broke the law is insufficient to create standing in a civil suit brought by a concerned citizen, even if the citizen is another legislative member, where the citizen has failed to show an injury in fact. Agaoleatu v. McMoore, 7 A.S.R.3d 64 (Trial Div. 2003).

Citizens have no common law right to bring *qui tam* actions, but must be granted the right through legislation. Agaoleatu v. McMoore, 7 A.S.R.3d 64 (Trial Div. 2003).

The Legislature of American Samoa has not granted citizens a right to bring *qui tam* actions by statute. Agaoleatu v. McMoore, 7 A.S.R.3d 64 (Trial Div. 2003).

It is well-established that in order to demonstrate standing, one must show: (1) injury in fact, by which we mean an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) a causal relationship between the injury and the challenged conduct, by which we mean that the injury fairly can be traced to the challenged action of the defendant, and has not resulted from the independent action of some third

party not before the court; and (3) a likelihood that the injury will be redressed by a favorable decision, by which we mean that the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative. These elements are the irreducible minimum required by the Constitution. Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

In litigation involving a trust, beneficiaries have standing to protect their rights and interests. Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

§ 2(2) —Ripeness

Any constitutional attack on a particular punishment is normally not ripe for review before the punishment has been given. Am. Samoa Gov't v. Tuilagi, 7 A.S.R.3d 61 (Trial Div. 2003).

Where prisoner moved for writ of habeas corpus in a criminal case, court properly considered only the term of imprisonment under which he was currently serving, not additional terms which he was to serve in the future and which were consecutive to his present one. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

Where prisoner alleged that plea agreement entered was not one he had agreed to and that instead of pleading guilty to Counts I and VI, he had been forced to plea to counts I, II, and V, court would not address the illegality of his punishment under counts II and V as prisoner had not yet begun serving those sentences. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

§ 2(3) —Mootness

Claims for money damages are seldom moot and are subject to judicial resolution, even if other issues in a lawsuit are moot. Samoana Fellowship, Inc. v. American Samoa Power Authority, 24 A.S.R.2d 71.

A case becomes moot when the issues are no longer "live" or the parties lack a legally cognizable interest in the outcome. Senate v. Lutali, 26 A.S.R.2d 125.

There is an exception to the mootness rule where the case is "capable of repetition, yet evading review". In non-class actions, this exception is limited to cases where (1) a defendant terminates the challenged action before the issue is fully litigated, and (2) there is a reasonable expectation the plaintiff would be subject to the same actions in the future. Senate v. Lutali, 26 A.S.R.2d 125.

For purpose of the exception to the mootness rule "reasonable expectation" must go beyond a theoretical possibility of repetition to the same plaintiff. However, the case is not rendered moot simply by the fact that the defendant has, at the moment, ceased the behavior at issue. Senate v. Lutali, 26 A.S.R.2d 125.

A controversy still smolders when the defendant has voluntarily, but not necessarily permanently, ceased to engage in the allegedly wrongful conduct. Senate v. Lutali, 26 A.S.R.2d 125.

The Court cannot hear cases that are moot, or where the issues to be determined are no longer "live" or the parties lack a legally cognizable interest in the outcome. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

An exception to mootness doctrine lies where the acts at issue are "capable of repetition, yet evading review." Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

If the reviewing court can afford prospective relief, the controversy is not moot. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

The "capable of repetition, but evading review" exception to the mootness doctrine is limited to cases where (1) the challenged action was too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

Under the "capable of repetition, but evading review" exception to the mootness doctrine, there must be a reasonable expectation that harm will again come to the same plaintiff, not merely a theoretical possibility of future harm. Island's Choice, Inc. v. American Samoa Gov't, 5 A.S.R.3d 3 (App. Div. 2001).

§ 2(4) —Political Questions

Senate is sole judge of member's qualifications for seat, and thus issue is non-justiciable "political question." A.S. Const. Art. II, § 3, § 22. Tuitasi v. Lualemaga, 4 A.S.R. 798.

Senate is sole judge of which candidate for seat got most votes, and this issue is thus non-justiciable "political question." A.S. Const. Art. II, § 22. Tuitasi v. Lualemaga, 4 A.S.R. 798.

Political question doctrine bars judicial consideration of an issue where there has been a textually demonstrable constitutional commitment of power to decide the issue to a coordinate branch of government. Mauga v. Lutu, 10 A.S.R.2d 115.

Provision of territorial constitution that the legislature shall judge elections of its members presumes that an election has

been held, and therefore does not define the factual question whether the required election ever occurred give rise to as a political question preventing judicial intervention. Rev. Const. Am. Samoa art. II § 22. Mauga v. Lutu, 10 A.S.R.2d 115.

The ability of the House or Senate to maintain a suit against the executive branch is, in the proper circumstances, beyond question. Senate v. Lutali, 26 A.S.R.2d 125.

To determine whether a case is justiciable, two determinations must be made: First, the court must decide whether the claim presented and the relief sought are of the type which admit of judicial resolution; Second, the court must determine whether the structure of the government renders the issue presented a 'political question'—that is, a question which is not justiciable in the High Court because of the separation of powers. Fa`amausili v. Am. Samoa Gov't, 6 A.S.R.3d 259 (Trial Div. 2002).

There is no jurisdictional bar to claims that suspension of a Fono representative for his statements: (1) was an unconstitutional restrain on free speech; (2) was an unconstitutional taking of a property interest; and (3) is null. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

Normally, the courts must refrain from prying into matters that admit of legislative adjudication rather than judicial resolution, such as disputes dealing solely with internal legislative rules or functions. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

The court has an obligation, however, to review governmental actions or laws that conflict with, or-are limited by, constitutional provisions. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

The court can review the scope of the Legislature's punishment because other constitutional limitations cannot be disregarded. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

§ 2(5) —Advisory Opinions

Where a case is constructed by acquiescing parties with identical interests in order to obtain an advisory opinion, and where the parties could have resolved the issue without the involvement of the Court, such declaratory relief cannot be granted absent the requirement that there be a true case or controversy, regardless of how useful a disposition on the merits would be. Fiame v. Fiame, 4 A.S.R.3d 95 (Trial Div. 2000).

The "case or controversy" limitation contained in the statute conferring jurisdiction upon the High Court prevents the Court from issuing advisory opinions. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

§ 3 Constitutional and Statutory Interpretation

SEE AMERICAN SAMOA GOVERNMENT § 1 – THE FEDERAL GOVERNMENT, CONSTITUTION, & LAWS OF AMERICAN SAMOA

SEE SAMOAN CUSTOMS § 1 – IMPACT ON AMERICAN SAMOA LAWS

§ 3(1) —General Provisions

Contemporaneous construction by officers upon whom is imposed a duty to enforce statute is entitled to great weight in interpretation of ambiguous positions of statute, particularly where there is constant uniform practice for long period of time. Government v. Bird, 2 A.S.R. 102.

Courts of Samoa recognize that common law may not in all respects be suitable to conditions of islands, but will follow so much of common law of England as is suitable and not inconsistent with other laws. (CAS 1) Magalei v. Tago, 3 A.S.R. 185.

When Supreme Court has not had occasion to reconsider a precedent for almost a century, almost all applications of precedent have been overruled by statute, and Supreme Court has overruled similar precedents in closely related or analogous areas, lower court may conclude that the precedent no longer represents the law that would be applied by Supreme Court. Monte Kaho v. Ron Pritchard Ground Services, Inc., 4 A.S.R.2d 40.

Unless Samoan court has ruled otherwise, High Court should ordinarily follow Restatement of the Law in construing common law. Tung v. Ah Sam, 4 A.S.R. 764.

Existing laws not inconsistent with the Constitution of 1960 continued in force when Constitution was ratified. (Const., Art. V, Sec. 2) Haleck v. Lee, 4 A.S.R. 519.

Revised Constitution of 1967 does not provide for continuance of existing laws and approval of new legislation on judicial matters by Secretary of Interior. Fanene v. Government, 4 A.S.R. 957.

Where promulgators of territorial constitution omitted equal protection clause, it would be inappropriate for judicial branch to construe some other constitutional provision to include an unwritten equal protection clause more demanding than the equal protection clause of the federal constitution. Rev'd Const. Am. Samoa art. I. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

While the UCC does not of its own force apply in American Samoa, some rules embodied in widely adopted uniform codes which restate generally accepted principles of law may apply. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

In construing the common law, the High Court ordinarily follows the Restatement of Law. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

A case is not overruled by a later case when they differ in findings of fact or issues raised and not in interpretation of law. Reid v. Puailoa, 23 A.S.R. 2d 101.

A court exercising judicial review starts with the presumption that a statute is valid and will construe a statute so as to avoid finding it unconstitutional. Mulitauaopele v. Maiava, 24 A.S.R.2d 134.

It is appropriate for the courts of American Samoa to give effect to Samoan customs and traditions. Courts should not abolish, by judicial fiat, Samoan traditions which have endured for generations in Samoan institutions and are recognized by formal legal institutions. Mulitauaopele v. Mulitauaopele, 25 A.S.R.2d 43.

Samoan custom is defined by an evolutionary process, not by the judicial process. Mulitauaopele v. Mulitauaopele, 25 A.S.R.2d 43.

A constitutionally authorized rule of procedure loses its procedural character when it determines the status of substantive legal rights. Lutu v. Ale, 28 A.S.R.2d 43.

The Revised Constitution of American Samoa envisions vigorous constitutional and statutory protection for Samoan ownership of land. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

Constitutional statutory authority is always paramount to administrative rule authority. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

The term "infamous crime" is contained in the Fifth Amendment to the United States Constitution, which requires an indictment to hold a person "to answer for a capital, or otherwise infamous crime." Because of the close nexus between the United States and American Samoa Constitutions, the federal definition of "infamous crime" is the intended definition of "infamous crime" in Art. I, § 6 of the Revised Constitution. American Samoa Gov't v. Samana, 1 A.S.R.3d 166 (Trial Div. 1997).

The federal Constitution applies in American Samoa only insofar as its tenets restate those fundamental limitations in favor of personal rights that are the basis of all free government. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

§ 3(2) —Legislative Intent

Object of interpretation of legislation is to ascertain true meaning and will of law making body. Government v. Bird, 2 A.S.R. 102.

Resort to preamble to statute in construing enacting portion explains ambiguities by relating them to general scope and meaning of statute. Bottling Corporation of Samoa v. Lee, 4. A.S.R. 499.

When court is considering the application of judge-made rules rather than legislation or a constitution, it has the duty to consider whether changed circumstances warrant modification of such rules. Monte Kaho v. Ron Pritchard Ground Services, Inc., 4 A.S.R.2d 40.

Although a federal statute does not apply to proceedings in the High Court of American Samoa, its passage by Congress should be taken into account in determining whether changed current circumstances warrant the application of rules announced in nineteenth-century precedents. Security Pacific National Bank v. M/V Conquest, 4 A.S.R.2d 59.

Legislative inaction in the face of judicial statutory construction strongly suggests agreement with, or at least acquiescence in, the judicial interpretation of those laws. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

When the legislature re-enacts a statute or adopts amendments to it "without a suggestion of disagreement" with a prior judicial construction, a very strong presumption exists that the legislature has adopted the prior construction. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Even if a statute creates unintended hardships, the responsibility to rewrite a statute belongs to the Legislature and not the High Court. Nelson & Robertson Pty., Ltd. v. Diocese of Pago Pago, 21 A.S.R.2d 6.

In light of the constitutional doctrine of separation of powers, a court will not inquire into the wisdom of public policy but will sustain a challenged action as long as it does not violate the Constitution. Mulitauaopele v. Maiava, 24 A.S.R.2d 134.

The requirement that a statute must have a rational basis is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In Re Matai Title I`aulualo, 25 A.S.R.2d 155.

Whether a statute operates retrospectively or prospectively only is one of legislative intent. American Samoa Gov't v. Estate of Fuimaono Tuinanau, 28 A.S.R.2d 187.

In construing statutes, it is assumed that the legislature intended to enact an effective law. American Samoa Gov't v. Alo, 2 A.S.R.3d 91 (Trial Div. 1998).

§ 3(3) —Statutory Construction

Statute provides in construing A.S.C. that words are to be understood in their ordinary sense unless defined or explained otherwise. 1 A.S.C. § 304. Letuli v. Government, 4 A.S.R. 830.

In construing to give effect to Legislative intention, court may construe "or" as meaning "and" or "and" as "or." Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Term "along" as used in ordinance means "within reasonable distance of." Lago v. Mageo, 4 A.S.R. 287.

"Along high-water mark of Harbor of Pago Pago" means within reasonable distance from high-water mark." Lago v. Mageo, 4 A.S.R. 287.

Since courts favor constitutionality of statutes, courts will construe Industrial Incentive Act as not giving Governor power to grant partial exemption in which case it is constitutional. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Similarly worded constitutional and statutory provisions may be construed differently in different jurisdictions, especially where they have been adopted and applied in different circumstances. Tuika Tuika v. Governor of American Samoa, 4 A.S.R.2d 85.

Conflict between constitutional provisions are ordinarily resolved in favor of the more recently enacted. Ferstle v. American Samoa Gov't, 4 A.S.R.2d 160.

Territorial court is not bound to interpret local rules in strict conformity with federal courts' interpretations of parallel federal rules. Wray v. Wray, 5 A.S.R.2d 34.

Where territorial statutes differed in language and structure from federal statutes on same subject matter, territorial court should not disregard clear language of territorial statutes on the basis of judicial decisions construing federal statutes. Lutu v. American Samoa Government, 7 A.S.R.2d 61.

Territorial statute vesting discretion in attorney general to proceed against certain minors as adults was not constitutionally defective due to alleged inconsistency with general purpose of juvenile justice statute to accord special treatment to minors, since both the general rules of statutory construction and the specific language of another statutory provision indicated that the exception was deliberate and purposeful. A.S.C.A. §§ 45.0103(9)(B)(I), 45.0115(c)(2)(a). American Samoa Gov't v. Julio, 9 A.S.R.2d 128.

Terms of air carriage contract which were inconsistent with Warsaw Convention were void, because the contract itself so provided and also because treaty obligations are the supreme law of the land and therefore supersede private contracts. U.S. Const. art. VI. American Samoa Gov't ex rel. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

Provision of territorial constitution that county council elect senators in accordance with Samoan custom does not include power to delegate the decision completely to a subdivision of the county, since this would allow a new custom, habit, or practice to repeal explicit and unambiguous constitutional provisions. Rev. Const. Am. Samoa art. II § 4. Mauga v. Lutu, 10 A.S.R.2d 115.

Cumulative effect of two territorial constitutional provisions, one requiring election of senators by county councils and the other providing that each senator shall hold office for four years, is to require that an election be held once every four years by the county council as it is then constituted; since the membership of the county council changes over time, no one particular council can be permitted to lock senatorial selection into the future by selecting any number of senators to serve during subsequent terms. Rev. Const. Am. Samoa art. II §§ 4, 6. Mauga v. Lutu, 10 A.S.R.2d 115.

There is a rational basis for a legislative distinction between (1) people who drive under the influence and then drive with a suspended license; and (2) those who commit other sorts of conduct punishable by suspension and then drive with a suspended license; therefore, a statute embodying such a distinction did not deny equal protection of the laws. U.S. Const. amdt. 14. Macomber v. American Samoa Gov't, 12 A.S.R.2d 29.

In a situation where the Uniform Customs and Practice for Documentary Credits (UCP) controls but is silent or ambiguous concerning a particular issue, analogous UCC provisions that are consistent with the UCP may apply. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Statute which sets different limitation periods for actions based on written and unwritten contracts, but does not define either term, is not unconstitutionally vague and does not violate due process, since parties can rely on case law and other legal authority to determine the meaning of these terms. Pene v. Bank of Hawaii, 17 A.S.R.2d 168.

The High Court may interpret territorial statutes differently than federal courts' interpretations of similar, but not identical, federal statutes, but this does not imply that territorial law supersedes federal law. Alamoana Recipe Inc. v. American Samoa Gov't, 24 A.S.R.2d 156.

Statutory provision requiring election ties to be decided by lot is not inconsistent with the Revised Constitution of American Samoa. A.S.C.A. § 6.0901. In re the Election for Representative from District No. 3, 27 A.S.R.2d 28.

The Legislature of American Samoa has not condemned a class of people by passing A.S.C.A. § 27.1001(i), which defines "foreign" as meaning "any place beyond the limits of American Samoa." A.S.C.A. § 27.1001(i) simply defines the term "foreign" for purposes of applying the customs regulations set forth in A.S.C.A. §§ 27.1001-27.1031. A.S.G. v. Pu`aa, 31 A.S.R.2d 73.

Statutory interpretation requires that two statutes be read harmoniously where possible. American Samoa Gov't v. Alo, 2 A.S.R.3d 91 (Trial Div. 1998).

In deciding on whether statutes are non-contradictory, the court must focus on their plain meaning. American Samoa Gov't v. Alo, 2 A.S.R.3d 91 (Trial Div. 1998).

A statute should be interpreted according to its plain meaning, avoiding any construction that would render a provision to be meaningless or nugatory. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

When the legislature speaks in the form of a properly adopted statute, courts must attempt to provide a rational interpretation. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

It is an elementary canon of statutory construction that a law is not to be construed so that its provisions are mere surplusage. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

Each provision of a statute is to be given full effect. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

To determine whether a statute presents an unconstitutional amendment by reference, courts apply a two pronged test: (1) is the amendment such a complete act so that the scope of the rights or duties created or affected by the legislation can be determined without referring to any other statute or enactment; (2) is whether "a straightforward determination of the scope of rights or duties under the existing statutes be rendered erroneous by the new enactment." Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

An amendment is not incomplete or unintelligible merely because executing its provisions requires resort to other statutes. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

A.S.C.A. § Section 17 does not require the re-enactment and publication of an entire statute when the amendment affects only one subsection. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

In all statutory construction cases, the court begins with the language of the statute and the inquiry ceases if the statutory language is unambiguous and the statutory scheme is coherent and consistent. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

The court cannot substitute its policy judgments for that of the legislature. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

The court is bound by the clear words of the statute and cannot speculate as to what the legislators might have overlooked. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

A statute is not absurd because it is an exception to other statutes. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

A statute is not irrational simply because it changes the prevailing practice. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

Courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, the judicial inquiry is complete. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

Where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, the court's duty is to adopt the latter. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

Courts are not to lightly assume that the legislature intended to infringe constitutionally protected liberties or usurp power constitutionally forbidden it. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

Constitutional issues should not be needlessly confronted. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

§ 3(4) —Conflict of Laws

SEE CIVIL PROCEDURE § 12 – CONFLICT OF LAWS

In cases of otherwise irreconcilable conflict between statutes the later statute governs the earlier, since the new law is deemed to have implicitly amended conflicting prior laws. Atuatasi v. Moaali`itele, 8 A.S.R.2d 53.

Apparent conflicts between statutes can often be reconciled by application of the rule that the more specific statute prevails over the more general. Atuatasi v. Moaali`itele, 8 A.S.R.2d 53.

In cases of apparent conflict between two statutes, specific and later statute prevails over more general and earlier statute. A.S.C.A. §§ 46.2203, 46.2206. Atuatasi v. American Samoa Government, 9 A.S.R.2d 67.

Insofar as T.C.R.Cr.P. 35 purports to extend or abolish the mandatory deadline for alleging errors of law in a criminal sentence, it is in direct conflict with the statute; as such, the statute must prevail over the judge-made rule. A.S.C.A. § 43.2402(a). T.C.R.Cr.P. 35. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Because the High Court's rules were promulgated solely on its own authority, they must give way to territorial statutes defining the court's jurisdiction, unless the statutes themselves are unconstitutional. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

There is no need for application of the rule of lenity, where two statutes that overlap do not possess internal conflict or ambiguity. American Samoa Government v. Whitney, 20 A.S.R.2d 29.

When a claimed conflict between two statutes is not relevant and not at issue, the court will decline comment. A.S.C.A. § 32.0619(a)(f). National Pacific Insurance Co. v. Commissioner of the American Samoa Government's Workmen's Compensation Commission, 22 A.S.R.2d 15.

Territorial laws which are inconsistent with applicable U.S. laws violate the territorial constitution, which in turn was promulgated under the authority of the U.S. Secretary of the Interior. Rev. Const. Am. Samoa Art. II, § 1(a), Art. V, § 11. Alamoana Recipe Inc. v. American Samoa Gov't, 24 A.S.R.2d 156.

Where a conflict exists between statute and any customary privilege, the statute governs. In Re Matai Title I`aulualo, 25 A.S.R.2d 155.

Custom in conflict with law must give way. A.S.C.A. § 1.0202. In Re the Matai Title Iu, 25 A.S.R.2d 127.

Laws which do not comply with the Constitution will be found to have no application. Mulitauaopele v. Maiava, 29 A.S.R.2d 116.

§ 4 Separation of Powers

SEE AMERICAN SAMOA GOVERNMENT § 2 – SEPARATION OF POWERS

The federal Constitution and the constitutions of various states limit executive appointments by vesting the power of confirmation in the legislature, but A.S.C.A. § 4.0112 is a statutory attempt to vest such power in the legislature. House of Representatives of American Samoa v. Sunia, 3 A.S.R.3d 123 (Trial Div. 1999).

The Revised Constitution of American Samoa contemplates a government patterned after the federal tripartite system and, accordingly, the well-established principle of separation of powers applies. House of Representatives of American Samoa v. Sunia, 3 A.S.R.3d 123 (Trial Div. 1999).

Confirmation of appointments made by the Governor is not an inherent legislative power; it is a specific attribute of the executive power of appointment which, in most cases, is constitutionally delegated to the legislative branch. House of Representatives of American Samoa v. Sunia, 3 A.S.R.3d 123 (Trial Div. 1999).

The Legislature may not usurp the power of confirmation, and as the Revised Constitution of American Samoa makes no provision for legislative confirmation of gubernatorial appointments to the office of Secretary of Samoan Affairs, that power is attached to the executive power of appointment and is vested solely in the Governor. House of Representatives of American Samoa v. Sunia, 3 A.S.R.3d 123 (Trial Div. 1999).

Because A.S.C.A. § 4.0112, on its face and without constitutional authorization, offers the Legislature, by its confirmation provisions, a critical means of severely limiting the executive power of appointment, it is unconstitutional to the extent that it applies to the Secretary of Samoan Affairs. House of Representatives of American Samoa v. Sunia, 3 A.S.R.3d 123 (Trial Div. 1999).

The Legislature of American Samoa, under the principle of separation of powers, has wide discretion in implementing its internal procedures as to employment and termination of employment. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

§ 5 Full Faith and Credit

A judgment of a court of the United States is entitled to full faith and credit in American Samoa. Evening Star v. Sonoma Mission, 2 A.S.R.2d 12 (App. Div. 1984).

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.

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.

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.

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.

The High Court of American Samoa is empowered to enforce a judgment of any United States court or other court entitled to full faith and credit in American Samoa under the Uniform Enforcement of Foreign Judgments Act. A.S.C.A. §§ 43.1701-09. DeStael v. Strasburg, 25 A.S.R.2d 96.

Full faith and credit requires that a forum should respect an earlier judgment to the extent that issues presented therein received a res judicata determination. U.S. CONST., Art. IV, § 1. In re A Minor Child, 28 A.S.R.2d 33.

Under the full faith and credit clause, a forum state has as much leeway to modify or depart from a foreign judgment, as does the state in which it was rendered. U.S. CONST., Art. IV, § 1. In re A Minor Child, 28 A.S.R.2d 33.

Full faith and credit requires this court to respect the res judicata effect of an earlier judgment in deciding the same issues presented in an action currently litigated. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Where earlier, final judgment determined that vessel owners' association was legal entity with vested ownership interest in vessels, and where plaintiffs in instant action and association were parties in the prior action, association was estopped from relitigating same issues in instant action. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

§ 6 Due Process

SEE ADMINISTRATIVE LAW § 4(1) – DUE PROCESS

SEE CRIMINAL PROCEDURE § 8(1) – DUE PROCESS

Government of American Samoa is limited by American Samoa Bill of Rights which includes due process clause. Government v. Soliai, 2 A.S.R. 600.

People of American Samoa are protected by due process clause in Fifth Amendment to Constitution of United States, and in particular that no person shall be deprived of life, liberty or property without due process of law. Government v. Soliai, 2 A.S.R. 600.

Constitutional right to due process of law is not denied when a court which has repeatedly accommodated counsel's unusual requests and overlooked procedural irregularities finally ceases to do so and dismisses the action. Monte Kaho v. Ron Pritchard Ground Services, Inc., 4 A.S.R.2d 40.

Fact that jurors who speak only Samoan must receive jury instructions through translator does not violate constitutional right to due process; need for translation is inevitable in bilingual territory where many witnesses and jurors speak one language but not the other. 46 A.S.C.A. § 46.1504. American Samoa Gov't v. Agasiva, 4 A.S.R.2d 110.

A government employee with no contractual or statutory right to continued employment may be fired for any reason or even "for no reason whatever" without a denial of due process; only exception is that employee cannot be terminated for a reason that itself violates some constitutional right, such as free speech or equal protection of the laws. U.S. Const. amdt. 14. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Although the due process clause of the federal constitution, which implicitly forbids racial discrimination by the federal government, binds the territories in at least some of its applications, it does not necessarily bind the territories in the same ways and to the same extent as in the continental United States. U.S. Const. amdt. 14. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Complaint alleging "wrongful imprisonment in violation of plaintiff's constitutional rights" sufficiently raises constitutional claim despite failure to cite specific provisions. A.S.C.A. § 43.1207 Tevaseu v. American Samoa Government, 5 A.S.R.2d 10.

Police may initiate prosecution for traffic offense by issuing ordinary traffic citation and summons even well after all parties have left the scene of the offense, and due process does not require usual procedural protection of full criminal prosecution. A.S.C.A. §§ 22.0802, 22.0803. American Samoa Gov't v. Ofa, 6 A.S.R.2d 1.

Garnishee bank that had elected not to retain counsel and whose employee attended garnishment hearing but did not request to testify could not argue in collateral attack on resulting judgment that it had been denied an opportunity to be heard. Amerika Samoa Bank v. Haleck, 6 A.S.R.2d 54.

Argument that license was "revoked" without procedural due process was unfounded where evidence shows license was

never granted. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

In order to have a cognizable claim for deprivation of procedural due process, one must first possess a "liberty" or "property" interest in the government action complained of. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Procedural due process requirements are not fixed, but vary with circumstances and particular demands of the case; however, some sort of notice and hearing is required before an individual is finally deprived of a property interest. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Notice and hearing afforded to satisfy procedural due process need not be full judicial hearing. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

To satisfy requirement of procedural due process, opportunity to be heard must be granted at a meaningful time and in a meaningful manner, but need not always be granted prior to the initial deprivation of property. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Ordinarily, due process is satisfied by proceedings less than a full evidentiary hearing prior to adverse administrative action, and the sufficiency of such proceedings is to be determined in light of 1) the private interest that will be affected by the official action, 2) the risk of an erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and 3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would impose. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Procedural due process is satisfied by piecemeal proceedings wherein parties were advised of the required showing, the proofs were considered promptly by the regulating agency, parties were advised of the agency's findings of insufficiency, parties submitted further proofs which agency considered and again advised parties that such proof was insufficient but did not issue a denial and remained open to further submission of proofs. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Due process requirements of notice and opportunity to be heard are not triggered until adverse administrative action constituting a "final" deprivation of property has taken place. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Recurring and intentionally dilatory tactics by agency may constitute "final" action sufficient to trigger due process requirements of notice and hearing. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

The expected benefit of a license which issues subject to articulated standards of qualification is a property interest giving rise to due process protection, although not to the full range of pre-deprivation procedural protections applicable to entitlements that are less contingent than the expectation of a license. Am. Sam. Const. art. I § 2. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Because in most cases licensing will be a straightforward process, quasi-judicial evidentiary hearing in all licensing proceedings would needlessly increase government expenditures and such hearings are required only where the proposed action on a license application will be final. Am. Sam. Const. art. I § 2., A.S.C.A. § 31.1508. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Court did not deprive attorney of life, liberty, or property without due process of law, either by injury to his reputation or otherwise, where (1) attorney had represented judgment debtor; (2) attorney also represented other members of judgment debtor's family; (3) after judgment, the judgment debtor and her family had agreed to changes in the record ownership of property formerly recorded as property of the judgment debtor, had arranged for the sale of the property, and had removed themselves from the territorial jurisdiction of the court; (4) attorney had in his possession the proceeds of the sale, which judgment creditor alleged to be the property of the debtor but which debtor and other family members claimed to be the property of other family members; (5) court had held the funds to be the property of the judgment debtor and subject to seizure by the judgment creditor; and (6) court ordered the funds to be deposited in the registry of the court pending further proceedings. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Court that ordered defendant released from mental institution, to which he had been committed after being found not guilty of first degree murder by reason of insanity, did not act unconstitutionally in imposing conditions (1) that he reside with his wife in Los Angeles unless granted permission by the court to reside elsewhere; (2) that he refrain from use of alcohol; and (3) that he consult with a physician periodically. American Samoa Gov't v. Satele, 7 A.S.R.2d 154.

Court order for confinement of prisoner, after his trial and conviction for attempted rape, was issued pursuant to due process of law and could be enforced without further judicial proceedings. Atuatasi v. Moaali`itele, 8 A.S.R.2d 53.

Due process of law was not denied to a convict who had been released from detention in violation of court order and who was subsequently re-arrested, where (1) convict's lawyer was notified immediately of his re-arrest and did not request a hearing, (2) a hearing was held as soon as the convict's new

lawyer requested one; (3) the scope and period of confinement after re-arrest did not exceed that imposed by the original court order, which had itself been issued pursuant to due process of law. Atuatasi v. Moaali`itele, 8 A.S.R.2d 53.

That some people may misconstrue an otherwise clear judgment and sentence, and even that a clerical employee of the parole board did misconstrue it, does not render the judgment and sentence so vague and ambiguous as to deprive the person convicted of due process of law. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

Reincarceration of an inadvertently released prisoner denies due process of law only where, under all the circumstances of the case, reincarceration would contravene fundamental principles of liberty and justice. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

Reincarceration of an inadvertently released prisoner did not deny due process of law where the release was due to a ministerial mistake and where, having been released for only twenty-eight days prior to his rearrest, the prisoner had not been so thoroughly reintegrated into society that his rearrest would contravene fundamental principles of liberty and justice. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

In the absence of statute creating right to certification hearing to determine whether to prosecute minor as a juvenile or an adult, the minor has no due process right to such a hearing. American Samoa Gov't v. Julio, 9 A.S.R.2d 128.

Provision of territorial constitution prohibiting deprivation of life, liberty, or property without due process of law prohibits prosecution from suppressing any evidence favorable to an accused where the evidence is material either to guilt or punishment. Rev'd Const. Am. Samoa art. I § 2. American Samoa Gov't v. Talamoa, 10 A.S.R.2d 14.

General request by defense counsel for any evidence in the possession of the prosecution that might tend to exculpate the defendant was within the scope of rule prohibiting suppression of material evidence favorable to the accused. Rev'd Const. Am. Samoa art. I § 2. American Samoa Gov't v. Talamoa, 10 A.S.R.2d 14.

There is no general constitutional right of indigent persons to litigate free of charge. Pene v. American Samoa Power Authority, 10 A.S.R.2d 61.

Denial of access to legal proceedings to those unable to pay the costs of such proceedings is a denial of due process of law only in cases where litigants seek to extricate themselves from family relationships imposed on them by the government. Pene v. American Samoa Power Authority, 10 A.S.R.2d 61.

Litigants who demanded costs of litigation, compensatory and punitive damages on account of mental distress said to have been caused by a brief disconnection of their electricity, and an injunction against future disconnections, and whose electricity had been disconnected after they had stopped paying their electric bill in retaliation for conduct of the electric company in an unrelated land dispute, had no constitutional right to a free trial transcript for use on appeal. Pene v. American Samoa Power Authority, 10 A.S.R.2d 61.

Appellants who claimed they could not afford to pay for a trial transcript had already been afforded due process of law by a trial on the merits, a written opinion by the trial judge on the merits of their claims, a hearing on their motion to reconsider, and another written opinion on that motion. Pene v. American Samoa Power Authority, 10 A.S.R.2d 61.

The right of a family member to use communal land is a proprietary right within the due process clause of the territorial constitution. Rev'd Const. of Am. Samoa I § 2. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

The heart of due process in parole revocation cases is a concern for basic fairness—the non-arbitrary treatment of a probationer or parolee by the state. American Samoa Gov't v. Lam Yuen, 11 A.S.R.2d 118.

Requirements of due process in parole revocation proceedings include the parolee's right to hear the evidence against him, to be heard in person and to present witnesses and documentary evidence, and to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing such confrontation. American Samoa Gov't v. Lam Yuen, 11 A.S.R.2d 118.

While "practice of law" is a general term, it is sufficiently definite that its employment in a criminal statute satisfies the demands of due process. A.S.C.A. § 31.0104. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

Government violates due process when it seizes a taxpayer's property for unpaid taxes without following the procedures mandated by the Internal Revenue Code for distraint and levy. Klauk v. American Samoa Gov't, 13 A.S.R.2d 52.

Where government failed to issue a 90-day statutory notice of deficiency before seizing plaintiff's property for unpaid taxes, it was enjoined from depriving plaintiff of his right to due process, either by continuing to deprive him of his rights under the Internal Revenue Code to challenge and contest income tax deficiencies or by withholding the property it had seized from plaintiff, until it complied with the applicable Code provisions pertaining to distraint and levy. Klauk v. American Samoa Gov't, 13 A.S.R.2d 52.

To hold a trial only a few minutes after the filing of the answer, over the objection of a party or under equivalent circumstances would be fundamentally unfair. Diocese of Samoa Pago Pago v. KMST, Inc., 15 A.S.R.2d 20.

Government's refusal to accept a surety bond in lieu of cash bail for an alien arrested for immigration offenses violated his constitutional rights, where government's reason for refusal was its hope that his friends would put up the money it would otherwise cost the government to deport him. Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

When the court finds that adequate grounds for discharge existed and requiring an employer to conduct a post-termination hearing would not change the result, due process has been satisfied. Palelei v. Star-Kist Samoa, Inc., 15 A.S.R.2d 120.

To properly assert personal jurisdiction over a nonresident, the long arm statute of the proposed forum must permit the exercise of jurisdiction under the particular facts of the case and such exercise of jurisdiction must satisfy the demands of due process. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

In order to subject a nonresident defendant to a judgment in personam, due process requires that he have certain minimum contacts with the forum such that maintaining the suit does not offend traditional notions of fair play and substantial justice. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

Minimum contacts needed for due process require that a defendant must have performed some act by which he purposefully availed himself of the privilege of conducting activities within the forum, thus invoking the benefits and protection of its laws. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

Minimum contacts required for due process insure that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts or because of the unilateral activity of another party or third person. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

Minimum contacts required by due process to assert personal jurisdiction were not satisfied where defendant neither designed nor manufactured the machinery alleged to have injured plaintiff in American Samoa, but merely installed piping for the machinery according to third party plans when such machinery was previously installed in another location. Patau v. Rosendahl Corporation, 16 A.S.R.2d 96.

Destroying the court reporter's shorthand notes in the twenty years between a final judgment and a party's attempt to relitigate the case does not violate due process. Taulaga v. Patea, 17 A.S.R.2d 34.

In some cases, such as when an illegal sentence was pronounced on a defendant unrepresented by counsel or when the circumstances surrounding an error of law made it impossible for counsel to call it to the Court's attention within ten days, a statutory ten-day limit might amount to an unconstitutional denial of liberty without due process of law. U.S. Const. Amends. V, XIV; Revised Const. of American Samoa art. I, § 2; A.S.C.A. § 46.2402(a). American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

That a criminal may be unable to determine the exact punishment and exceptions to punishment does not render criminal statutes unconstitutional; a person is only entitled to know the maximum punishment available. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

No constitutional right to rehabilitation at public expense exists, nor do statutes authorizing rehabilitation programs or early release give any particular criminal a constitutionally protected "liberty interest" in participating in them. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

No substantive due process right exists for not being deported. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

The right to interstate travel is a substantive, virtually unqualified constitutional right, but international travel can be regulated within the limits of due process. U.S. Const. Amend. V. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

The freedom to travel is one of the freedoms a convicted criminal may lose; therefore, a requirement that a convict spend part or all of his probation outside the Territory does not unconstitutionally abridge any such right. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Eyewitness identification evidence is unreliable and must be suppressed as violating due process if suggestive identification procedures have led to a very substantial likelihood of irreparable misidentification. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

Though identification procedure whereby complainant identified defendant in a one-on-one confrontation at police station was impermissibly suggestive, under the totality of the circumstances it was not so unfair as to violate due process, since complainant identified defendant without police prompting or comment, had seen him shortly before the crime, and at the scene of the crime had described physical characteristics and clothing of her assailant which matched defendant and had pointed out a third party who not only had also seen defendant before the crime but then identified him to the police immediately afterwards. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

Statute which sets different limitation periods for actions based on written and unwritten contracts, but does not define either term, is not unconstitutionally vague and does not violate due process, since parties can rely on case law and other legal authority to determine the meaning of these terms. Pene v. Bank of Hawaii, 17 A.S.R.2d 168.

Neither the Due Process Clause of the Fifth Amendment nor the right to a fair trial guaranteed by the Sixth Amendment gives a non-indigent defendant the right to a court-appointed and government-paid interpreter. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

American Samoa Constitution guarantees a court-appointed interpreter only to an indigent defendant who will otherwise be unable to understand the proceedings against him or to communicate with his counsel. Kim v. American Samoa Government, 17 A.S.R.2d 193.

Court employment of Samoan-English interpreters, but not interpreters of other languages, is simply a practice which reflects the cultural and juridical history of American Samoa rather than a racially based classification. Kim v. American Samoa Government, 17 A.S.R.2d 193.

Statute providing that the High Court shall have interpreters deals with the method of appointing permanent court employees and does not require Court to find, employ, and compensate special ad hoc officers whenever a litigant demands an interpreter. Kim v. American Samoa Government, 17 A.S.R.2d 193.

The overlap of the statutes defining sodomy and deviate sexual assault does not violate a criminal defendant's due process. A.S.C.A. §§ 46.3611, 46.3612. American Samoa Gov't v. Whitney, 20 A.S.R.2d 29.

When the statutes in question clearly define the conduct proscribed and the punishment available under each, due process is satisfied. American Samoa Gov't v. Whitney, 20 A.S.R.2d 29.

A "void" judgment, from which relief may be granted, is one in which a court lacked the power to enter the judgment, as when a court lacked jurisdiction over the parties or the subject matter, violated "due process of law," or engaged in "a plain usurpation of power." Fed. R. Civ. P. 60(b)(4); T.C.R.C.P. Rule 60(b)(4). Reid v. Puailoa, 23 A.S.R.2d 101.

Though the Immigration Board's documents are confidential by statute, this statute may not be used to deny constitutionally guaranteed due-process rights, nor does it prohibit the Court from ordering the Attorney General to produce these records when needed. U.S. Constitution Amend. V; Rev. Const. Am. Samoa Art. I, § 2; A.S.C.A. § 41.0307. Farapo v. American Samoa Gov't, 23 A.S.R.2d 136.

An alien in a deportation proceeding is entitled to cross-examine the government's witnesses, and an improper curtailment of this right constitutes a violation of procedural due process. U.S. Constitution Amend. V; Rev. Const. Am. Samoa Art. I, § 2; A.S.C.A. § 41.0205(7)(c); A.S.A.C. § 41.0807(a). Farapo v. American Samoa Gov't, 23 A.S.R.2d 136.

The right of a family member to use land owned by a Samoan communal family is a property right protected by the territorial constitution's due process clause. Rev. Const. Am. Samoa Art. I, § 2. Seventh Day Adventist Church of American Samoa v. Maneafaiga, 23 A.S.R.2d 150.

A non-capital criminal defendant is not constitutionally or procedurally entitled to a list of the prosecution's prospective witnesses. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 2; T.C.R.Cr.P. 16(a)(2). American Samoa Gov't v. Wilson, 24 A.S.R.2d 26.

Although constraining government decisions which deprive an individual of some "property" or "liberty" interest, procedural due process does not prohibit the government's taking of property but requires that a person have an opportunity to be heard before his property is finally taken. Mulitauaopele v. Maiava, 24 A.S.R.2d 134.

The unquestioned right of a family member to use communal land is a property right under the due process clause of either the U.S. or Samoan constitutions. A non-family member, by definition, has no such right. Pen v. Lavata`i, 25 A.S.R.2d 164.

If, as a matter of trial strategy, counsel declines to cross-examine a witness or avoids asking certain questions, the defendant's right to confront witnesses is not violated. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

As a matter of due process of law, the Land Commission must hold public hearings on proposed transfers of land, and give reasonable notice to interested parties. Pen v. Lavata`i, 30 A.S.R.2d 10.

A.S.C.A. § 46.0807(b) is reasonable and does not violate a person's due process rights. It is reasonable to believe that a person lawfully arrested may need to be held up to the full 24 hours without formal prosecution, because he is endangered or poses a threat to public safety, even if the district court sits before then. There is no point in bringing a person before the district court who will not be charged. Nor is there any logic in releasing a person prior to 24 hours when he is still legitimately held for safety reasons, simply because the district court has sat within a shorter time frame. American Samoa Gov't v. Lolesio, 30 A.S.R.2d 27.

If an arrestee is held for longer than 24 hours without being brought before the district court and charged, and if he can show that police personnel never intended to prosecute him, he has remedies for a violation of his due process rights. Contempt proceedings might also be appropriate in this situation. A.S.C.A. § 46.0807(b). American Samoa Gov't v. Lolesio, 30 A.S.R.2d 27.

A demonstration of actual prejudice is a necessary but not sufficient element of a due process claim arising from pre-accusatory delay. The court must also consider the reasons for the delay as well as the prejudice to the accused. American Samoa Gov't v. Logovi`i, 30 A.S.R.2d 143.

In considering the reasons for pre-accusatory delay, broad leeway is given for prosecutorial discretion and legitimate investigative purposes. Conversely, a delay that is imposed for purely tactical reasons is probably violative of due process. American Samoa Gov't v. Logovi`i, 30 A.S.R.2d 143.

When a pre-accusatory delay is caused by prosecutorial neglect rather than by intentional tactical delay, the evidence of actual prejudice to the defendant must be compelling to sustain a dismissal based on due process. American Samoa Gov't v. Logovi`i, 30 A.S.R.2d 143.

The unavailability of witnesses resulting from an extended delay is not enough by itself to demonstrate that the defendant cannot receive a fair trial. The defendant must show how the testimony of the missing witnesses would have been exculpatory. American Samoa Gov't v. Logovi`i, 30 A.S.R.2d 143.

A claim of denial of due process, either procedural or substantive, cannot be sustained, absent proof of a deprivation of a 'liberty' or 'property' interest within the meaning of the Due Process Clause of Article I, § 2 of the Revised Constitution of American Samoa, or of the Fifth or Fourteenth Amendments of the U.S. Constitution. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

Not every interest is protected by procedural due process guarantees. The claim must be derived from a statute or legal rule or through a mutually explicit understanding to be an enforceable right or entitlement. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

Though courts have eschewed rigid definitions of "liberty" and "property" interests, we believe that an interest in continuing an at-will periodic tenancy is not a constitutionally protected "liberty" or "property" interest. An at-will tenant may have a subjective need or desire for the relationship to continue but not a legitimate expectation for it to continue. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

Courts must examine the nature of the interest at stake to determine whether the party has merely a unilateral expectation of the interest or has a constitutionally protected claim of entitlement to the interest in deciding a party's due process rights. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 45 (Trial Div. 1997).

Enforceable claims to an entitlement derive from a statute, legal rule, or through contractual arrangement. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 45 (Trial Div. 1997).

Where a discharged employee presents sufficient facts which, if proven at trial, could persuade a reasonable factfinder to find that he had a just cause termination clause in his employment contract, that his employer wrongfully terminated his employment without just cause, and that the employment was terminated in violation of the requirements of procedural and substantive due process the employer's motion for summary judgment will be denied by the court. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 45 (Trial Div. 1997).

To assert a cause of action for deprivation of due process, a party must demonstrate that it has a constitutionally protected claim of entitlement to a "liberty" or "property" interest. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Procedural due process rights can attach to a contractual entitlement where a person's good name, reputation, honor, or integrity is at stake. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Where employee's contract provided for continued employment absent sufficient cause, employee was entitled to due process before he could be terminated. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

The practical requirements of procedural due process vary with the circumstances and particular demands of the case and usually require something less than a full evidentiary hearing. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

As long as the claimant has notice and an opportunity to be heard, the claimant has been afforded adequate procedural due process. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Where employee was not given advance notice of the charges against him such that he could gather evidence and solicit witness testimony to present defense, such procedure did not substantially comport with the requirements of procedural due process. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Requirements of procedural due process are not fixed but vary with circumstances and particular requirements of case, minimally demanding notice and opportunity to be heard. Suluai v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 216 (Trial Div. 2002).

Under the Due Process Clause, a Senator has a constitutionally

protected property interest in serving his term. Fa`amausili v. Am. Samoa Gov't, 6 A.S.R.3d 259 (Trial Div. 2002).

Before an individual is finally deprived of a property interest, due process requires at a minimum notice of the grounds and opportunity to be heard at a meaningful time and in a meaningful manner. Fa`amausili v. Am. Samoa Gov't, 6 A.S.R.3d 259 (Trial Div. 2002).

A family's entitlement to communal land is a proprietary right within the due process clause of the territorial constitution. Fanene v. Fanene, 6 A.S.R.3d 333 (Land & Titles Div. 2002).

§ 7 Individual Rights

§ 7(1) —Generally

Basic rights at the heart and soul of the American way of life, having an explicit or implicit constitutional foundation, are fundamental and are entitled to have laws impacting them strictly scrutinized. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

Neither a matai title nor the aspiration to attain the title is a property right, or any other constitutional right of fundamental importance. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

A.S.C.A. § 1.0403(b), which sets forth qualifications of eligibility to succeed to a matai title does not establish, or deal with, fundamental rights so as to be subject to strict scrutiny by a reviewing court. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

Under the rational basis test, a statute passes constitutional muster if it is rationally related to a legitimate territorial interest. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

§ 7(2) —Equal Protection

SEE CRIMINAL PROCEDURE § 8(2) – EQUAL PROTECTION

Equal Protection guarantees forbid statute unnecessarily penalizing United States citizenship as between similarly situated taxpayers one of whom is a citizen and one of whom is a national even though they may both be American Samoans. Where the substitution of terms renders referential legislation ambiguous, court will not favor meaning that is inconsistent with constitutional rights. Naber v. Am. Samoa Gov't, 1 A.S.R.2d 109 (Trial Div. 1983).

A statute that punishes an act if performed by an employee of the Development Bank of American Samoa, but not if performed by an employee of a commercial bank, involves neither a fundamental right not a suspect classification, and does not deny equal protection of the laws. Am. Samoa Gov't v. To'oto'o, 2 A.S.R.2d 61 (App. Div. 1985).

The rule that a state may classify persons for the purpose of legislation and pass laws applying such classifications operations to permit a legislative scheme classifying the officers and employees of the Development Bank of American Samoa differently from those of commercial banks in American Samoa. Am. Samoa Gov't v. To'oto'o, 2 A.S.R.2d 61 (App. Div. 1985).

The encouragement of economic process in American Samoa is an acceptable, if not mandatory, interest of the American Samoa Government and the American Samoa Government can enact legislation furthering this interest by discouraging fiduciaries employed by the Development Bank of American Samoa from misappropriating "money, funds, credit or securities" belonging to the Bank. Am. Samoa Gov't v. To'oto'o, 2 A.S.R.2d 61 (App. Div. 1985).

Personnel board's recommendation not to employ plaintiff was not shown to have been motivated by constitutionally impermissible gender-based discrimination when it could have resulted from past experience applicable to employees of either sex and plaintiff failed to bring evidence suggesting otherwise. U.S. Const. amdt. 14. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Personnel board's recommendation not to employ plaintiff was not shown to have been based on allegedly unconstitutional statutory Samoan hiring preference when evidence showed overwhelmingly that Board's recommendation was a response to undue manipulation of hiring process by plaintiff's husband. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Federal constitution would not prohibit American Samoan hiring preference, which is reasonably calculated to alleviate the difficulties that attend a government composed largely of officials with no knowledge of the local language and culture and who generally remain in the territory only temporarily. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Plaintiffs were not denied equal protection when denied license as a hairdresser or cosmetician because they did not meet standard of experience set out by the legislature. U.S. Const. Amdt. 14, § 1. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

Territorial constitution contains no equal protection clause. Rev'd Const. Am. Samoa art. I. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

Where territorial application of equal protection clause of federal constitution was not argued by either party, but both parties assumed that challenged territorial statute was unconstitutional if and only if it established a classification for which there was no rational basis, court would assume that the

equal protection clause was applicable at least insofar as it required a rational basis for statutory classifications. U.S. Const. amend. 14. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

Statutory scheme under which the same act may be punished under either of two statutes, with prosecutor having discretion to choose under which statute to prosecute, does not violate equal protection clause of federal constitution. U.S. Const. amend. 14. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

Statutory scheme under which two statutes define two different crimes, but proof of extra element is required by statute prescribing higher penalty, does not violate equal protection clause of federal constitution. U.S. Const. amend. 14. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

Even under equal protection analysis more stringent than the rational basis test, statute punishing those who drove after their licenses had been suspended for driving under the influence did not create unconstitutional classification, since (1) statutory distinction was not incoherent or unclear; (2) court should not substitute its opinion for that of the legislature on relative culpability, need for deterrence, and other factors necessary to determine range of appropriate sentences for various offenses; (3) drunken driving does appear to present special problems that might suggest the need for special statutory treatment. U.S. Const. amend 14; A.S.C.A. § 22.0223. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

Extent to which the equal protection clause of the Fourteenth Amendment of the U.S. Constitution applies in the territory of American Samoa is unclear. U.S. Const. amdt. 14. Macomber v. American Samoa Gov't, 12 A.S.R.2d 29.

There is a rational basis for a legislative distinction between (1) people who drive under the influence and then drive with a suspended license; and (2) those who commit other sorts of conduct punishable by suspension and then drive with a suspended license; therefore, a statute embodying such a distinction did not deny equal protection of the laws. U.S. Const. amdt. 14. Macomber v. American Samoa Gov't, 12 A.S.R.2d 29.

The Revised Constitution of American Samoa, promulgated in 1967 under the authority of the Secretary of the Interior, contains no equal protection clause. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Court employment of Samoan-English interpreters, but not interpreters of other languages, is simply a practice which reflects the cultural and juridical history of American Samoa rather than a racially based classification. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

It is unclear to what extent equal protection applies in American Samoa, because the Revised Constitution of American Samoa contains no equal protection clause. American Samoa Gov't v. Whitney, 20 A.S.R.2d 29.

The extent to which equal protection applies in the territory is unclear because the territorial constitution does not contain an equal-protection clause. In Re Matai Title I`aulualo, 25 A.S.R.2d 155.

Eligibility to be a candidate for a matai title is not an incident of one's nationality and therefore A.S.C.A. § 1.0403 does not abridge a constitutionally-guaranteed privilege. In re Matai Title I`aulualo, 25 A.S.R.2d 155.

Equal protection does not prevent classifications which are reasonably related to the achievement of a legislative purpose. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

Age groupings have been consistently upheld for regulatory objectives such as voting, jury selection, military service, and receiving Social Security and other benefits. In the context of matai title eligibility, the distinction between minority and majority is a logical differentiation. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

To prevail under the defense of selective prosecution, a defendant must show that his prosecution was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification, and that others similarly situated have not been prosecuted. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

Selective prosecution claims are reviewed under ordinary equal protection standards. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

A claim for selective prosecution based on the publicity in a case is analyzed under the rational basis standard. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

Under the rational-basis test, the government need only show that its actions are rationally related to a legitimate state interest. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

Claims of conspiracy to deprive someone of their constitutional rights are properly brought under 42 U.S.C. § 1985(3), not 42 U.S.C. § 1981. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

In order to properly state a claim under 42 U.S.C. § 1985(3), a complaint must allege that the defendants did (1) conspire (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws. It must then assert that one or more of the conspirators (3) did, or caused to be done, any act in furtherance of the object of the

conspiracy, whereby another was (4a) injured in his person or property or (4b) deprived of having and exercising any right or privilege of a citizen of the United States. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

§ 7(3) —Freedom of Speech, Press, and Religion

SEE RELIGION

Code prohibits enactment of law respecting establishment of religion or prohibiting free exercise thereof. Mulitauaopele v. Paleafei, 3 A.S.R. 93.

Law against prohibiting free exercise of religion refers to government and does not apply to individuals who object to use of their lands for church purposes. Mulitauaopele v. Paleafei, 3 A.S.R. 93.

Neither the rights to free speech and a free press nor a criminal defendant's constitutional right to a public trial preclude a court from excluding members of the public from the courtroom during the testimony of juvenile complaining witness in a rape case, where the court has determined after a public hearing that such exclusion is necessary to protect the witness's psychological well-being or to prevent her from being harassed and intimidated. American Samoa Gov't v. Masaniai, 4 A.S.R.2d 156.

Blanket imposition of religious programs on unconsenting inmate violates establishment and freedom of religion clauses of both federal and territorial constitutions. U.S. Const. amend. I; Rev'd Const. Am. Samoa art. I, § I. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

First amendment prohibits court from assuming jurisdiction to review church electoral processes or other disputes concerning church policy and church administration. U.S. Const. amend. 1. Ofa v. Tongan Wesleyan Church, 8 A.S.R.2d 110.

Where the identity of a church's governing body is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy, but instead should attempt to apply "neutral principles of law." Tele`a v. Savea, 11 A.S.R.2d 110.

Court must examine both the allegedly defamatory language and its context in determining whether it is a statement of fact or a statement of opinion, since language which taken alone might seem to be a statement of fact may be a statement of opinion when viewed in context. King v. Ala`ilima, 16 A.S.R.2d 6.

The power to govern a congregational church vests in the whole congregation, or in persons or entities which the majority of the congregation may select as the governing authority for general or particular purposes. U.S. Const. Amend. I; Rev. Const. Am. Samoa Art. I, § 1. Lefiti v. Tauanu'u, 24 A.S.R.2d 68.

When the identity of the governing authority or authorities within a church is substantially at issue, civil courts must refrain from delving into ecclesiastical laws and practices that may be paramount to resolving the controversy. U.S. Const. Amend. I; Rev. Const. Am. Samoa Art. I, § 1. Lefiti v. Tauanu'u, 24 A.S.R.2d 68.

Under A.S.C.A. § 43.5202(3), a communication published without malice is conditionally privileged when the publisher reasonably believes that the defamatory matter communicated affects a sufficiently important interest of the publisher and the recipient's knowledge of this information serves to lawfully protect the publisher's interest. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

The conditional privilege provided under A.S.C.A. § 43.5202(3) is lost if the publisher abuses the privilege. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

Article I, § 1 of the Revised Constitution of American Samoa has the same free speech and press provisions as in the First Amendment to the United States Constitution, under which there can be no liability without fault on the publisher of defamatory matter injurious to a private person. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

The posting of a check only to employees serves legitimate business purposes and is conditionally privileged under A.S.C.A. § 43.5202(3), and the immunity from liability continues when the check is publicly displayed unless the conditional privilege is lost through malicious abuse, and malice is present when a publisher either knows that the published matter is false and defamatory or acts in reckless disregard as to its truth or falsity. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

A business loses its conditional privilege as a publisher under A.S.C.A. § 43.5202(3) when it is not necessary to publicly post a check to convey to employees an off-island bank policy, and, without justification, fails to return the check to a hidden position and ignores the consequences of the public display; such actions manifest a reckless disregard of the truth or falsity of the defamatory character of the publicly posted check. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

Where a publicly displayed check clearly imparts that the idea that the person had passed a bad check, a criminal act, the posted check is libelous while visible to the public, and is actionable per se without proof of actual damages under the common law applicable in situations involving private concerns of a defamed private person. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

The public peace disturbance statute, A.S.C.A. § 46.4501(a)(2), is not facially invalid for being overbroad—it narrowly tailors it's required element of "intent to cause public annoyance or alarm, or recklessly creating a risk of it." American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

The public peace disturbance statute, A.S.C.A. § 46.4501(a)(2), does not apply to protest actions which are meant to express a viewpoint rather than to "cause public inconvenience, annoyance, or alarm," and by judicially limiting the application of the statute to non-protected speech, there are no residual overbreadth problems. American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

The "unreasonable noise" provision of the public peace disturbance statute, A.S.C.A. § 46.4501(a)(2), is an objective standard set by community practices, and so is not invalid for being vague; mathematical precision is not required in defining levels of noise, and as a member of the community, the defendant should have been aware that shouting in a public restaurant was unreasonable noise for purposes of the statute. American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

The standard that free speech is not absolute and may, in certain, narrow situations be regulated, also applies to speech in the legislative process. Muavaefa'atasi v. House of Representatives, 7 A.S.R.3d 117 (Trial Div. 2003).

§ 7(4) —Takings and Just Compensation

SEE PROPERTY § 1(3) – EMINENT DOMAIN

Private property may not be taken by government for private purposes even though just compensation is paid; but may be taken for public use. Government v. Soliai, 2 A.S.R. 600.

A "taking" of property by ASG requires it to provide just compensation. U.S. Const. Amend. V; Rev. Const. Am. Samoa art. I, § 2. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

A land use regulation may effect a constitutional taking if it fails to "substantially advance legitimate state interests" or "denies an owner economically viable use of his land." U.S. Const. Amend. V; Rev. Const. Am. Samoa art. I, § 2. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

Coastal zone regulations might effect a taking, and thus require compensation to the landowner, if they effectively prohibit any "economically viable" use of private property. U.S. Const. Amend. V; Rev. Const. Am. Samoa art. I, § 2. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

No "taking" occurs when government merely restrains property uses which are tantamount to public nuisances. U.S. Const. Amend. V; Rev. Const. Am. Samoa art. I, § 2. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

No compensation is due for what would otherwise be a regulatory taking when the government merely restrains uses of property that are tantamount to public nuisances. Solomona v. Governor of American Samoa, 18 A.S.R.2d 14.

In condemning land for public uses to build a road, the United States also acquired the land between the road and the shoreline, including the accompanying littoral rights; these rights have been transferred to ASG. A.S.C.A. § 37.2050. Anderson v. Vaivao, 21 A.S.R.2d 95.

Requiring criminal counsel to serve without compensation is generally not an unconstitutional taking of property without just compensation. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 2. American Samoa Gov't v. Wilson, 23 A.S.R.2d 159.

Although constraining government decisions which deprive an individual of some "property" or "liberty" interest, procedural due process does not prohibit the government's taking of property but requires that a person have an opportunity to be heard before his property is finally taken. Mulitauaopele v. Maiava, 24 A.S.R.2d 134.

After-the-fact compensation for a land's use is not an adequate substitute for obtaining permission or following applicable statutory procedures in order to use the land in the first place. Mamea v. American Samoa Power Authority, 26 A.S.R.2d 47 (Land & Titles 1994).

The American Samoa Government has the authority to alter or modify the public purpose of a condemnation in order to satisfy some other public use. American Samoa Gov't v. Meredith, 28 A.S.R.2d 92.

§ 7(5) —Cruel and Unusual Punishment

SEE CRIMINAL PROCEDURE § 5(2) – CONSTITUTIONAL RESTRICTIONS

§ 7(6) —Discrimination

Restriction whereby native land may not be held by persons who have not fifty percent or greater Samoan blood is racial classification which must be afforded strict scrutiny in constitutional challenge. Preservation of Samoan lands for Samoans, as guaranteed by treaty and American Samoan constitution, is compelling interest justifying invidious discrimination. Notwithstanding that decision is based upon invalid statute, majority has taken judicial notice that racial classification survives strict scrutiny analysis despite the fact that government has neither alleged no presented evidence of a compelling interest. Craddick v. Territorial Registrar, 1 A.S.R.2d 10 (App. Div. 1980).

42 U.S.C. § 1981 creates an enforceable cause of action in American Samoa for claims of intentional racial discrimination. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

42 U.S.C. § 1981 does not apply to claims based on sex discrimination. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

For actions under § 1981, a plaintiff must specifically plead "intentional discrimination on account of race," otherwise known as "racial animus." Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

Where complaint went beyond alleging of noncompliance with administrative regulations to state intentional racial discrimination, it did not belong at the administrative level. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

Where territorial statute discriminates against individuals based on their national origin, Court will apply strict scrutiny in reviewing it. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

A.S.C.A. § 1.0403(b) does not exclude individuals based on national origin. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

§ 8 Contracts

SEE CONTRACTS

Provision of federal constitution that "No state shall pass any law impairing the obligation of contracts" is limitation upon power of state and not United States possession such as American Samoa. Haleck v. Tiumalu, 3 A.S.R. 380.

Federal courts do not have exclusive jurisdiction over federal civil rights actions such as 42 U.S.C. § 1981, but instead have concurrent jurisdiction. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

A.S.C.A. § 3.0208 clearly grants the High Court jurisdiction to hear claims brought under 42 U.S.C. § 1981. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

42 U.S.C. § 1981 applies to United States Territories, including American Samoa. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

42 U.S.C. § 1981 applies against both private and state actors. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

42 U.S.C. § 1981 protects rights arising both under the Thirteenth and Fourteenth Amendments to the United States Constitution. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

42 U.S.C. § 1981 creates an enforceable cause of action in American Samoa for claims of intentional racial discrimination. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

42 U.S.C. § 1981 does not apply to claims based on sex discrimination. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

For actions under § 1981, a plaintiff must specifically plead "intentional discrimination on account of race," otherwise known as "racial animus." Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

Claims of conspiracy to deprive someone of their constitutional rights are properly brought under 42 U.S.C. § 1985(3), not 42 U.S.C. § 1981. Purcell v. Seugogo, 6 A.S.R.3d 276 (Trial Div. 2002).

§ 9 Habeas Corpus

SEE CRIMINAL PROCEDURE § 7(7) – HABEAS CORPUS & CONDITIONS OF CONFINEMENT

CONTRACTS

§ 1 Contract Formation
- 1(1) —Meeting of the Minds
- 1(2) —Consideration
- 1(3) —Offer and Acceptance
- 1(4) —Requirement of a Writing: The Statute of Frauds
- 1(5) —Quasi Contract
- 1(6) —Conditions Precedent and Subsequent

2 Responsibilities and Authority of Parties Forming a Contract
- 2(1) —Authority
- 2(2) —Requirement of Capacity
- 2(3) —Duties of Parties
- 2(4) —Third Party Beneficiaries
- 2(5) —Assignment of Rights
- 2(6) —Delegation of Duties
- 2(7) —Fiduciary Duties
- 2(8) —Warranties

3 Unenforceability
- 3(1) —Public Policy/Illegality
- 3(2) —Fraud
- 3(3) —Unfairness and Unconscionability
- 3(4) —Mistake and Impossibility
- 3(5) —Misrepresentation
- 3(6) —Duress
- 3(7) —Impossibility
- 3(8) —Impracticability
- 3(9) —Frustration of Purpose
- 3(10) —Voidable Contracts
- 3(11) —Void Contracts
- 3(12) —Undue Influence

4 Contract Modification
- 4(1) —General Principles
- 4(2) —Oral Modification
- 4(3) —Written Modification
- 4(4) —Ratification
- 4(5) —Novation
- 4(6) —Mutual Rescission
- 4(7) —Waiver
- 4(8) —Repudiation
- 4(9) —Cancellation
- 4(10) —Acquiescence

5 Contract Interpretation
- 5(1) —General Provisions
- 5(2) —The Uniform Commercial Code
- 5(3) —The Parol Evidence Rule
- 5(4) —Plain Meaning Rule

5(5) —Ambiguous Terms
5(6) —Custom & Usage
5(7) —Different & Additional Terms
5(8) —Missing Terms
5(9) —CIF Contract Terms
5(10) —Choice of Law Provisions
6 Performance and Breach
6(1) —Breach Generally
6(2) —Bad Faith
6(3) —Substantial Performance
6(4) —Partial Performance
6(5) —Divisible Contracts
6(6) —Anticipatory Repudiation
6(7) —Accord & Satisfaction
6(8) —Duty to Mitigate
7 Remedies
7(1) —Statute of Limitations
7(2) —Specific Performance and Injunctions
7(3) —General Measure of Damages
7(4) —Quantum Meruit
7(5) —Liquidated Damages
7(6) —Exemplary Damages
7(7) —Reformation
7(8) —Promissory Estoppel
7(9) —Punitive Damages
7(10) —Attorney Fees
8 Types of Contracts
8(1) —Oral Agreements
8(2) —Bailment Contracts
8(3) —Consignment Contracts
8(4) —Written Contracts

§ 1 Contract Formation

§ 1(1) —Meeting of the Minds

Notarization serves to assure the authenticity and validity of signatory's assent to a document, and there is a strong presumption that a notarized signature is valid. Mailo v. Soane, 4 A.S.R.2d 140.

When one party signed a blank form believing that it would be filled out by the other party in the amount of $6,000, and the other party instead filled the contract out in the amount of $15,164, there was no agreement between the parties on a contract obligating the signing party to pay $15,164; the other party was entitled at most to a quantum meruit recovery. Development Bank v. Ilalio, 5 A.S.R.2d 110.

An employer's policy manual can give rise to contractual rights and obligations if the contents of the manual and the circumstances of its distribution suggest that it was designed to give the impression that such rights and obligations existed and thereby to elicit particular conduct on the part of employees. Palelei v. Star Kist Samoa, Inc., 5 A.S.R.2d 162.

Employee handbook that strongly advised employees not to join a labor union, described a system of "progressive discipline" prior to termination, and required the employee to sign a statement that he has read the manual and understands its provisions, gave rise to contractual rights and obligations with regard to discipline and termination of employment. Palelei v. Star Kist Samoa, Inc., 5 A.S.R.2d 162.

Where the parties to a putative contract of sale have made no definite commitments to each other, no contract is formed and

thus relief on the contract is unavailable to either party. Chan Kau v. Samasoni, 7 A.S.R.2d 21.

No reasonable person could conclude that creditor had agreed to a settlement proposed by debtor, and therefore no question of material fact was raised with respect to such settlement, where the evidence, taken in the light most favorable to the debtor, was that (1) debtor had told creditor's representative he had no intention of paying the debt but that he was willing to surrender a car that had been taken as collateral security; (2) creditor never verbally agreed to this proposal; (3) creditor had the legal right to take the car and then collect the remainder of the debt; (4) debtor had the subjective impression that creditor's representative was happy to receive the car, since otherwise the creditor would receive nothing at all; (4) creditor never took the car. Bank of Hawaii v. Pene, 8 A.S.R.2d 30.

In an action for breach of an oral contract for the settlement of an outstanding electric bill, court would not find that the agreement included concessions by the electric company with regard to land disputes unrelated to the bill in question, where: (1) plaintiff's documentary evidence of the existence of such terms was self-serving and prepared after the negotiations; (2) defendant's representatives testified that there was no agreement on these terms; (3) notes made during the negotiations by defendant's counsel reflected no agreement to such terms; (4) plaintiff himself had sought the settlement as an alternative to a trial scheduled the same day, over the objections of defendant's counsel who had objected to a continuance for the purpose of settlement negotiations; (5) a stipulation signed by both parties at the conclusion of the negotiations had contained no reference to agreement on any collateral terms; (6) agreement to such terms would have been beyond the scope of defendant's representatives' authority; and (7) it made no business sense for defendant to agree to such terms. Pene v. American Samoa Power Authority, 10 A.S.R.2d 9.

Where invoices received and paid by buyers suggested that the contractor's actual bill would be well over the original contract price, but buyers already had a massive investment in the project and were in no position to call it off, neither their payment of invoices which did not bring their total payment above the contract price nor their silence in the face of subsequent invoices which did far exceed the contract price could fairly be regarded as consent to a dramatic and one-sided modification of the contract. Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

Where parties agreed that contractor would undertake work not included in the original contract, but did not discuss any modification in the contract price, it was unreasonable for the buyer to assume that there would be no extra charge, and just as unreasonable for the contractor to assume that the buyers would pay whatever he asked. Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

Where parties did not even attempt to reach an agreement on the price of modifications to a building under construction, but instead each party chose to proceed in deliberate disregard of the materially different interpretation which he surely knew the other party would eventually place on the arrangement, there was no contract and no contractual basis for resolving a subsequent dispute over the price to be paid for the modifications; rather, the court must apply the doctrine of quantum meruit to award the contractor the value of the benefit conferred on the buyer. Restatement of Contracts (Second) § 20(1). Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

A court will not presume that an injured worker settling a workmen's compensation claim clearly intended to release all his future claims against a third party who did not participate in negotiating the contract and apparently paid no consideration for such release. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

Parties to a contract for the sale of land must mutually assent to their agreement, tested by an objective or external standard. Onofia v. Pitoitua, 1 A.S.R.3d 159 (Trial Div. 1997).

To constitute a valid contract, there must be an offer, acceptance, and consideration. MSM Village Store v. GMP Assoc., Inc., 2 A.S.R.3d 148 (Trial Div. 1998).

A valid contract requires mutual assent, whether subjective, or objective. MSM Village Store v. GMP Assoc., Inc., 2 A.S.R.3d 148 (Trial Div. 1998).

Where express agency contract existed between defendant and party closely related to plaintiff, covering same type of service which was the subject of the unproven but alleged contract, payments made by defendant were not considered evidence of the alleged agreement. MSM Village Store v. GMP Assoc., Inc., 2 A.S.R.3d 148 (Trial Div. 1998).

The essential elements of a contract include the subject matter, parties, terms and conditions, and price or other consideration. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

§ 1(2) —Consideration

Gratuity cannot be turned into consideration by subsequent promise to pay therefor so long as to make valid contract, and promise to give land after receipt of gratuity is not enforceable. Atofau v. Tuufuli, 2 A.S.R. 414.

The legal importance of an unfair bargaining process diminishes when the considerations given and received by the weaker party approach what they would have been had the process been above board. Development Bank v. Ilalio, 5 A.S.R.2d 1.

Forbearance from pressing a claim that is later found to be invalid may be consideration for a new promise provided that, at the time the new promise is made, the forbearing party believes in good faith that his claim is just. Development Bank v. Ilalio, 5 A.S.R.2d 110.

Plaintiff's forbearance to sue may be sufficient consideration for defendant's waiver of the statute of limitations even though it would be insufficient to supply missing essential elements of a contract that were previously absent. Development Bank v. Ilalio, 5 A.S.R.2d 110.

Consideration sufficient to support a guaranty need not flow directly to the guarantor, and may take the form of delivery of goods to a third party on the faith of the guarantor's assurance of payment. Ryan, Inc., v. Vaka, 5 A.S.R.2d 149.

In the absence of changed circumstances or other special equitable considerations, there was no consideration for a modification in the contract price where contractor proposed to do nothing for the higher price that he was not already obliged to do for the original contract price. Restatement of Contracts (Second) § 73. Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

A court will not presume that an injured worker settling a workmen's compensation claim clearly intended to release all his future claims against a third party who did not participate in negotiating the contract and apparently paid no consideration for such release. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

Circumstances indicated that consideration for agreement was really use of seller’s vehicle as taxi, and not vehicle, where vehicle was operated by purchaser as taxi for eighteen months without transferring title. Taliga v. Siaumau, 1 A.S.R.3d 73 (Trial Div. 1997).

§ 1(3) —Offer and Acceptance

Parties may be bound by terms of contract even though they do not sign it where their assent is otherwise indicated by possession and compliance with terms of contract. Faiivae v. Tiumalu, 3 A.S.R. 402.

Where actions of parties indicate that they treated contract as valid, trial court is not in error in finding contract valid. Scanlan v. Steffany, 3 A.S.R. 583.

A proffered "settlement" of an already litigated claim, purporting to "adjust" boundaries established by the court, has no effect when it (1) was never judicially approved; (2) resulted from negotiations between a licensed legal practitioner and an adverse party represented by counsel in the absence of the latter party's counsel; (3) clearly results in disadvantage to the latter party; (4) was renounced by the latter party soon thereafter; and (5) bears a close resemblance to an earlier "settlement" asserted in court by the legal practitioner, the existence of which the adverse party denied immediately after having consulted his attorney. Te'o v. Sotoa, 5 A.S.R.2d 90.

Where buyer routinely accepted deliveries of merchandise after notice of higher price than seller had previously offered in connection with another transaction, made payments on account, and did not question the price until after seller had filed suit, buyer had accepted the higher price. R.P. Porter International, Inc., v. Samoa Roofing and Siding, Inc., 7 A.S.R.2d 54.

Unconditional gifts are irrevocable after delivery, so that one who has made an unconditional donation of funds to a church may not demand repayment. Ofa v. Tongan Wesleyan Church, 8 A.S.R.2d 110.

Where lease provided that tenant would have a right to renew at the expiration of the original five-year term, and where, after expiration and after various breaches of lease by both landlord and tenant, the parties negotiated for subdivision of the leased premises and landlord sent letter stating that tenant would retain a stated square footage as its leasehold interest, with a designated space at the bottom of the letter for acceptance by the tenant, such acceptance would give rise to a new five-year lease on the modified terms. Development Bank of American Samoa v. Ron Pritchard Ground Services, Inc., 8 A.S.R.2d 190.

Minuscule, lilliputian, or exceedingly fine print does not satisfy requirement that passengers be given conspicuous notice of incorporation by reference of baggage liability limitations. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

To be sufficiently conspicuous, a notice of baggage liability limitations must be positioned and identified so as to penetrate the traveling public's reasonably focused consciousness. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Defendant airline's notice of incorporated terms was sufficiently conspicuous when the notice: (1) though small was legible; (2) was preceded by a bold-face heading; and (3) was the first thing a passenger would see in the ticket after the flight coupons. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

In order for airline to limit its liability for lost luggage it must provide passengers conspicuous written material on or with the ticket that sets forth either (1) that airline's monetary limitation or (2) a notice that "[f]ederal rules require any limit on an airline's baggage liability to be at least $1250 per passenger." 14 C.F.R. § 254.5. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Airline ticket's notice which neither stated the airline's monetary limit on liability for lost baggage, nor contained the exact text of an alternate notice approved by federal regulation, was insufficient to limit the airline's liability. 14 C.F.R. § 254.5. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Baggage liability limitation notice which was behind the flap in the ticket jacket which would ordinarily contain the ticket did not provide passenger with conspicuous notice, since the message was poorly positioned and the design encouraged the obscuring of the terms of contract. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Baggage liability limitation found on ticket jacket was sufficiently conspicuous where: (1) type though small was legible; (2) the message was set out in a separate box at the tope of the page; and (3) a bold-faced "PLEASE NOTE" drew attention to it. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Where defendant airline did not provide conspicuous notice of its liability limits for lost baggage, it would not be able to limit liability and plaintiff would recover the full value of his baggage since (1) a reasonable reading of the contract led to that result and (2) that is the logical implication of federal regulations requiring conspicuous notice. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Although the common law prohibited a common carrier from attempting to exculpate itself from all liability for loss of baggage due to its own negligence, federal common law has developed the "released value doctrine" under which a carrier may limit the amount of its liability to the agreed value of the goods, provided that the shipper has the option of obtaining coverage for the full value of its goods, is made aware of that option, and knowingly chooses to pay a lower price for the lesser coverage. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

In promulgating regulations allowing airlines to limit liability for lost baggage by providing notice to passengers, and in rejecting a proposal that would have required passengers to sign a "statement of understanding" as a prerequisite to limitation of liability, the Civil Aeronautics Board implicitly limited the extent to which passengers may rely on the "released value doctrine" to avoid an airline's attempt to limit liability. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Expressed intention of Civil Aeronautics Board not to preempt state courts on applicability of "released value doctrine" to limitation of airlines' liability for lost baggage, and the Board's somewhat conflicting intention to facilitate incorporation by reference of limitations of liability, could be harmonized by requiring carriers (1) to make excess valuation insurance available; (2) to make this fact known to the traveling public in a manner at least as conspicuous as the required notices of the airline's limited liability; and (3) to set out the outlines of the coverage provided. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Ambiguity in solicitation for bids, which might otherwise prevent soliciting agency from determining which bid was the lowest and what price it would have to pay if it accepted the low bid, could be cured by information supplied in the bids themselves. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Ambiguities in offer and acceptance, which might otherwise prevent the formation of a contract, may be resolved by reference to the prior business relations of the parties. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

A party who unilaterally places a practical construction on contract language does not necessarily bind other parties to this construction, but seriously limits his own chances of enforcing an opposing construction when the old one should be of no further benefit to him. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Bid submitted to administrative agency in competitive bidding process for fuel supply contract should be construed not to include a terminal fee, where (1) bid did not specify whether the terminal fee would be included or excluded from the bid price; (2) bidder was currently charging the same agency extra for the terminal fee under a contract in which the language of its bid had been essentially identical to that of its present bid; (3) bidder's contention that the intervening six months had given rise to a new custom with regard to terminal fee charges was not supported by the evidence; and (4) bidder did not indicate its intention to change its pricing policy until after the bids were opened, when it seemed evident that bidder would not be awarded the contract unless its bid included the terminal fee. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Administrative rule allowing rejection of bids on account of ambiguities in the solicitation, if construed to allow rejection of a bid which was clearly the low one on account of an ambiguity in the solicitation that had been cured by the bids themselves, would violate competitive bidding statute prohibiting changes prejudicial to fair competition. A.S.A.C. § 10.0232; A.S.C.A. § 12.0211. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Clause in bid solicitation by government agency reserving the agency's right to reject all offers, if construed to allow such rejection for no reason at all or just because the government might get a better price if bidders are allowed to rebid after looking at their competitors' bids, would violate competitive bidding statute prohibiting changes prejudicial to fair

competition. A.S.C.A. § 12.0211. Pago Petroleum Products, Inc., v. American Samoa Power Authority, 10 A.S.R.2d 75.

Auto parts, clothing, and modestly priced mats are not the type of goods—such as live animals, jewelry, fragile, perishable, or inherently dangerous items, or items with unique value—which an airline may reject from carriage altogether, or for which it may require increased payment or a release or other condition before agreeing to carry the goods. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, 13 A.S.R.2d 5.

Language in airline ticket limiting airline's liability for lost baggage adequately notifies passenger of such limited liability where language is conspicuous and understandable, even though the language deviates from that provided in federal regulation. 14 C.F.R. § 254.5(b). American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, 13 A.S.R.2d 5.

Language suggested in federal regulation to give notice of monetary limitations on airline's liability for passengers' baggage is not mandatory; alternative language that effectively notifies passengers is permitted. 14 C.F.R. § 254.5(b). American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, 13 A.S.R.2d 5.

Where invoices received and paid by buyers suggested that the contractor's actual bill would be well over the original contract price, but buyers already had a massive investment in the project and were in no position to call it off, neither their payment of invoices which did not bring their total payment above the contract price nor their silence in the face of subsequent invoices which did far exceed the contract price could fairly be regarded as consent to a dramatic and one-sided modification of the contract. Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

Plaintiff was held to have accepted the terms and conditions of a contract when he signed and returned it to the other party; his acceptance of payments according to the stated contractual terms also corroborated the fact that he agreed to such terms. Mauga v. Pioneer Pacific Financial Services, Inc., 16 A.S.R.2d 16

Fact that defendant had not signed the contract in issue was immaterial, since he accepted the terms and conditions of such contract by making payments according to its terms. Mauga v. Pioneer Pacific Financial Services, Inc., 16 A.S.R.2d 16

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.

An untimely attempt to exercise an option to renew or extend a lease is ineffective. Reine v. Fiame, 23 A.S.R.2d 25.

When an individual lives as a member of a family's household, a presumption arises that the services for which compensation is sought were rendered gratuitously. This is true even when persons living in the same household are not related by blood or affinity. Farapo v. Schuster, 26 A.S.R.2d 112.

Where an original ground lease did not contain a clause allowing for a second option or a right to extend the lease, a letter extending the lease does not constitute a new lease. Development Bank of American Samoa v. Scanlan, Inc., 28 A.S.R.2d 57.

Receipt and free acceptance of goods, and partial payment for them, may constitute the incurrence of a debt. Carpenters Fiji, Ltd. v. Pen, 28 A.S.R.2d 202.

A party may rescind a contract award where no contractual rights have vested. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

A public agency's invitation for bids is regarded as a request for offers and no contractual rights arise prior to its acceptance by the agency. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

In public contracts, the bid is the offer, and a contract comes into being upon acceptance by the governmental agency. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Courts will respect statutory language requiring formal execution of a contract in order for contract rights and obligations to vest. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Where arbitrary action or fraudulent intent to injure a complaining party is indicated, courts may interfere with an agency's power to rescind its award. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Where circumstances indicated that backroom negotiations had taken place between government agency and second-lowest bidder that was awarded contract after award rescinded, court would not honor clause shielding agency from liability as it had clearly employed clause arbitrarily and acted in bad faith. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

§ 1(4) —Requirement of a Writing: The Statute of Frauds

Territorial statute providing that no debtor can be charged interest in excess of 6% unless the amount "is in writing and is signed by the party to be charged" precluded court from

holding debtor liable to pay interest at a higher rate in the absence of a signed agreement, even when debtor knew bank would charge creditor a higher rate of interest on amounts not timely paid by debtor. A.S.C.A. § 28.1501(a). Meridian Breckwoldt Samoa, Ltd., v. Max Haleck, Inc., 7 A.S.R.2d 95.

Since in the absence of a written agreement specifying the rate of interest applicable to a promissory note the statutory rate of 6% will apply, where a note specified an interest rate of 12.5% "until maturity" the rate after maturity was 6%. A.S.C.A. § 28.1501. Pritchard v. Amerika Samoa Bank, 8 A.S.R.2d 157.

Territorial statute requiring certain transactions to be "approved in writing by the Governor" was not violated when Governor signed a lease document and then authorized members of his staff to make certain revisions to the document before it left his office, even though the Governor did not sign the document a second time after the changes were made. A.S.C.A. § 30.0131. American Samoa Gov't v. Samoa Aviation, Inc., 11 A.S.R.2d 144.

Instrument containing all the terms of a completed contract between two parties which is executed by one party and accepted or adopted by the other constitutes a contract in writing within the meaning of the applicable statute of limitations, regardless of the fact that the latter party did not sign the instrument. Pene v. Bank of Hawaii, 17 A.S.R.2d 168.

A court may compel specific performance of a partially performed, unwritten agreement; the court's power to compel specific performance is expressly recognized in the statute of frauds relating to land transactions. A.S.C.A. § 37.0211. Manoa v. Jennings, 21 A.S.R.2d 23.

The maximum interest rate for business purposes is 18 percent, pursuant to A.S.C.A. § 28.1503, but interest rates greater than six percent must be in writing to be enforceable, pursuant to A.S.C.A. § 28.1501. Jessop v. Hisatake, 25 A.S.R.2d 12.

A verbal promise to convey any interest in land is not legally binding. American Samoa Gov't v. Meredith, 28 A.S.R.2d 10.

Under A.S.C.A. § 27.1530, a writing sufficient to satisfy the statute of frauds in the sale of goods need not be the contract itself, but may be merely a memorial sufficient to indicate that a contract for sale has been made. American Samoa Gov't Employees Federal Credit Union v. Sele, 28 A.S.R.2d 21.

The language of the A.S.C.A. § 27.1530 indicates that the writing need not be the contract itself, but merely a memorial "sufficient to indicate that a contract for sale has been made." American Samoa Gov't Employees Federal Credit Union v. Sele, 28 A.S.R.2d 21.

The fact that the instrument was signed after the contract was entered does not operate to nullify the contract under the statute of frauds. American Samoa Gov't Employees Federal Credit Union v. Sele, 28 A.S.R.2d 21.

In American Samoa, a contract for the sale of land must be in writing, supported by some written evidence signed by the party to be bound or his authorized agent. Onofia v. Pitoitua, 1 A.S.R.3d 159 (Trial Div. 1997).

In American Samoa, contracts for the sale of real property are required to be evidenced in writing. Gabriel v. Pipili, 2 A.S.R.3d 227 (Land & Titles Div. 1998).

A contract which does not comply with the Statute of Frauds is unenforceable. Aveina v. Aveina, 4 A.S.R.3d 107 (Trial Div. 2000).

American Samoa law does not recognize a contract for the sale of real property unless it is in writing, or has been partially performed. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

The writing required by the statute of frauds may be a note or memorandum subscribed by the party to be charged. It need not be a formal document. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

A note or memorandum documenting the sale of real property should completely evidence the contract which the parties made by giving all of the essential or material terms of the contract. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

§ 1(5) —Quasi Contract

SEE CIVIL PROCEDURE § 9 – EQUITABLE REMEDIES

Liability under a quasi-contract theory is implied-in-law by the equitable principle against unjust enrichment. Farapo v. Schuster, 26 A.S.R.2d 112.

Restitutionary claims under the quasi-contract theory do not apply to family situations. Farapo v. Schuster, 26 A.S.R.2d 112.

The court can find an implied contract from the conduct of the parties. MSM Village Store v. GMP Assoc., Inc., 2 A.S.R.3d 148 (Trial Div. 1998).

An implied contract has the same requirements as an express contract, including mutual assent. MSM Village Store v. GMP Assoc., Inc., 2 A.S.R.3d 148 (Trial Div. 1998).

§ 1(6) —Conditions Precedent and Subsequent

Statement by one of lessors that lease would not be valid without signature of co-owner was merely incorrect legal

opinion and not condition precedent to valid lease. Scanlan v. Steffany, 3 A.S.R. 583.

§ 2 Responsibilities and Authority of Parties Forming a Contract

§ 2(1) —Authority

No lease existed when the people who signed documents purporting to create various contract and/or property rights in some buildings had no authority to do so. Fagasoaia v. Fanene, 17 A.S.R.2d 91.

A contract entered into by a government official lacking authority, or failing to follow proper procedures, is void. Rakshan v. American Samoa Gov't, 28 A.S.R.2d 151.

Where one co-tenant conveys title to part of the co-owned land without authorization of the other co-tenants, title to tract conveyed may still inure to the grantee of the unauthorized conveyance where the tract is partitioned to the grantor in subsequent proceedings and if recognition of the prior conveyance can be done without prejudice to the other co-tenants. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

§ 2(2) —Requirement of Capacity

Mental capacity to contract is presumed until it is proven by a preponderance of evidence that actual unsoundness of mind existed at the time of contractual act. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

In determining mental capacity to contract, the legal standard is whether the person fully understood the nature, purpose, and effect of the particular transaction. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

§ 2(3) —Duties of Parties

Every contracting party has an obligation to deal reasonably with the other. R.P. Porter International, Inc., v. Pacific International Engineering, Ltd., 11 A.S.R.2d 124.

Hidden defects of an item for sale were material facts which the seller had a duty to disclose to the buyer. Roache v. Uia, 7 A.S.R.3d 83 (Trial Div. 2003).

§ 2(4) —Third Party Beneficiaries

Consideration sufficient to support a guaranty need not flow directly to the guarantor, and may take the form of delivery of goods to a third party on the faith of the guarantor's assurance of payment. Ryan, Inc., v. Vaka, 5 A.S.R.2d 149.

§ 2(5) —Assignment of Rights

RESERVED

§ 2(6) —Delegation of Duties

RESERVED

§ 2(7) —Fiduciary Duties

Duty of a fiduciary to be zealous in protection of the interests of beneficiaries is at its highest when interests of beneficiaries may compete with personal interests of the fiduciary. Logoa'i v. South Pacific Island Airways, Inc., 6 A.S.R.2d 28.

A constructive trust may arise from violation of a fiduciary duty, such as where the property is obtained by constructive fraud or undue influence. Where there is a preexisting fiduciary relationship between the parties, a person whose property has been taken is entitled to restoration of the property itself. Jennings v. Thompson, 25 A.S.R.2d 77.

A guardian is a fiduciary, whose duty to be zealous in the protection of the interests of those to whom the fiduciary duty is owed is at its highest in situations wherein these interests may compete with the personal interests of the fiduciary. Stephens v. Stephens, 30 A.S.R.2d 165.

As a fiduciary, a guardian is charged with unscrupulous unselfishness, and is legally bound to perform his or her fiduciary duties in the best interests of his or her charge. Stephens v. Stephens, 30 A.S.R.2d 165.

§ 2(8) —Warranties

Express warranties are interpreted according to general contract principles. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

§ 3 Unenforceability

§ 3(1) —Public Policy/Illegality

Whether a court will enforce illegal contract depends on many factors including whether nonenforcement will deter or punish wrongdoing, whether nonenforcement would reward the principal wrongdoer at the expense of less culpable parties, and whether the illegality involved "wicked intent." Enekosi v. Tu'ufuli, 3 A.S.R.2d 81.

A court may take cognizance of an illegal contract for some other purpose without "enforcing" it. Enekosi v. Tu'ufuli, 3 A.S.R.2d 81.

Under territorial statute, one who makes a contract within the territory to extend credit at the rate of 20 per cent commits the crime of usury and is liable to imprisonment and to forfeiture of the entire amount of the debt. A.S.C.A. § 28.1510.

Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc., 9 A.S.R.2d 62.

Attempt by airline to exclude all liability for loss of certain classes of baggage was void for violation of public policy, since a carrier who stipulates not to be bound to the exercise of care and diligence seeks to put off the essential duties of his employment. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Promise to pay in exchange for a promise not to bring criminal prosecution is unenforceable, unlawful, and void as against public policy, regardless of guilt or innocence. Purse Seine Inc. v. Lumana`i Development Inc., 11 A.S.R.2d 1.

Airline's rule in its Contract of Carriage exonerating the airline from all liability for irreplaceable articles, valuable items, religious or ceremonial mats and artifacts, samples, and goods for resale included in passenger's baggage was contrary to public policy and void, at least as applied to personal property that was neither fragile, perishable, inherently dangerous, nor uniquely valuable. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, 13 A.S.R.2d 5.

An airline may not limit its liability for provable direct or consequential damage resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $1250 for each passenger. 14 C.F.R. § 254.4. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, 13 A.S.R.2d 5.

Contracts falling afoul of the "No contract shall be entered into unless" formula should be treated as a special instance of the contract that is partly illegal but in some respects enforceable. American Samoa Gov't v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Not all unlawful agreements are ipso facto void; if the denial of relief is disproportionately inequitable the right to recover will not be denied. American Samoa Gov't v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Where legislature has not specifically defined the consequences of a particular kind of illegal contract, courts are left to a delicate balancing of factors for and against enforcement; unenforceability may not always deter or punish and may sometimes even reward the principal wrongdoer, and caution is necessary when so much of commercial life is governed by regulations which may easily be broken without wicked intent. American Samoa Gov't v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Court can excise the illegal portions of a contract and enforce the remainder, with or without compensating adjustments in the contractual obligations of the parties, or may modify an illegal term to make it conform to the law. American Samoa Gov't v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Lease agreement omitting inflation adjustment clause required by statute would be enforced, after modification to include such a clause, where: (1) the statute did not provide that contracts omitting the required term should be absolutely void; (2) the contract complied with all applicable laws and regulations but one; (3) the only "misconduct" in which the lessee might be said to have engaged was to sign an apparently lawful agreement drafted by the lessor; (4) there was no evidence that the required clause was omitted by any reason but inadvertence; (5) the lessee had signed a covenant to obey all laws pertaining to the premises; (6) soon after being notified of the absence of the inflation adjustment clause, the lessee expressed its belief that it was in fact bound to pay the required adjustments; (7) the statute did not appear designed to punish conduct regarded as malum in se by effecting a forfeiture; (8) the statutory purpose of protecting the lessor could be accomplished by imposing on the lessee the obligation to pay the required adjustments; and (9) the record rather clearly showed that the absence of an inflation adjustment clause was not a genuine point of controversy between the lessor and lessee, but was one of a series of technical grounds on which the lessor sought to evict the lessee in order to accommodate another prospective tenant. A.S.C.A. § 37.2020. American Samoa Gov't v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Merely recommending that an individual retain a lawyer cannot single handedly transform an unenforceable settlement in an enforceable one. Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

The court will not enforce claimed partnership gains derived while the parties were in violation of the American Samoa licensing Act. A.S.C.A. §§ 27.0201 et seq. Papali`i v. Pen, 18 A.S.R.2d 82.

An agreement to violate or inhibit licensing laws is clearly illegal and contrary to public policy. A.S.C.A. §§ 27.0201 et seq. Papali`i v. Pen, 18 A.S.R.2d 82.

A promise to perform an illegal act is unenforceable. Rakshan v. American Samoa Gov't, 28 A.S.R.2d 151.

A contract entered into by a government official lacking authority, or failing to follow proper procedures, is void. Rakshan v. American Samoa Gov't, 28 A.S.R.2d 151.

Where agreement was meant to violate or evade the Territory’s business licensing laws, it is contrary to public policy, illegal and unenforceable. Taliga v. Siaumau, 1 A.S.R.3d 73 (Trial Div. 1997).

The court may modify an illegal contract term without invalidating the entire contract. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Generally, a contract to indemnify against the consequences of a wrongful act, or a contract of indemnity growing immediately out of, and connected with, an illegal or immoral act is void and will not be enforced by a court of justice. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 3(2) —Fraud

Fraud recovery in American Samoa requires proof: 1) that there was a material representation of fact; 2) that the representation was false; 3) that the representation was made with intent to deceive; 4) that the representation was relied on by the person complaining; 5) that the complainant had a right to rely on the representation; and 6) that the complainant was injured by his reliance. Rose v. Hall, 1 A.S.R.2d 17 (Trial Div. 1980).

When a party signed a promissory note on which the line indicating the amount was left blank, with the understanding that he was agreeing to assume liability for the fair market value of a truck, and where promisee bank later filled in an amount two-and-one-half times greater than that fair market value, the note was voidable either for fraud or for mutual mistake, depending on whether the bank officials knew or did not know of the promisor's understanding. Development Bank v. Ilalio, 5 A.S.R.2d 1.

Parol evidence is admissible to show that an agreement reached by the parties was incorrectly reduced to writing because of fraud or mutual mistake, or that there was no agreement at all for one of these reasons. Development Bank v. Ilalio, 5 A.S.R.2d 1.

A contracting party who materially and fraudulently alters a writing which is either sufficient or necessary evidence of the contract thereby loses any rights under that contract, even if he has conferred a benefit on the other party. Hardy v. Anderson, 9 A.S.R.2d 79.

A contracting party who failed to show that the other party knew or should have known of circumstances making his conduct unreasonable had failed to carry his burden of proof. R.P. Porter International, Inc., v. Pacific International Engineering, Ltd., 11 A.S.R.2d 124.

Where the registered owners of land acquired it from plaintiff by fraud, a constructive trust in favor of plaintiff was properly imposed against both the land and proceeds from its sale. Fania v. Sipili, 14 A.S.R.2d 70.

According to the Restatement of Restitution § 167, "[w]here the owner of property transfers it to another, being induced by fraud, duress or undue influence of a third person, the transferee holds the property upon a constructive trust for the transferor, unless before notice of the fraud, duress or undue influence the transferee has given or promised to give value." Sipili v. Fania, 17 A.S.R.2d 96.

When real property was obtained by constructive fraud or undue influence, violating a fiduciary relationship, a constructive trust provides the remedy to transfer the property to the person entitled to it. Jennings v. Jennings, 21 A.S.R.2d 40.

A constructive trust may arise from violation of a fiduciary duty, such as where the property is obtained by constructive fraud or undue influence. Where there is a preexisting fiduciary relationship between the parties, a person whose property has been taken is entitled to restoration of the property itself. Jennings v. Thompson, 25 A.S.R.2d 77.

Fraud is generally defined as anything calculated to deceive. It may be a single act or combination of circumstances, the suppression of truth or the suggestion of what is false, direct falsehood or innuendo, by speech or by silence. American Samoa Gov't Employees Federal Credit Union v. Sele, 28 A.S.R.2d 21.

To constitute fraud, the false or misleading act or omission must be designed to induce another party to act in reliance on the truth of the statement. American Samoa Gov't Employees Federal Credit Union v. Sele, 28 A.S.R.2d 21.

The traditional elements of actual fraud in contract or tort are (1) a false representation or concealment of a material fact, (2) made with knowledge of its falsity, (3) with the intent to induce the person to whom it is made to act upon it, and (4) such person acted in reliance upon the representation (5) to his damage. Mailo v. Aumavae, 30 A.S.R.2d 175.

If the fraud goes to the inception or execution of the agreement, so that the promisor is deceived as to the nature of his act, and actually does not know what he is signing, mutual assent is lacking, and the agreement is void. Mailo v. Aumavae, 30 A.S.R.2d 175.

A mortgagee cannot obtain reformation of a deed that is void by reason of fraud and is not protected as a bona fide encumbrancer, even though it acted in good faith. Mailo v. Aumavae, 30 A.S.R.2d 175.

Absent special circumstances, a party may attack a contract on the grounds of fraud only when he has exercised due diligence in protecting himself from that fraud. ASPA v. NPI, 31 A.S.R.2d 201.

Where plaintiff misrepresented that the house and surrounding land were for sale and that he had the legal ability to sell them, he clearly defrauded defendant. Fanene v. Vaona, 7 A.S.R.3d 285 (Land & Titles Div. 2003).

Due to the plaintiff's fraudulent conduct during a purported sale of land, defendant is entitled to return of amounts paid, reimbursement for repairs to the property, and an award of punitive damages. Fanene v. Vaona, 7 A.S.R.3d 285 (Land & Titles Div. 2003).

§ 3(3) —Unfairness and Unconscionability

A party cannot be relieved of his contractual obligations simply for having made a bad bargain. Development Bank v. Ilalio, 5 A.S.R.2d 1.

If a contract or any of its terms is unconscionable, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable provisions, or so limit the application of the unconscionable provisions as to avoid any unconscionable result. Restatement of Contracts 2d § 208. Development Bank v. Ilalio, 5 A.S.R.2d 1.

A radical disparity between the contract price of a good or service and its fair market value, while not alone sufficient to void the contract, raises doubts about whether the transaction was free from fraud and coercion. I Development Bank v. Ilalio, 5 A.S.R.2d 1.

The legal importance of an unfair bargaining process diminishes when the considerations given and received by the weaker party approach what they would have been had the process been above board. Development Bank v. Ilalio, 5 A.S.R.2d 1.

A contract is ordinarily rendered unenforceable on the ground of unconscionability only when both its substance and the bargaining process leading up to it are unconscionable. Development Bank v. Ilalio, 5 A.S.R.2d 1.

A contract unenforceable for fraud or unconscionability cannot become enforceable simply because the institution on whose behalf the contract was made no longer employs the individuals whose misdealings tainted the contract. Development Bank v. Ilalio, 5 A.S.R.2d 1.

A proffered "settlement" of an already litigated claim, purporting to "adjust" boundaries established by the court, has no effect when it (1) was never judicially approved; (2) resulted from negotiations between a licensed legal practitioner and an adverse party represented by counsel in the absence of the latter party's counsel; (3) clearly results in disadvantage to the latter party; (4) was renounced by the latter party soon thereafter; and (5) bears a close resemblance to an earlier "settlement" asserted in court by the legal practitioner, the existence of which the adverse party denied immediately after having consulted his attorney. Te'o v. Sotoa, 5 A.S.R.2d 90.

In order for a contract to be legally unenforceable under the doctrine of unconscionability it is not necessary that the court find facts sufficient to sustain a defense of duress or of failure of consideration; rather, unconscionability is a distinct equitable defense that can be established by some combination of such indicia as grossly inadequate consideration, inequality of bargaining power, sharp practice, and the absence of a real bargaining process even when none of these indicia standing alone would be sufficient to void the contract. Development Bank v. Ilalio, 5 A.S.R.2d 110.

Although reformation of a deed may be in order if, for example, the fact that the deeded land was outside the grantor's individually land was a mistake, reformation is not available where overriding factors are present. An overriding factor includes the procurement of the grantor's signature through fraud. Mailo v. Aumavae, 30 A.S.R.2d 175.

§ 3(4) —Mistake

Parol evidence is admissible to show that an agreement reached by the parties was incorrectly reduced to writing because of fraud or mutual mistake, or that there was no agreement at all for one of these reasons. Development Bank v. Ilalio, 5 A.S.R.2d 1.

Petition to modify the property settlement agreement in a divorce decree on the ground of mistake was denied where the language of the agreement unambiguously stated that one party would pay a fixed sum to another and did not condition such payment on the successful sale of the property in question. Mahoney v. Mahoney, 16 A.S.R.2d 109.

Petition to modify the property settlement provision in a divorce decree on the ground of mistake was denied where the provision was part of a final divorce decree that had settled the property rights of the parties for at least ten years. Mahoney v. Mahoney, 16 A.S.R.2d 109.

When a party disputed an assertion that a written insurance contract was the product of mutual mistake and so did not reflect the actual terms of the policy, a factual dispute precluding summary judgment existed. American Samoa Power Authority v. National Pacific Insurance Co., 23 A.S.R.2d 100.

Reformation involves rewriting a contract in order to reflect the actual intent of both parties, and an insurance contract may be reformed after a loss has occurred. However, reformation is not appropriate to enforce terms to which the defendant never assented, but is used only to correct a mistake in writing to conform to the actual agreement of the parties. Plaza Department Store v. Duchnak, 26 A.S.R.2d 106.

If a genuine mistake results in an erroneous calculation of damages, such mistake provides an escape from an otherwise

binding accord. Kent Samoa Inc. v. Shimasaki, 29 A.S.R.2d 44.

A mutual mistake of fact occurs when the parties to an agreement have a common intention, but the written contract erroneously fails to reflect their intention due to a mistake on the part of both parties in writing the agreement. Accordingly, in order for the affirmative defense of mutual mistake to be sustained, defendant must raise fact issues showing that both parties were acting under the same misunderstanding of the same material fact. American Samoa Power Auth. v. National Pac. Ins. Co., Ltd., 30 A.S.R.2d 149.

A party is not ordinarily allowed to avoid a contract due to a mistake as to the contents of the contract. However, where the writing does not reflect the agreement previously made and the term was not omitted by agreement, the court will grant reformation for mutual mistake despite the negligence involved in failing to read the document, the parol evidence rule, and the Statute of Frauds. American Samoa Power Auth. v. National Pac. Ins. Co., Ltd., 30 A.S.R.2d 149.

§ 3(5) —Misrepresentation

A party who did not read a contract may nonetheless be granted relief when he or she was induced by misrepresentation. American Samoa Power Auth. v. National Pac. Ins. Co., Ltd., 30 A.S.R.2d 149.

Where defendant had agreed to sell plaintiffs house and land pursuant to unenforceable oral contract, and in fact did not own the house, plaintiffs were entitled to refund of deposit money and prejudgment interest from the date their claim became liquidated, which was when plaintiff discovered misrepresentation and had demanded their money back. Aveina v. Aveina, 4 A.S.R.3d 107 (Trial Div. 2000).

Hidden defects of an item for sale were material facts which the seller had a duty to disclose to the buyer. Roache v. Uia, 7 A.S.R.3d 83 (Trial Div. 2003).

Seller’s intentional misrepresentation of known hidden defects permit the buyer to return the purchased item for a refund, terminating the contract without further liability for the purchase price. Roache v. Uia, 7 A.S.R.3d 83 (Trial Div. 2003).

§ 3(6) —Duress

According to the Restatement of Restitution § 167, "[w]here the owner of property transfers it to another, being induced by fraud, duress or undue influence of a third person, the transferee holds the property upon a constructive trust for the transferor, unless before notice of the fraud, duress or undue influence the transferee has given or promised to give value." Sipili v. Fania, 17 A.S.R.2d 96.

Three elements must be found to establish a showing of duress in contract: one side involuntarily accepted the terms of another; circumstances permitted no other alternative; and such circumstances were the result of coercive acts of the opposite party. Blue Pac. Management Corp. v. Prescott, 30 A.S.R.2d 149.

§ 3(7) —Impossiblity

Where services are rendered pursuant to an illegal agreement, recovery is unavailable under both breach of contract and quantum meruit theories. Taliga v. Siaumau, 1 A.S.R.3d 73 (Trial Div. 1997).

§ 3(8) —Impracticability

RESERVED

§ 3(9) —Frustration of Purpose

RESERVED

§ 3(10) —Voidable Contracts

A void contract is a legal nullity, and cannot serve as the basis for equitable estoppel; while a voidable contract may be affirmed by the parties and rendered valid by the doctrine of estoppel—parties to a transaction conceded to be fair and supposed to be lawful, on the faith of which many other transactions have been entered into, are estopped from questioning its validity and repudiating the transaction to the injury of others. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

§ 3(11) —Void Contracts

Terms of air carriage contract which were inconsistent with Warsaw Convention were void, because the contract itself so provided and also because treaty obligations are the supreme law of the land and therefore supersede private contracts. U.S. Const. art. VI. American Samoa Gov't ex rel. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

Airline's disclaimer of liability for "valuable items" such as video equipment is unenforceable in light of Warsaw Convention clause that nullifies contractual provisions "tending to relieve the carrier of liability or to fix a lower limit" than that allowed by the Convention. Warsaw Convention art. 23. American Samoa Gov't ex rel. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

A void contract is a legal nullity, and cannot serve as the basis for equitable estoppel; while a voidable contract may be affirmed by the parties and rendered valid by the doctrine of estoppel—parties to a transaction conceded to be fair and supposed to be lawful, on the faith of which many other transactions have been entered into, are estopped from

questioning its validity and repudiating the transaction to the injury of others. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Under 46 U.S.C. § 11107, oral fishing agreements are void. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Common Carrier's failure to aid customers in locating missing packages is not the kind of behavior that voids a contract. Amerika Samoa Bank v. United Parcel Service, 25 A.S.R.2d 159.

A contract entered into by a government official lacking authority, or failing to follow proper procedures, is void. Rakshan v. American Samoa Gov't, 28 A.S.R.2d 151.

§ 3(12) —Undue Influence

According to the Restatement of Restitution § 167, "[w]here the owner of property transfers it to another, being induced by fraud, duress or undue influence of a third person, the transferee holds the property upon a constructive trust for the transferor, unless before notice of the fraud, duress or undue influence the transferee has given or promised to give value." Sipili v. Fania, 17 A.S.R.2d 96.

When real property was obtained by constructive fraud or undue influence, violating a fiduciary relationship, a constructive trust provides the remedy to transfer the property to the person entitled to it. Jennings v. Jennings, 21 A.S.R.2d 40.

A constructive trust may arise from violation of a fiduciary duty, such as where the property is obtained by constructive fraud or undue influence. Where there is a preexisting fiduciary relationship between the parties, a person whose property has been taken is entitled to restoration of the property itself. Jennings v. Thompson, 25 A.S.R.2d 77.

As a general rule, the making of a contractual transaction is presumed free of undue influence until it is established by a preponderance of evidence that unfair persuasion was actually exerted. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

A presumption of undue influence arises when the parties to an improvident transaction have a confidential or fiduciary relationship. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

Once the presumption of undue influence arises, it can be rebutted only by clear and convincing evidence. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

The legal standard for determining whether undue influence was exerted is whether the questioned act was done by a person who had lost his free will and would not have entered the transaction but for another imposing compulsion. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

The parent-child relationship can constitute the type of confidential relationship necessary to show undue influence. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

The remedy to cure the unjust consequences of undue influence is to undo the transactions. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

§ 4 Contract Modification

§ 4(1) —General Principles

Notations on lease that do not constitute modification of terms and are in accordance with intentions of parties do not invalidate lease nor reflect on honesty of party making notations. Steffany v. Scanlan, 3 A.S.R. 456.

Where seller revoked discount, claiming that discount assumed prompt payment from purchaser, but contract contained no such limiting provision to discount term and instead provided alternative reason for discount, court considered seller's unilateral action invalid, contrary to the written agreement and would not enforce it. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

§ 4(2) —Oral Modifications

A written agreement may be modified by oral agreement. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

An unwritten modification is enforceable when it has been acted upon by the parties so that it would be an injustice or fraud to refuse to carry it out. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

§ 4(3) —Written Modification

When a party signs an instrument without reading it, the party may not avoid enforcement of a contract on the ground that he or she did not read the instrument or did not understand its contents. American Samoa Power Auth. v. National Pac. Ins. Co., Ltd., 30 A.S.R.2d 149.

§ 4(4) —Ratification

Party who accepts benefits accruing under contract removes defects in contract by implied ratification. Steffany v. Scanlan, 3 A.S.R. 456.

Lessor who accepts benefits accruing under lease cures any defect by implied ratification. 3 A.S.R. 583.

§ 4(5) —Novation

RESERVED

§ 4(6) —Mutual Rescession

Generally, where the failure to read the contract is induced by carelessness alone, no grounds exist for reformation or rescission. ASPA v. NPI, 31 A.S.R.2d 201.

§ 4(7) —Waiver

When lessees accept benefits of lease, they are estopped from denying validity of lease. Scanlan v. Steffany, 3 A.S.R. 583.

Customer for whose benefit a bank issued a letter of credit can waive any nonconformities in the related documents. Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

§ 4(8) —Repudiation

Repudiation of a contract must be unequivocal and absolute, and petition for injunction by lessor to prevent ship from going out to sea before insurance is procured is not such repudiation. Steffany v. Scanlan, 3 A.S.R. 456.

Renunciation of contract is not successful unless other party unequivocally accepts renunciation, and continued performance under the contract is not such acceptance. Steffany v. Scanlan, 3 A.S.R. 456.

Where lessor withdrew petition for injunction, he was withdrawing any alleged repudiation of contract, thus obligating adverse party to perform under contract. Steffany v. Scanlan, 3 A.S.R. 456.

When lessor withdraws his repudiation of lease, he obligates lessee to perform his commitments under lease. Scanlan v. Steffany, 3 A.S.R. 583.

§ 4(9) —Cancellation

A contract that provides that it may be canceled at any time still requires reasonable notice for its cancellation. Tedreck v. Noga, 6 A.S.R.3d 102 (Trial Div. 2002).

§ 4(10) —Acquiescence

A party waived its right to challenge an agreement when it acquiesces transactions made pursuant to the agreement. Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

Acquiescence consists of assent by words or conduct on which the other party relies. Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

§ 5 Contract Interpretation

§ 5(1) —General Provisions

Conduct of parties is entitled to great weight in determining interpretation of contract. Steffany v. Scanlan, 3 A.S.R. 456.

The common law of contracts applies in American Samoa unless it conflicts with a territorial statute or is unsuitable to local conditions. A.S.C.A. § 1.0201. Development Bank v. Ilalio, 5 A.S.R.2d 1.

Contract by which defendant agreed to "waive the statute of limitations and other waiveable defenses" in exchange for plaintiff's temporary forbearance to sue should be construed as a waiver of technical defenses to the enforcement of a just debt but not of substantive defenses concerning the validity of the underlying contract. Development Bank v. Ilalio, 5 A.S.R.2d 110.

Documents purporting to be settlements of prior disputes are customarily given stricter judicial scrutiny than contracts involving more palpable consideration, especially when the party drafting and pressing for the settlement is a business entity experienced in such transactions, the other party has no such experience and is unrepresented by counsel, the more experienced party employed threats or promises to encourage the other party to sign the document with little or no deliberation, and the consideration given by the more experienced party was relatively trivial. Development Bank v. Ilalio, 5 A.S.R.2d 110.

In an international transaction between two corporations represented by sophisticated businessmen, the burden of determining whether the product complied with regulations in buyer's locality was on the buyer. Meridian Breckwoldt Samoa, Ltd., v. Max Haleck, Inc., 7 A.S.R.2d 95.

Court should construe and enforce conveyance in accordance with the apparent intent of the conveyor despite technical flaws in the conveyancing documents. Roberts v. Sesepasara, 7 A.S.R.2d 139.

Trial court's conclusion that a loan guaranty from which the name of the principal debtor had been omitted was intended to secure particular loans was supported by substantial evidence where circumstances surrounding the execution of the guaranty demonstrated the intent of the parties. Pritchard v. Amerika Samoa Bank, 8 A.S.R.2d 157.

Since deregulation of the airline industry, baggage liability limitations no longer are tariffs having the force and effect of law but are contractual terms whose construction and enforcement depends on applicable law. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Deregulation of airlines does not leave territorial court free to look only to the territorial law of contracts in deciding cases relating to lost baggage, since detailed federal regulations apply to baggage liability and since even in areas not expressly regulated the continued federal interest in air transportation suggests that federal common law should provide the rule of decision. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Promulgation by the Civil Aeronautics Board of regulations allowing airlines to limit the amount of their liability for lost baggage does not indicate regulatory approval of attempts by airlines to exclude all liability for entire classes of goods. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

In choosing between reasonable interpretations of a contract, court would opt for that construction which operates against the draftsman. Restatement (Second) of Contracts § 206. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Provision of airline's contract of carriage that airline would accept as baggage personal property for the "wear, use, comfort, or convenience" of passenger does not relieve the airline of liability for its loss of business goods accepted as baggage, since (1) the positive does not always imply the negative; and (2) having accepted business goods for transportation, the defendant should not be heard to say that it takes no responsibility for that which it has carried. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Provision of airline's contract of carriage, disclaiming liability for damage to certain items caused solely by the fragile nature of such items, implied that the contract did not exclude all liability for loss of "business goods" carried as baggage, since some of the listed items could only be carried for "business purposes." American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Airlines seeking to incorporate by reference baggage liability limitations must provide to their passengers "conspicuous" notice that terms incorporated by reference are part of the contract and that such terms include baggage liability limitations. 14 C.F.R. Part 253. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

The term "f.o.b." in a contract for the sale of goods is presumed to mean that the seller is obliged to load the goods "free on board" the conveyance by which they will be transported to the buyer, and the presumption was not rebutted by a party's assertion of an alternative meaning. R.P. Porter International, Inc., v. Pacific International Engineering, Ltd., 11 A.S.R.2d 124.

When three companies may otherwise be entitled to be treated as separate entities for most purposes but found it to their advantage to treat themselves as a single enterprise, the court treated them as a single entity in construing a contract. EW Truck & Equipment Co. v. Coulter, 19 A.S.R.2d 61.

Under the terms of a "c.i.f." contract, the seller pays for shipping costs and also for an insurance policy that will protect the buyer against damage during shipping; the title and the risk of loss or damage to the goods shift to the buyer upon delivery of the goods to the carrier and of the bill of lading and the insurance certificate to the buyer. U.C.C. § 2-401. Ghiselli Bros. v. Ryan Inc., 19 A.S.R.2d 128.

A court will not rewrite the terms of a contract if the parties' intent is evident. Thompson v. National Pacific Insurance, 20 A.S.R.2d 85.

A domestic relationship between parties to a contract taints claims of arms length dealing for purposes of determining the existence or meaning of the agreement. Transpac Corp. v. Drabble, 25 A.S.R.2d 66.

The court should not fabricate an agreement based on reasonable inferences, where the parties have either failed to agree or have yet to agree. Transpac Corp. v. Drabble, 25 A.S.R.2d 66.

An insurance policy is a contract and the same rules of construction applicable to other contracts are applicable to insurance policies. If an insurance contract is unambiguous, the vast majority of U.S. jurisdictions require that a court follow the prescriptions of the policy as written, and need look no further in resolving any disputes. Asifoa v. National Pacific Insurance, 26 A.S.R. 2d 23.

An insurance policy is a contract, and the same rules of construction applicable to other contracts are applicable to insurance policies. Plaza Department Store v. Duchnak, 26 A.S.R.2d 106.

An implied-in-law condition of a contract between a bank and a depositor is that the bank will refrain from charging the depositor's account without authority from the depositor. Any payments which are not authorized by the depositor as a creditor of the bank are made with the bank's own funds, and not with those of the depositor. American Samoa Gov't Employees Federal Credit Union v. Sele, 28 A.S.R.2d 21.

Actions to recover bank deposits evidenced by entries in a depositor's account passbook are governed by statutes relating to actions on oral contracts, and not on written contracts, unless the passbook is signed by an authorized bank employee and contains a definite promise to pay. Passi v. Amerika Samoa Bank, 28 A.S.R.2d 130.

A strong presumption prevails against construction of contract terms in a way that permits one party to exercise unbridled discretion to the detriment of the other. Kent Samoa Inc. v. Shimasaki, 29 A.S.R.2d 44.

In the absence of evidence to the contrary, the place of performance of a contract is considered to be the place of contracting. Pal Air Int'l, Inc. v. Porter, 30 A.S.R.2d 104.

When the ultimate object in a contract is the payment of money, the place of performance is considered to be the place where the payment is received. Pal Air Int'l, Inc. v. Porter, 30 A.S.R.2d 104.

Extrinsic evidence regarding a contract term is prohibited if it directly contradicts the terms of the written agreement. Blue Pac. Management Corp. v. Prescott, 30 A.S.R.2d 149.

Where documentary evidence and prevailing business custom supported defendant's interpretation of contract, decision in its favor proper. Pioneer Trucking, Ltd. v. Fletcher Construction Co., Ltd., 1 A.S.R.3d 72 (Trial Div. 1997).

A subordination agreement is to be interpreted according to ordinary contract principles. Administrator v. Amerika Samoa Bank, 3 A.S.R.3d 146 (Trial Div. 1999).

The common law of contracts applies in American Samoa. Tedreck v. Noga, 6 A.S.R.3d 102 (Trial Div. 2002).

Express warranties are interpreted according to general contract principles. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

Summary judgment is properly used for interpreting a contract whose terms are considered by opposing parties to be clear and unambiguous, despite disagreement between the parties as to what the agreement provides. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

The meaning of particular parts or words in a contract should be determined in light of and consistent with the general purpose of the agreement. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

An interpretation of a contractual provision that gives reasonable meaning to all provisions is preferable to one that leaves part of the language useless or inexplicable or creates surplusage. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

In interpreting a contract, preference must be given to reasonable interpretations as opposed to those that are unreasonable. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

Contracts should be read in their entirety. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

Court will not rewrite the parties' agreement in order to fix a poorly worded contract. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

§ 5(2) —The Uniform Commercial Code

Since the Fono has declined to adopt the Uniform Commercial Code (UCC), the court should not attempt to do so by judicial fiat. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

In a situation where the Uniform Customs and Practice for Documentary Credits (UCP) controls but is silent or ambiguous concerning a particular issue, analogous UCC provisions that are consistent with the UCP may apply. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

While the UCC does not of its own force apply in American Samoa, some rules embodied in widely adopted uniform codes which restate generally accepted principles of law may apply. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Letter of credit exists independently of the obligations of the underlying contract and must be paid when the required documents are presented, regardless of the transactions between the buyer and seller. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Letter of credit transactions contain three separate contracts: 1) between the bank who agrees to issue the letter and its customer; 2) between the customer and the beneficiary who agree to use a letter; and 3) between the issuing bank that promises to pay conforming drafts against the letter and the beneficiary. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Independence of a letter of credit from its underlying transactions preserves its usefulness as a commercial device and reflects a policy decision that disputes regarding the underlying facts should be resolved after the letter is paid. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

UCC provision reducing damages for wrongful dishonor of a letter of credit by any amount realized by resale or other use or disposition of the subject matter of the transaction does not apply to situations such as guaranty letters of credit. UCC § 5-115. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

UCC provision reducing damages for wrongful dishonor of a letter of credit by the amount realized by resale or other use or disposition of the subject matter of the transaction did not apply to a letter governed by the Uniform Customs and Practice for Documentary Credits (UCP) where: 1) the UCP was unambiguous (though not explicit) regarding damages since it clearly implied that the dishonoring party was liable for the face amount of the letter; 2) the UCC provision was not an apparent rule of general law since no cases construed it to reduce damages below the face amount of the letter; and 3) reducing damages below the face amount would reduce the commercial utility of such letters since disputes concerning the fact and amount of resale could obscure the exact amount owed and hinder prompt payment. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

UCC provision reducing damages for wrongful dishonor of a letter of credit by the amount realized by resale or other use or disposition of the subject matter of the transaction would not apply to a letter governed by the UCP which may not have identified the goods in enough detail to enable the court to trace their resale without referring to the underlying contracts. UCC § 5-115. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Letter of credit requiring only a beneficiary's signed statement and a notice of default of invoice rather than an attached copy of the invoice for the goods for which it guaranteed payment might not be governed by UCC provision reducing damages for wrongful dishonor of a letter of credit by the amount realized by resale of the subject matter of the transaction, since the letter might not identify the goods sufficiently to enable the court to trace their resale without referring to the underlying contracts. UCC § 5-115. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Under Uniform Commercial Code § 2-401(2) title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading, (a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but (b) if the contract requires delivery at destination, title passes on tender there. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

Uniform Commercial Code § 2-401(2) is an appropriate rule for determining when title passes in American Samoa and shall govern this issue. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

§ 5(3) —The Parol Evidence Rule

Parol evidence is admissible to show that an agreement reached by the parties was incorrectly reduced to writing because of fraud or mutual mistake, or that there was no agreement at all for one of these reasons. Development Bank v. Ilalio, 5 A.S.R.2d 1.

The Court is not prohibited by the Parol Evidence Rule from considering the contents of an additional writing aside from the original, written contract, where such additional writing is composed subsequent to the contract. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

The Court is not prohibited by the Parole Evidence Rule from considering the contents of an additional writing aside from the original, written contract, where such additional writing assists in interpreting the original terms of the contract. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

The parol evidence rule is part of the common law of contracts and applies in American Samoa. Tedreck v. Noga, 6 A.S.R.3d 102 (Trial Div. 2002).

Under the parol evidence rule, extrinsic evidence is inadmissible to contradict clear contract terms. Tedreck v. Noga, 6 A.S.R.3d 102 (Trial Div. 2002).

The parol evidence rule "prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract." American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

§ 5(4) —Plain Meaning Rule

Words used in an exclusionary clause in an insurance policy are to be given the meaning that common speech imports. Thompson v. National Pacific Insurance, 20 A.S.R.2d 85.

If a contract's language is plain and unambiguous, the intention expressed controls, rather than whatever may be claimed to have been the intention of the parties Administrator v. Amerika Samoa Bank, 3 A.S.R.3d 146 (Trial Div. 1999).

Where the language is plain and unambiguous, the meaning of a contract should be determined without reference to extrinsic facts or aids. Administrator v. Amerika Samoa Bank, 3 A.S.R.3d 146 (Trial Div. 1999).

If a contract is not ambiguous, its plain meaning controls and the Court need not inquire further into the intent of the parties. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

The Court will not reword a contract provision that is clear both on its face and when read in context. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

Where the objective language used by the parties indicates their intent to be bound by the contract, the court will give that language effect. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

§ 5(5) —Ambiguous Terms

Where recitals in a contract are ambiguous, operating parts of contract will control, and where recitals are inconsistent with operating parts, latter will control. Haleck v. Tiumalu, 3 A.S.R. 380.

Contract was not ambiguous, and thus rules governing the resolution of ambiguous terms did not apply, where court found that the intent of the parties was clear but there was a clerical error in reducing the contract terms to writing. Pritchard v. Amerika Samoa Bank, 8 A.S.R.2d 157.

Ambiguous terms in a form contract will be construed most strongly against the party who framed and prepared them. Kent Samoa Inc. v. Shimasaki, 29 A.S.R.2d 44.

When a provision of a contract is ambiguous, it may be interpreted according the parties' subsequent conduct. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

Ambiguous lease provisions are to be construed against the drafter. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

In choosing between reasonable interpretations of a contract, the court will normally construe the contract against the drafter. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

Where both parties were involved in choosing the language of the contract, the primary reasons for construing contracts against the drafter were not present and Court refused to employ such rule. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

A court should look to extrinsic evidence only if the contract is ambiguous on its face. Tedreck v. Noga, 6 A.S.R.3d 102 (Trial Div. 2002).

§ 5(6) —Custom & Usage

Conduct of parties is entitled to great weight in determining interpretation of contract. Steffany v. Scanlan, 3 A.S.R. 456.

Where public agency granted contractor an extension for filing its bond, but did not clearly specify the length of such extension, court would consider agency's custom of flexibility in determining the limits of the extension. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

§ 5(7) —Different & Additional Terms

When a contract states no time frame for performance, the court will imply a reasonable time. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

§ 5(8) —Missing Terms

When parties clearly intend to make a contract but do not specify some important term, the court must imply or infer a term from all the circumstances. Samoa Products v. Pereira, 3 A.S.R.2d 45.

When a merchant extended credit in the amount of several thousands of dollars, accepted several part payments and extended further credit, the circumstances suggested that the parties intended the debt to be paid in periodic payments rather than on demand. Samoa Products v. Pereira, 3 A.S.R.2d 45.

Where a writing purporting to be a guaranty of indebtedness omitted an essential term but the circumstances clearly indicated that the parties intended to make a binding contract and that the writing did not embody the whole agreement, the court could look to other documents signed by the parties and other surrounding circumstances to determine the parties' intention with regard to the missing term. Development Bank v. Pritchard, 6 A.S.R.2d 125.

Argument that a written guaranty contract which omitted the name of the principal debtor was missing an essential term and thus was unenforceable as a matter of law was without merit, where the intention of the parties with regard to the missing term appeared from other evidence. Pritchard v. Amerika Samoa Bank, 8 A.S.R.2d 157.

Where the Government had drafted a lease document inadvertently omitting a provision required by statute for periodic adjustment of the rent, and the lessee had no objection to such a provision, the lease would be reformed or construed to include the required provision rather than declared invalid. A.S.C.A. § 37.2020. American Samoa Gov't v. Samoa Aviation, Inc., 11 A.S.R.2d 144.

Statute requiring that a specified provision shall be included in every contract of a particular class thereafter made is one that prescribes the legal operation of contracts, not one that affects factual interpretation; the provision must be given effect even though the parties know nothing of the statute and do not include the provision, and even though they know of it and expressly agree upon the exact contrary. American Samoa Gov't v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Courts have consistently treated statutes requiring that certain provisions shall be included in certain contracts not to invalidate nonconforming contracts, but to make them conform by operation of law; in effect, the courts read the

words, "No contract shall omit provision X" to mean "Every contract shall include provision X." American Samoa Gov't v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Lease drafted by lessees' attorney, and agreed to by lessor who was unrepresented by counsel, which failed to specify most terms generally included in a contract of lease and which allowed the lessee to deduct credits from the rent in an amount which was neither agreed upon nor determinable by reference to the agreement, may have been too indefinite to constitute a legally binding contract. Fealofa`i v. Reid, 14 A.S.R.2d 57.

Where the parties do not agree on a specific time for performing obligations under a contract a reasonable time will be implied. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

§ 5(9) —CIF Contract Terms

Under the terms of a "c.i.f." contract, the seller pays for shipping costs and also for an insurance policy that will protect the buyer against damage during shipping; the title and the risk of loss or damage to the goods shift to the buyer upon delivery of the goods to the carrier and of the bill of lading and the insurance certificate to the buyer. U.C.C. § 2-401. Ghiselli Bros. v. Ryan Inc., 19 A.S.R.2d 128.

Under a "c.i.f." contract, the buyer's remedy for goods damaged in transit is to file a claim under the insurance policy purchased by the seller and surrendered to the buyer, not to reject the goods as "non-conforming." Ghiselli Bros. v. Ryan Inc., 19 A.S.R.2d 128.

Because a plaintiff bore no risk of loss under a c.i.f. contract and is not permitted to recover twice for the same injury, a defendant was entitled to remittitur in the amount of a cash settlement which a plaintiff received from an insurance company. Ghiselli Bros., Inc. v. Ryan, Inc., 22 A.S.R.2d 57.

§ 5(10) —Choice of Law Provisions

Absent the parties' agreement on the governing law, or an American Samoa statutory or common-law choice of law standard, the Court will turn to common law generally to provide guidance in determining the choice of law applicable to a contract. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

The general rule is that the law of the place of performance governs the interpretation of a contract for services, and will only be trumped if another state has a more significant relationship with the transaction or parties. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 6 Performance and Breach

§ 6(1) —Breach Generally

Failure of one party to contract to meet other's hopes and expectations re production and credit terms does not constitute breach of contract. Jt. Holdings & Tr. Ltd. v. P.J. Brennan, Inc., of Samoa, 4 A.S.R. 812.

When bank making home improvement loan contrived to make disbursements to third party contractor far in excess of fair value of materials and services provided and without borrower's knowledge, bank had committed breach of contract and fraud and could recover only the fair value of what borrower actually received. Development Bank v. Lava, 5 A.S.R.2d 24.

Where equipment lease provided that rent was payable when lessees were paid on their construction contract, and where lessees had received only partial payment on their contract and had made a substantial part payment of the equipment rent, evidence preponderated against the conclusion that lessees were in default on the equipment lease. Anderson v. Sinagege R.M. Utu Enterprises, 8 A.S.R.2d 139.

Where lease was ambiguous as to time on which rental payments were due, lessees made part payment, and lessor's manager then wrote a letter thanking lessees for the payment, reiterating lessor's intention to extend the lease after the expiration of its original term, and stating that lessor was looking forward to doing further business with lessees, but seven days later lessor seized the leased equipment on the ground that lessees were in default, court would find that lessees were not in default. Anderson v. Sinagege R.M. Utu Enterprises, 8 A.S.R.2d 139.

Where contract specified no time during which the goods were to be delivered, vendee had the burden of proving that vendor's delivery schedule violated an implied term of the contract. R.P. Porter International, Inc., v. Pacific International Engineering, Ltd., 11 A.S.R.2d 124.

Statute regulating height of truck loads was enacted to protect innocent bystanders, and court would not trivialize this protection by redressing the failure of one contracting party to compensate another for systematic overloading of trucks in violation of the statute. A.S.C.A. § 22.0331. R.P. Porter International, Inc., v. Pacific International Engineering, Ltd., 11 A.S.R.2d 124.

Even if vendor committed breach of contract by failing to deliver the goods within a reasonable time, vendee who obtained substitute goods at a price lower than the contract price was not damaged by the breach. R.P. Porter International, Inc., v. Pacific International Engineering, Ltd., 11 A.S.R.2d 124.

Contractor who agreed to use materials "of the highest quality," and who subsequently allowed buyers to choose from a variety of materials without any suggestion that the materials

they chose would result in an increase in the contract price, either knew or should have known that the buyers would understand "highest quality" materials to include the particular materials they were being shown; the contract was therefore enforceable in accordance with the buyers' understanding that the contract price included the materials they selected. Restatement of Contracts (Second) § 20(2). Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

If each party to a contract does things which, assuming no breach by the other party, would amount to a breach of the contract, the first breach is usually deemed to excuse what otherwise would have been the subsequent breach by the other party. EW Truck & Equipment Co. v. Coulter, 19 A.S.R.2d 61.

When each party breaches a contract before finding out about the other party's independent breach, and in the absence of any dimension of malice or wilfulness in either party's breach, the most appropriate remedy is to give each party the benefit of the bargain to which it agreed and was entitled. EW Truck & Equipment Co. v. Coulter, 19 A.S.R.2d 61.

Where there is a fundamental variance between what the court finds to be promised performance, and performance made, there is a breach of contract. C.B.T. Lumber, Inc. v. Pacific Reliant Industries, Inc., 20 A.S.R.2d 26.

Only an unreasonable delay constitutes a material breach. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

Where seller failed, after two month's time, to produce a written contract to document the real estate sale and instead attempted to raise the agreed upon price, seller's breach was substantial enough to defeat the contract's purpose and entitled purchaser to rescind contract and recover, as compensatory damages, monies paid towards purchase price and survey. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

To justify rescission, a breach of a contract must be so substantial and fundamental as to defeat the contract's purpose. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

Where court found cancellation of contract award was arbitrary and in bad faith, but nonetheless concluded that no formal contract had been formed, it could not award expectation damages as are normally appropriate in breach of contract cases. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Comparative fault is an appropriate defense in a tort action, not a contract one. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

§ 6(2) —Bad Faith

Where circumstances indicated that backroom negotiations had taken place between government agency and second-lowest bidder that was awarded contract after award rescinded, court would not honor clause shielding agency from liability as it had clearly employed clause arbitrarily and acted in bad faith. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Where court found cancellation of contract award was arbitrary and in bad faith, but nonetheless concluded that no formal contract had been formed, it could not award expectation damages as are normally appropriate in breach of contract cases. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Where defendants arbitrarily, and in bad faith, rescinded contract, plaintiff was entitled to reliance damages, attorney's fees and punitive damages. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

§ 6(3) —Substantial Performance

RESERVED

§ 6(4) —Partial Performance

Where parties had entered into an installment contract, the time of breach was to be measured at date last missed payment, not before. BHP Petroleum South Pacific, Inc. v. Daitoh Trading Co. 1 A.S.R.3d 60 (Trial Div. 1997).

Full performance of a duty under a contract discharges the duty. Ioane v. Aiga Tautai O Samoa, 1 A.S.R.3d 96 (Trial Div. 1997).

A claimant cannot successfully assert part performance when he fails to keep his own bargain. Onofia v. Pitoitua, 1 A.S.R.3d 159 (Trial Div. 1997).

Acceptance of partial payment as payment in full, despite a statement that it is accepted only as partial payment, constitutes acceptance of a substituted performance. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

Where lessee had tendered late payment at less than contract rate, lessor could not accept payment and also claim a default under the agreement. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

American Samoa law does not recognize a contract for the sale of real property unless it is in writing, or has been partially performed. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

If the parties have not reduced the essential terms of a land conveyance to writing but have partially performed the contract, A.S.C.A. § 37.0211 authorizes the court to enforce the oral contract. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

The court has the explicit power to compel specific performance of a partially performed contract. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

§ 6(5) —Divisible Contracts

RESERVED

§ 6(6) —Anticipatory Repudiation

RESERVED

§ 6(7) —Accord & Satisfaction

The existence of an accord and satisfaction becomes a question of law when both sides allege the same set of facts, but offer opposing applications of the law to those facts. Kent Samoa v. Shimasaki, 27 A.S.R.2d 140.

Circumstances substantiated accord and satisfaction where purported consideration from defendant included equipment, cooler and agreement not to compete, where plaintiff did not dispute receiving equipment or cooler, and where evidence proved defendant had not engaged in business for five years prior to lawsuit. Samoa Sharkfin Trading Co. v. Ho Py Hong, 1 A.S.R.3d 143 (Trial Div. 1997).

Party may not seek to be relieved from accord and satisfaction when he or she later realizes that such was a bad bargain. Samoa Sharkfin Trading Co. v. Ho Py Hong, 1 A.S.R.3d 143 (Trial Div. 1997).

For an accord and satisfaction to discharge an existing debt, there must be: (1) a good faith dispute over the amount of an unliquidated claim; (2) substituted performance that is tendered and accepted; and (3) valuable consideration for the agreement. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

If there is a reasonable basis for a good faith dispute as to the amount of a debt, that dispute may be settled by an accord and satisfaction, even where the claim or defense giving rise to the dispute was invalid. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

A party offered an accord has no duty to accept substituted performance, but the acceptance of performance in the disputed amount operates to discharge the duty, despite a declaration of not assenting to the condition that payment is payment in full. American Samoa Cablevision v. Am. Samoa Power Auth., 4 A.S.R.3d 199 (Trial Div. 2000).

§ 6(8) —Duty to Mitigate Damages

A plaintiff in a breach of contract action has a duty to mitigate damages. C.B.T. Lumber, Inc. v. Pacific Reliant Industries, Inc., 20 A.S.R.2d 26.

§ 7 Remedies

§ 7(1) —Statute of Limitations

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.

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.

In actions by depositors to recover funds from a bank, the statute of limitations does not accrue until the depositor has made a demand and the bank has refused to pay. Passi v. Amerika Samoa Bank, 28 A.S.R.2d 130.

Actions to enforce unwritten agreements are subject to a three (3) year statute of limitations under A.S.C.A. § 43.0120(3). Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

Actions to enforce written agreements are subject to a ten (10) year statute of limitations under A.S.C.A. § 43.0120(3). Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

A written contract, for purposes of the statute of limitations, is one containing all the terms of a completed contract between the two parties and is executed by one of the parties and accepted or adopted by the other. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

The essential elements of a contract include the subject matter, parties, terms and conditions, and price or other consideration. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

A memorandum that memorializes an oral agreement between the parties satisfies the writing requirement for purposes of the statute of limitations. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

Actions founded on unwritten contracts shall be brought within 3 years under A.S.C.A. § 43.0120 (3). Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

§ 7(2) —Specific Performance and Injunctions

Where lease provided that lessee would be entitled, upon termination of the lease by fault of the lessor, to return of furniture and other improvements he installed, "less depreciated value," and where the depreciated value of all such furniture and improvements was less than the amount spent by the lessee on improvements that could not easily be removed from the building, the lessee would be entitled to the return of all furniture and improvements not affixed to the building. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

A court may compel specific performance of a partially performed, unwritten agreement; the court's power to compel specific performance is expressly recognized in the statute of frauds relating to land transactions. A.S.C.A. § 37.0211. Manoa v. Jennings, 21 A.S.R.2d 23.

Noncompliance with the statute of frauds does not abridge a court's power to compel the specific performance of an agreement in the case of part performance. A.S.C.A. § 37.0211. Blue Pacific Management Corp. v. Paisano's Corp., 23 A.S.R.2d 58.

Buyer-plaintiffs entitled to specific performance of property where written contract executed and buyer-plaintiffs fully performed, despite fact that deed never signed nor delivered prior to seller’s death. Gabriel v. Pipili, 2 A.S.R.3d 227 (Land & Titles Div. 1998).

§ 7(3) —General Measure of Damages

That an employee's wage may have been less than required by the federal minimum wage laws did not make it improper for workmen's compensation commission to base his compensation award on his actual wage in accordance with territorial statute. A.S.C.A. § 32.0261. Enekosi v. Tu'ufuli, 3 A.S.R.2d 81.

Trial court did not err in holding party personally liable for rental payments when that party had personally engaged in negotiations for the rental and had not formed a corporation until about the time he took possession of the property, and where all transactions were so informal that it was not clear property owner intended to deal with a corporation rather than an individual. Filioali'i v. Adams, 3 A.S.R.2d 105.

When bank making home improvement loan contrived to make disbursements to third party contractor far in excess of fair value of materials and services provided and without borrower's knowledge, bank had committed breach of contract and fraud and could recover only the fair value of what borrower actually received. Development Bank v. Lava, 5 A.S.R.2d 24.

Liquidated debts, or those whose amounts have been determined or may be ascertained by calculation according to established market values, are generally proper subjects of setoff. South Seas Trading Co. v. Suamalie Construction Co., 6 A.S.R.2d 80.

When lending bank cancelled a certificate of deposit given by guarantor bank to secure third party's debt and "wrote off" the underlying debt, third party debtor remained liable for the debt to either the lending bank or the guarantor bank, depending upon whether the lending bank was within its rights in canceling the certificate. Development Bank v. Pritchard, 6 A.S.R.2d 125.

Court would exercise its equitable discretion to allow husband of judgment debtor, who had made payments on land contract and paid for a house on the land, to retain in preference to the judgment creditor half of the proceeds from sale of land which had been held in the name of the judgment debtor. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

Where contractor and subcontractor had not agreed on a price for performance of subcontract, and contractor protested immediately upon receipt of a bill from subcontractor, the subcontractor was entitled to the fair value of the work. R.P. Porter International, Inc., v. Samoa Roofing and Siding, Inc., 7 A.S.R.2d 54.

In assessing fair value of work performed by subcontractor, court should exclude amounts billed for materials in excess of those necessary to do the work, for tools and other capital expenditures, for labor costs that did not reflect actual payment to specific workers, and for an unexplained "contingency factor." R.P. Porter International, Inc., v. Samoa Roofing and Siding, Inc., 7 A.S.R. 2d 54.

Plaintiff's claim for exemplary damages against defendant who allegedly stopped payment on checks as part of a scheme to defraud plaintiff was not supported by the evidence when (1) a letter from the bank indicated that the checks had been dishonored because of insufficient funds and (2) plaintiff had failed to subpoena bank officials or records in support of its contention that defendant had stopped payment. R.P. Porter International, Inc., v. Samoa Roofing and Siding, Inc., 7 A.S.R. 2d 54.

Seller who had been partly reimbursed by shipper for price of goods wrongfully delivered by shipper to buyer could recover the remainder of the unpaid purchase price, but not the amount already recovered from the shipper, in a subsequent action against the buyer. Meridian Breckwoldt Samoa, Ltd., v. Max Haleck, Inc., 7 A.S.R.2d 95.

Where contract provides for payment in a foreign currency but payment is made in United States dollars, payment should ordinarily be in an amount equal to the specified foreign currency amount according to the exchange rate on the date specified for payment. Meridian Breckwoldt Samoa, Ltd., v. Max Haleck, Inc., 7 A.S.R.2d 95.

Where contract provided for payment in a foreign currency whose value in relation to United States dollars had increased since the time specified for payment, buyer who had not paid on time bore the burden of the subsequent shift in the exchange rate and would be held liable in an amount equal to the specified foreign currency amount according to the exchange rate on the date of judgment. Meridian Breckwoldt Samoa, Ltd., v. Max Haleck, Inc., 7 A.S.R.2d 95.

Buyer was liable for bank charges imposed on seller due to buyer's failure to make payment to the bank as specified in the contract, at least where such charges would otherwise have been imposed directly on buyer and in the course of prior dealings the buyer had reimbursed seller for bank charges imposed on seller. Meridian Breckwoldt Samoa, Ltd., v. Max Haleck, Inc., 7 A.S.R.2d 95.

Buyer was not liable for costs incurred by seller as a consequence of buyer's having made payment in a way not specified by the contract, where seller had authorized the alternate mode of payment. Meridian Breckwoldt Samoa, Ltd., v. Max Haleck, Inc., 7 A.S.R.2d 95.

Where equipment lease specified that lessees would pay rent for a specified minimum number of hours, but lessees were unable to use the equipment for the minimum number of hours due to lessor's failure to perform its obligations, lessees would be required to pay rent only for the number of hours they actually used the equipment. Anderson v. Sinagege R.M. Utu Enterprises, 8 A.S.R.2d 139.

Where inability of lessees to use leased equipment for the minimum number of hours specified in the lease was due to factors outside the control of either lessor or lessees, lessees would be required to pay rent for the hours in question. Anderson v. Sinagege R.M. Utu Enterprises, 8 A.S.R.2d 139.

Where lessor wrongfully repossessed leased equipment shortly before the expiration of the term of the lease, but lessees did not prove any damages on account of the premature repossession, lessees would be required to pay rent for the period prior to repossession as well as incidental expenses allocated to the lessees by the lease agreement. Anderson v. Sinagege R.M. Utu Enterprises, 8 A.S.R.2d 139.

Where lessees were not in default when lessor repossessed the leased equipment, lessor could not recover its expenses incident to the repossession. Anderson v. Sinagege R.M. Utu Enterprises, 8 A.S.R.2d 139.

Since in the absence of a written agreement specifying the rate of interest applicable to a promissory note the statutory rate of 6% will apply, where a note specified an interest rate of 12.5% "until maturity" the rate after maturity was 6%. A.S.C.A. § 28.1501. Pritchard v. Amerika Samoa Bank, 8 A.S.R.2d 157.

Under statute providing that interest on business loans may not exceed 18 per cent annually, creditor whose contract specified 20 per cent interest would have judgment for only 18 per cent. A.S.C.A. § 28.1503. Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc., 9 A.S.R.2d 62.

Where contract specified payment in United States dollars, judgment would be in the amount of United States dollars originally agreed to by the parties, plus interest and collection charges, notwithstanding the decline of the United States dollar with respect to the Australian dollar during the time between contract and judgment. Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc., 9 A.S.R.2d 62.

Provision of the Warsaw Convention creating liability for "damage sustained by" loss of baggage, and containing no language limiting the amount of recovery to the value of the lost baggage or to "foreseeable" damages, should be construed to allow recovery of consequential damages occasioned by loss of baggage. Warsaw Convention art. 18(1). American Samoa Gov't ex rel. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

Under provision of the Warsaw Convention which, unlike the common law, allows recovery of consequential damages whether or not they were foreseeable, passenger's purchase of a battery pack for use during his trip to replace one lost by defendant airline constitutes compensable damage even though the lost battery pack belonged to plaintiff's employer and not to plaintiff. Warsaw Convention art. 18(1). American Samoa Gov't ex rel. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

Conspicuous statement on airline ticket that excess valuation insurance was available, and on ticket jacket detailing the terms of such insurance, were sufficient so that passenger who had not purchased such insurance was entitled to recover only the amount available under the airline's contract of carriage for loss of baggage. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

In assessing damages to vendee upon breach of seller's contract to deliver goods, court would include the actual cost to the vendee of using its own machines to process substitute goods, rather than a "market value" for use of the machines which included a substantial profit to vendee, since vendee had not shown that the machines were diverted from other profitable use. R.P. Porter International, Inc., v. Pacific International Engineering, Ltd., 11 A.S.R.2d 124.

Vendee who loaded goods after vendor breached its obligation to load them "free on board," but who did not prove that his loading machine was thereby diverted from other profitable uses, could recover only the actual cost of operating the loader and not the additional amount he testified he usually charged for "standby time." R.P. Porter International, Inc., v. Pacific International Engineering, Ltd., 11 A.S.R.2d 124.

Unrecorded lease of building, which did not include the land on which the building was located, gave rise only to contractual rights, not to a real interest in the property. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

Where lessor's mortgagee had secured a writ of execution against the leased premises, and unrecorded lease gave lessee no real interest in the property, lessee could have been lawfully evicted by mortgagee with no recourse but to try to collect his damages from the lessor. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

Where the parties had entered into an agreement for the construction of a house whereby the carpenter would be compensated for his services in accordance with Samoan custom rather than by calculation of normal charges for time and expenses, but the house owner did not deal in good faith with the carpenter and then unilaterally terminated the agreement without cause after the carpenter had significantly performed, the carpenter was entitled to compensation for the reasonable value of his labor. Maua v. Mulipola, 12 A.S.R.2d 105.

Plaintiff's claim that defendant was liable for the entire amount noted in an agreement to purchase inventory from their dissolved joint business was not sustained by evidence showing that defendant had returned the bulk of the inventory to plaintiff's new place of business; that plaintiff's relative or employee kept an accounting of merchandise returned by the defendant, but no copy of this accounting was ever supplied either to the defendant or to the court; and that defendant admitted owing plaintiff for the items he had not returned and had made installment payments on this debt. Chang v. Fuiava, 13 A.S.R.2d 1.

Where contractor agreed to make improvements on a house for "approximately" $75,000, and the amount actually billed and paid was slightly less than ten per cent over this amount, this amount was in accordance with the contract price and buyers were not entitled to a refund of the amount paid in excess of $75,000. Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

Measure of damages for defective performance, where cost of repairing the defect is so high that a reasonable person would prefer to make cosmetic changes and live with the result, is not the cost of repairing the defect but the difference in value between the benefit conferred by the defective performance and the benefit that would have been conferred by the promised performance. Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

Where a contract stated that plaintiff would receive commissions on insurance premiums collected via payroll deduction, defendant was liable for such commissions on premiums collected under a subsequent payroll deduction plan until he gave timely written notice of cancellation to plaintiff as required by the contract. Mauga v. Pioneer Pacific Financial Services, Inc., 16 A.S.R.2d 16

In assessing post-judgment interest, the court set the rate at six per cent, the maximum enforceable rate on unwritten contracts. A.S.C.A. § 28.1501(a). Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

Concerning an unwritten contract, which affords no contractual or legal basis for variation from the rule that each party pays his own attorney fees, plaintiff was entitled to recover only the principal amount plus six per cent pre-judgment interest. Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

Under a "c.i.f." contract, the buyer's remedy for goods damaged in transit is to file a claim under the insurance policy purchased by the seller and surrendered to the buyer, not to reject the goods as "non-conforming." Ghiselli Bros. v. Ryan Inc., 19 A.S.R.2d 128.

When buyer's bank was to surrender title documents to the buyer only upon his payment in local currency but instead surrendered the documents by accepting payment which was not immediately transferrable to the seller's bank, in violation of a collection letter between both banks, buyer's bank thereby obligated itself to make good any difference between the effect of what it did and what it contracted to do. Ghiselli Bros. v. Ryan Inc., 19 A.S.R.2d 128.

A plaintiff in a breach of contract action has a duty to mitigate damages. C.B.T. Lumber, Inc. v. Pacific Reliant Industries, Inc., 20 A.S.R.2d 26.

Where the trial court properly assessed that both parties breached their contract, its decision in equity requiring the parties to share expenses will be affirmed. EW Truck and Equipment Co. v. Coulter, 20 A.S.R.2d 88.

Damages for breach of a lease or a covenant in a lease, if any, must be proved according to general principles which determine the measure of damages on claims arising from breaches of other kinds of contracts. Lindgren v. Betham, 20 A.S.R.2d 98.

The statutory rate of six percent interest is presumed on overdue debts for which no contractual interest rate is specified. A.S.C.A. § 28.1501(a). Ghiselli Bros., Inc. v. Ryan, Inc., 22 A.S.R.2d 57.

Because a plaintiff bore no risk of loss under a c.i.f. contract and is not permitted to recover twice for the same injury, a defendant was entitled to remittitur in the amount of a cash settlement which a plaintiff received from an insurance company. Ghiselli Bros., Inc. v. Ryan, Inc., 22 A.S.R.2d 57.

Liability under a quasi-contract theory is implied-in-law by the equitable principle against unjust enrichment. Farapo v. Schuster, 26 A.S.R.2d 112.

Restitutionary claims under the quasi-contract theory do not apply to family situations. Farapo v. Schuster, 26 A.S.R.2d 112.

A demand is not liquidated even if it appears that something is due, unless it appears how much is due; and when it is admitted that one of two specific sums is due, but there is a genuine dispute as to which is the proper amount, the demand is regarded as "unliquidated" within the meaning of that term as applied to the subject of accord and satisfaction. Kent Samoa v. Shimasaki, 27 A.S.R.2d 140.

In order to recover compensation for "standby time" for the use of defendant's own construction equipment as an element of damages arising from plaintiff's breach of contract, defendant would have to prove not only that the breach made it necessary for him to use his own equipment, but that the plaintiff somehow made it necessary for the equipment to wait at the construction site while it was not actually being used. R.P. Porter International, Inc., v. Pacific International Engineering, Inc. (Mem.), 12 A.S.R.2d 48.

Even if defendant had proved that plaintiff's breach of construction contract made it necessary to leave machinery at the construction site for long periods of time, court would not have exceeded its discretion in insisting that defendant supply the exact details of the profitable uses from which the equipment was thereby diverted, or in inferring from defendant's failure to supply such details that there was no such profitable use and therefore no monetary loss from the diversion. R.P. Porter International, Inc., v. Pacific International Engineering, Inc. (Mem.), 12 A.S.R.2d 48.

Measure of damages for defective performance, where cost of repairing the defect is so high that a reasonable person would prefer to make cosmetic changes and live with the result, is not the cost of repairing the defect but the difference in value between the benefit conferred by the defective performance and the benefit that would have been conferred by the promised performance. Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

Where court found cancellation of contract award was arbitrary and in bad faith, but nonetheless concluded that no formal contract had been formed, it could not award expectation damages as are normally appropriate in breach of contract cases. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Where defendants arbitrarily and in bad faith canceled contract award, court could properly award damages incurred by winning bidder in reliance upon award. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

§ 7(4) —Quantum Meruit

Purchaser of goods must pay seller value of goods shipped by seller and accepted by purchaser. Jt. Holdings & Tr. Ltd v. P.J. Brennan, Inc., of Samoa, 4 A.S.R. 812.

Bank could not recover attorney fees as provided in promissory notes on which borrower defaulted when bank had breached its contract and was entitled only to quantum meruit recovery. Development Bank v. Lava, 5 A.S.R.2d 24.

When one party signed a blank form believing that it would be filled out by the other party in the amount of $6000, and the other party instead filled the contract out in the amount of $15,164, there was no agreement between the parties on a contract obligating the signing party to pay $15,164; the other party was entitled at most to a quantum meruit recovery. Development Bank v. Ilalio, 5 A.S.R.2d 110.

Equitable remedy such as quantum meruit is not available to a party with unclean hands. Hardy v. Anderson, 9 A.S.R.2d 79.

Where party to construction contract uses nonconforming materials, court is ordinarily faced with the question whether the lack of conformity was so serious as to bar not only recovery on the contract but also quantum meruit recovery for the benefit conferred on the other party. Hardy v. Anderson, 9 A.S.R.2d 79.

Where contracting party materially and fraudulently altered documents to create the false impression that he had complied with his obligations under the contract, and presented the altered documents as evidence in court, court would not grant quantum meruit recovery for benefit conferred on the other party. Hardy v. Anderson, 9 A.S.R.2d 79.

Where lessor had agreed, in return for certain commitments by lessee, to credit offsets due to the lessee against current invoices rather than against lessee's past due obligations, but lessee had not kept its part of the bargain, lessor was free to apply the offsets to the earliest debt first. American Samoa Gov't v. Manu`a Air Transport, 12 A.S.R.2d 78.

Where the parties had entered into an agreement for the construction of a house whereby the carpenter would be compensated for his services in accordance with Samoan custom rather than by calculation of normal charges for time and expenses, but the house owner did not deal in good faith with the carpenter and then unilaterally terminated the agreement without cause after the carpenter had significantly

performed, the carpenter was entitled to compensation for the reasonable value of his labor. Maua v. Mulipola, 12 A.S.R.2d 105.

Where parties did not even attempt to reach an agreement on the price of modifications to a building under construction, but instead each party chose to proceed in deliberate disregard of the materially different interpretation which he surely knew the other party would eventually place on the arrangement, there was no contract and no contractual basis for resolving a subsequent dispute over the price to be paid for the modifications; rather, the court must apply the doctrine of quantum meruit to award the contractor the value of the benefit conferred on the buyer. Restatement of Contracts (Second) § 20(1). Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

Where it was not clear that extra expense to a contractor had increased the value of the benefit conferred upon the buyer, and the contractor's equitable claim to compensation was substantially weakened by his failure to apprise the buyers of the extent of such extra expense, contractor's recovery under the doctrine of quantum meruit would be limited to the value of the benefit conferred. Hardco Inc. v. Lutali, 14 A.S.R.2d 1.

If purported lease did not amount to a binding agreement, each party would nevertheless be entitled to quantum meruit recovery for any benefits conferred upon the other party; the lessor would be entitled to possession of the house and to its fair rental value for the time during which it had been occupied by the lessees, but only after compensating the lessees for any improvements they made which would be of benefit to the lessor. Fealofa`i v. Reid, 14 A.S.R.2d 57.

When a seaman had worked to prepare a vessel for an upcoming voyage before leaving the vessel, he was entitled to compensation on a quantum meruit basis. Zuguin v. M/V Captain M.J. Souza, 23 A.S.R.2d 7.

Where plaintiff had agreed to do emergency repairs on defendant's boat and defendant promised that payment would be discussed after completion of work, but said topic was never discussed between parties, plaintiff entitled to quantum meruit compensation for services rendered. Ioane v. Aiga Tautai O Samoa, 1 A.S.R.3d 96 (Trial Div. 1997).

Plaintiff's claim of for payment at his customary rate was neither untoward nor unreasonable and was proper as quantum meruit compensation. Ioane v. Aiga Tautai O Samoa, 1 A.S.R.3d 96 (Trial Div. 1997).

Where evidence was clear that services had been provided benefiting defendant, plaintiff was entitled to recover the reasonable value of such services based upon the doctrine of quantum meruit. MSM Village Store v. GMP Assoc., Inc., 2 A.S.R.3d 148 (Trial Div. 1998).

§ 7(5) —Liquidated Damages

RESERVED

§ 7(6) —Exemplary Damages

Where, after making agreement to sell land, seller wrongfully failed to perform his side of the bargain in an expeditious manner, and instead attempted to increase purchase price, such misconduct was deliberate, reprehensible and entitled purchaser to exemplary damages. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

§ 7(7) —Reformation

Reformation involves rewriting a contract in order to reflect the actual intent of both parties, and an insurance contract may be reformed after a loss has occurred. However, reformation is not appropriate to enforce terms to which the defendant never assented, but is used only to correct a mistake in writing to conform to the actual agreement of the parties. Plaza Department Store v. Duchnak, 26 A.S.R.2d 106.

Reformation is an extraordinary remedy, and courts have in general exercised it with caution. However, courts have reformed insurance contracts in regard to the amount of coverage provided. Plaza Department Store v. Duchnak, 26 A.S.R.2d 106.

§ 7(8) —Promissory Estoppel

The doctrine of promissory estoppel prevents a party from denying its implied promise to execute a contract with another once the other has relied in good faith upon the first party's representation. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

§ 7(9) —Punitive Damages

Where court determined that public utility and its manager had arbitrarily and in bad faith canceled contract award, punitive damages in the amount of $5,000.00 were proper to deter the defendants from wantonly, arbitrarily, and abusively wielding their public procurement power in the future. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Where defendants arbitrarily, and in bad faith, rescinded contract, plaintiff was entitled to reliance damages, attorney's fees and punitive damages. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

§ 7(10) —Attorney Fees

SEE LEGAL PROFESSION § 5(2) – LITIGATION EXPENSES

The general rule is that a party cannot recover attorney's fees

incurred in enforcing a claim against another. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

The court can and does award attorney's fees where required by statute, or where an opposing party has acted wantonly, oppressively, or in bad faith. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

§ 8 Types of Contracts

§ 8(1) —Oral Contracts

Oral agreement by person who negotiated on behalf of purchaser that negotiator would guarantee payment from purchaser created an agency or surety relationship between purchaser and negotiator, and vendor could look to third party for payment. Ryan, Inc., v. Vaka, 5 A.S.R.2d 31.

In an action for breach of an oral contract for the settlement of an outstanding electric bill, court would not find that the agreement included concessions by the electric company with regard to land disputes unrelated to the bill in question, where: (1) plaintiff's documentary evidence of the existence of such terms was self-serving and prepared after the negotiations; (2) defendant's representatives testified that there was no agreement on these terms; (3) notes made during the negotiations by defendant's counsel reflected no agreement to such terms; (4) plaintiff himself had sought the settlement as an alternative to a trial scheduled the same day, over the objections of defendant's counsel who had objected to a continuance for the purpose of settlement negotiations; (5) a stipulation signed by both parties at the conclusion of the negotiations had contained no reference to agreement on any collateral terms; (6) agreement to such terms would have been beyond the scope of defendant's representatives' authority; and (7) it made no business sense for defendant to agree to such terms. Pene v. American Samoa Power Authority, 10 A.S.R.2d 9.

While a contemporaneous oral agreement may establish a lessor's duty to repair, a subsequent oral undertaking cannot vary a written lease complete in itself. Reine v. Fiame, 23 A.S.R.2d 25.

A verbal promise to convey any interest in land is not legally binding. American Samoa Gov't v. Meredith, 28 A.S.R.2d 10.

A campaign promise, made when the promisor was not acting on the government's behalf but merely as a private citizen seeking elected office, is unenforceable. American Samoa Gov't v. Meredith, 28 A.S.R.2d 92.

Without valid consideration, a verbal promise is at most an offer to make a gift and a mere promise to make a gift is unenforceable. American Samoa Gov't v. Meredith, 28 A.S.R.2d 92.

Actions to recover bank deposits evidenced by entries in a depositor's account passbook are governed by statutes relating to actions on oral contracts, and not on written contracts, unless the passbook is signed by an authorized bank employee and contains a definite promise to pay. Passi v. Amerika Samoa Bank, 28 A.S.R.2d 130.

When there is no written partnership agreement between the parties the court may look to circumstantial evidence offered by each party to back his oral claim of the presence or absence of a partnership. Johnson v. Coulter, 28 A.S.R.2d 218.

Where plaintiff alleged an oral contract for services, but did not provide sufficient evidence of when the agreement was formed, by whom it was formed, what promises were made, what performance was required, or what the mutual understanding was between the parties, Court found that no legal contract existed. MSM Village Store v. GMP Assoc., Inc., 2 A.S.R.3d 148 (Trial Div. 1998).

Under 46 U.S.C. § 11107, oral fishing agreements are void. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

§ 8(2) —Bailment Contracts

SEE TORTS § 13 – BAILMENTS

Bailment for mutual benefit arises whenever both parties benefit from the transaction. Garcia v. Galea`i, 15 A.S.R.2d 14.

Bailee need not receive tangible compensation for a transaction to constitute a bailment, so long as the transaction is an incident of the business in which bailee profits, or was accepted because of benefits expected to accrue. Garcia v. Galea`i, 15 A.S.R.2d 14.

When lessor takes possession of leased premises and its contents to the exclusion of the lessor, the lessee becomes the bailee of such property and thus has a duty to look after it while it remains in his custody. Sala v. Tuika, 18 A.S.R.2d 29.

§ 8(3) —Consignment Contracts

In a consignment, the consignor retains ownership, as well as the powers of recall and setting the sale price. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

In a consignment, the consignee receives a commission but not the profits of the sale. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

In a true consignment, the consignee possesses no interest in the consigned property that may be obtained by creditors.

Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

Using contract terms that give the alleged consignor the right of reclamation if goods remain unsold, without further development of the consignment relationship, does not create a consignment. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

Simply holding a right of reclamation if payments are not met does not create a consignment. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

A conditional sale which is not a consignment leaves the seller with a security interest. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

§ 8(4) —Written Contracts

A written contract is one which is all in writing, so that all its terms and provisions can be ascertained from the instrument itself. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

Where invoice signed subsequent to performance of the agreement contained all essential terms of the agreement, but price term was altered subsequent to its execution, court held that such writing satisfied the requirements of a written contract, despite fact that consideration owing was issue left to be resolved. Misipeka v. Legislature of American Samoa, 7 A.S.R.3d 96 (Trial Div. 2003).

CORPORATION AND PARTNERSHIP

§ 1 Formation of Corporations
- 1(1) —Generally
- 1(2) —Distinct Corporate Name
- 1(3) —Who May Incorporate
- 1(4) —Fees Required for Incorporation
- 1(5) —Organizational Meeting

2 Preincorporation Transactions

3 Limited Liability & the Corporate Entity
- 3(1) —Generally
- 3(2) —Piercing the Corporate Veil

4 Corporate Financial Structure
- 4(1) —Generally
- 4(2) —Books & Accounts
- 4(3) —Shares
- 4(4) —Dividends

5 Corporate Management Structure
- 5(1) —Generally
- 5(2) —Incorporators
- 5(3) —Shareholders
- 5(4) —Officers & Directors
- 5(5) —Duties of Management
- 5(6) —Business Judgment Rule
- 5(7) —Management Compensation
- 5(8) —Shareholders Meetings
- 5(9) —Board Meetings
- 5(10) —Election/Voting Procedures
- 5(11) —Dissenters & Their Rights
- 5(12) —Corporate Counsel

6 Types of Corporations
- 6(1) —Generally
- 6(2) —Closely Held Corporation
- 6(3) —Public Corporation
- 6(4) —Foreign Corporations
- 6(5) —Eleemosynary Corporations
- 6(6) —Cooperative Corporations

7 Corporate Powers & Prohibitions
- 7(1) —General Provisions
- 7(2) —Powers
- 7(3) —Transfers of Land
- 7(4) —Prohibitions

8 The Corporation & Litigation
- 8(1) —Generally
- 8(2) —Shareholder Suits
- 8(3) —Third Party Suits

9 Organic Changes: Amendments, Mergers and Dissolution
9(1) —General Provisions
9(2) —Amending Formative Documents
9(3) —Merger
9(4) —Dissolution of the Corporation
10 Partnerships
10(1) —General Provisions
10(2) —Formation
10(3) —Service on a Partnership
10(4) —Dissolution of Partnership
10(5) —Liability for Partnership Debts

§ 1 Formation of Corporations

§ 1(1) —Generally

A One who has dealt with a church as a corporate entity and has participated in church affairs for a period of years is estopped from questioning the validity of the church's incorporation. Ofa v. Tongan Wesleyan Church, 8 A.S.R.2d 110.

Validity of a de jure or de facto corporation may not be collaterally attacked in a proceeding brought to determine title to property held by the corporation. Ofa v. Tongan Wesleyan Church, 8 A.S.R.2d 110.

One company's domestic certificate of incorporation does not establish an identity between it and another company holding a separate, local certificate of incorporation. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

In the absence of an authorizing statute, the general rule at common law is that an unincorporated association is not a legal entity capable of holding or acquiring property. Alailima-Utu v. Tufele, 22 A.S.R.2d 34.

Where circumstances indicated that parties shared a personal and business relationship, managerial authority, and some ownership over business entity, but entity had failed to properly operate as a corporation, court could treat entity as a partnership. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

§ 1(2) —Distinct Corporate Name

A.S.C.A. § 30.0104(a) requires that a corporation's name be such as to distinguish it upon the records of the territorial registrar from the name of any other corporation. American Samoa Rugby Football Ass'n v. Godinet, 7 A.S.R.3d 161 (Trial Div. 2003).

A.S.C.A. § 30.0104(a) prevents a corporation from using a name similar to another corporation's name where the public is likely to be deceived by the similarity. American Samoa Rugby Football Ass'n v. Godinet, 7 A.S.R.3d 161 (Trial Div. 2003).

Where corporation had registered and used literal, Samoan translation of other corporation's name, as its name, injunctive relief was appropriate. American Samoa Rugby Football Ass'n v. Godinet, 7 A.S.R.3d 161 (Trial Div. 2003).

§ 1(3) —Who May Incorporate

RESERVED

§ 1(4) —Fees Required for Incorporation

RESERVED

§ 1(5) —Organizational Meeting

Under the statutory requirements set forth in Title 30 of the American Samoa Code, corporate entities must conduct an organizational meeting of incorporators, adopt bylaws, and issue stock certificates. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

Corporations are required to prepare guidelines fixing the number of directors and the manner of their election. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

Corporations are required to maintain a stock book containing the names of all persons who are stockholders of the corporation, their interests, the amount paid on their shares and all transfers thereof. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

Where purported corporation had failed to conduct organizational meeting of incorporators, adopt bylaws, issue stock certificates, prepare guidelines for electing directors, and maintain accounting books or stock book, court held such

business entity was not a corporation. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

§2 Preincorporation Transactions

Trial court did not err in holding party personally liable for rental payments when that party had personally engaged in negotiations for the rental and had not formed a corporation until about the time he took possession of the property, and where all transactions were so informal that it was not clear property owner intended to deal with a corporation rather than an individual. Filioali'i v. Adams, 3 A.S.R.2d 105.

Where a corporation with outstanding debts and claims against it dissolves and reincorporates, equity will hold all assets traceable to the original corporation liable to discharge the debts and claims. Kneubuhl Maritime Services Corp. v. Adams, 8 A.S.R.2d 20.

§ 3 Limited Liability & the Corporate Entity

§ 3(1) —Generally

The appropriate remedy for a lack of financial support from an estranged spouse is a lawsuit against him at common law, not a self-help resort to the assets of his corporation. Transpac Corp. v. Drabble, 25 A.S.R.2d 66.

A fundamental reason for forming a corporation is to shield stockholders, officers, and directors from personal liability for business debts. The corporate veil will not be pierced to attach liability to such individuals unless the corporation is being used as a shield for crime, fraud, or other practices inconsistent with the purposes of corporations. Joseph D. Seagram & Sons, Inc. v. Comm. Credit Corp. of American Samoa, 29 A.S.R.2d 121.

A corporation is a legal fiction which exists as a separate entity from its shareholders and exempts the shareholders' property from corporate debts. American Samoa Gov't v. Amerika Samoa Bank, 7 A.S.R.3d 92 (Trial Div. 2003).

§ 3(2) —Piercing the Corporate Veil

Minority shareholder became personally liable for a corporate debt where he made a written promise to pay a past due balance owed by the corporation and the writing did not indicate that the obligation was other than personal. Kneubuhl Maritime Services Corp. v. Adams, 8 A.S.R.2d 20.

Minority shareholder became personally liable for a corporate debt where he made a written promise to pay a past due balance owed by the corporation and the writing did not indicate that the obligation was other than personal. Kneubuhl Maritime Services Corp. v. Adams, 8 A.S.R.2d 20.

Shareholders' immunity for corporate debts is absolute unless circumstances justify disregarding the corporate entity to prevent abuse of corporate privileges by an individual or another corporation having domination or control; in such cases, the issue is whether limiting corporate privileges will accomplish justice and defeat fraud or other unfairness in a court's resolution of the issues before it. A.S.C.A. § 30.0114(6). Amerika Samoa Bank v. Adams, 22 A.S.R.2d 38.

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.

The equitable alter ego doctrine is applicable in admiralty but will only disregard a corporate entity upon a proper factual showing. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 145.

Court would allow assets of corporation to be garnished to satisfy judgment owed by ex-husband to ex-wife under divorce decree, where (1) business had been jointly owned and managed by husband and wife, (2) husband had formed a corporation in which he and another person owned all the shares and had secured wife's agreement to transfer the business to the corporation a few months before husband filed for divorce, (3) evidence suggested that corporation now owned assets formerly belonging to husband and wife, and (4) the amount garnished was less than the amount of payments long overdue on a property settlement which had been ordered by the court to compensate wife for her interest in the business now owned by the corporation. Dellumo v. Dellumo, 4 A.S.R.2d 48.

A fundamental reason for forming a corporation is to shield stockholders, officers, and directors from personal liability for business debts. The corporate veil will not be pierced to attach liability to such individuals unless the corporation is being used as a shield for crime, fraud, or other practices inconsistent with the purposes of corporations. Joseph D. Seagram & Sons, Inc. v. Comm. Credit Corp. of American Samoa, 29 A.S.R.2d 121.

For purposes of particular issues, an individual may so dominate a corporation that the individuality of the person and corporation cease to exist, and recognition of their separate existence would promote the person's unjust evasion of contractual obligations. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

Although a corporate officer or owner is normally not subject to personal liability for the acts of the corporation, the corporate shroud of protection from liability may be pierced, and the corporate officer or owner held personally liable for the conduct of the corporation, if the corporation is nothing

more than his alter ego. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

A party is an alter ego of a corporation when there is such a unity of interest and ownership that the individuality, or separateness, of said person and corporation has ceased and the facts are such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

The alter ego doctrine treats the corporation and the dominating person as one person, so that any act committed by one is attributed to both, and if either is bound, by contract, judgment, or otherwise, both are equally bound. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Where defendant was the sole real shareholder and owner of corporation during the majority of the time at issue, did not adhere to corporate formalities, siphoned off corporate funds for his own use, and left corporate bank accounts barren of funds, court rightly determined that alter ego doctrine applied. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Shareholders are normally exempt from liability for the corporation's debts, but the exemption will be abrogated if there are circumstances justifying disregard of the corporate entity, in order to prevent abuse of corporate privileges, either by one or more individuals or by another corporation. American Samoa Gov't v. Amerika Samoa Bank, 7 A.S.R.3d 92 (Trial Div. 2003).

Piercing the corporate veil is justified when: (1) the corporation is not only influenced and governed by the shareholder, but there is such a unity of interest and ownership that the individuality, or separateness, of said person and corporation has ceased; and (2) the facts are such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice. American Samoa Gov't v. Amerika Samoa Bank, 7 A.S.R.3d 92 (Trial Div. 2003).

Where defendant was the dominant, if not the only, stockholder of corporation, where there was no evidence of a corporate structure or of adequate corporate records and minutes, and where defendant admitted to paying off corporation's debt with his own personal funds, Court found that there was sufficient unity of interest and ownership to satisfy first prong of test for piercing corporate veil. American Samoa Gov't v. Amerika Samoa Bank, 7 A.S.R.3d 92 (Trial Div. 2003).

The inequity necessary to justify piercing the corporate veil must flow from the misuse of the corporate form. American Samoa Gov't v. Amerika Samoa Bank, 7 A.S.R.3d 92 (Trial Div. 2003).

Where corporation was not authorized to transact insurance business as an insurer, having obtained certificate of insurance through misrepresentations, but shareholder nevertheless attempted to hold corporation out as a legitimate insurer in the Territory so that he might personally gain from corporation's collection of deposit, court concluded that injustice would result if corporate veil were not pierced. American Samoa Gov't v. Amerika Samoa Bank, 7 A.S.R.3d 92 (Trial Div. 2003).

A claim based on the alter ego theory is not in itself a claim for substantive relief. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

An alter ego claim in a complaint is sufficient notice under T.C.R.C.P. 8(a) that a plaintiff seeks to hold the defendant individually liable for certain actions. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

§ 4 Corporate Financial Structure

§ 4(1) —Generally

RESERVED

§ 4(2) —Books and Accounts

RESERVED

§ 4(3) —Shares

When an offer for bids to purchase stock shares owned by territorial government is extensively publicized, sale price was substantially higher than book value of shares, and evidence of poor financial performance of corporation suggests that shares might not be worth even their book value, the best evidence of the value of the shares is what they actually brought on the market. Fa'atiliga v. Lutali, 3 A.S.R.2d 139.

Title ownership of shares of stock is prima facie evidence of true ownership. Johnson v. Coulter, 30 A.S.R.2d 130.

§ 4(4) —Dividends

RESERVED

§ 5 Corporate Management Structure

§ 5(1) —Generally

In the absence of a provision in the constitution or bylaws of an unincorporated association giving its members a severable interest in the association's assets, the general rule is that a withdrawing member loses title to associational property, which stays with the members remaining in the association. Alailima-Utu v. Tufele, 22 A.S.R.2d 34.

§ 5(2) —Incorporators

RESERVED

§ 5(3) —Shareholders

Fundamental incident of corporate ownership is right of shareholders to inspect books and records of corporation whose stock they hold. Haleck v. TRT, Inc., 6 A.S.R.3d 226 (Trial Div. 2002).

In derivative action to inspect books and records of corporation, to withstand motion to dismiss for failure to state cause of action, plaintiffs need only plead that they are stockholders, they made demands to examine records, they have proper purpose, and their demands were refused. Haleck v. TRT, Inc., 6 A.S.R.3d 226 (Trial Div. 2002).

§ 5(4) —Officer & Directors

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, 24 A.S.R.2d 81.

§ 5(5) —Duties of Management

Corporate management had a fiduciary duty to minority shareholders that precluded forgiveness of debts to corporation owed by associates of majority shareholder without some valid business purpose. Fa'atiliga v. Lutali, 3 A.S.R.2d 139.

Acts of self-dealing by corporate managers that are clearly detrimental to the corporation constitute a breach of fiduciary duty to the corporation. Haythornwaite v. Transpac Corp., 6 A.S.R.2d 110.

Where officials of organization provided an accounting with respect to disposition of the organization's property, minor discrepancies would not justify the expense of an accounting, but some such discrepancies reflected unlawful transactions for which officials were bound to make restitution. Tele`a v. Savea, 11 A.S.R.2d 110.

A corporate board of directors has a fiduciary duty to the corporation and its shareholders, and an attempt by a board to insulate itself from accountability to the shareholders is inconsistent with this duty. Lutali v. Foster, 24 A.S.R.2d 39.

§ 5(6) —Business Judgment Rule

Court should not interfere with business judgment of the management of a corporation on matters such as giving directors one free weekend a month at hotel owned by corporation, employing officer of corporation that had purchased an option to become majority shareholder, and letting him examine corporate books. Fa'atiliga v. Lutali, 3 A.S.R.2d 139.

§ 5(7) —Management Compensation

RESERVED

§ 5(8) —Shareholders Meetings

Since trustees must jointly exercise all powers calling for discretion and judgment, if trustees of a trust whose corpus includes corporate stock call a shareholders' meeting without a co-trustee, the meeting is unauthorized, and its proceedings are of no effect. Beaver v. Craven, 19 A.S.R.2d 14.

A special board meeting held without due notice to all the directors as required by the corporation's bylaws, and in the absence of those directors without notice, is unlawful, and all acts done at such a meeting are void, absent ratification or estoppel. Beaver v. Craven, 19 A.S.R.2d 14.

§ 5(9) —Board Meetings

RESERVED

§ 5(10) —Election/Voting Procedures

Territorial statute providing that shareholder may either cast all his votes for one candidate for corporate office or divide his votes among as many candidates as there are positions did not leave corporate management free to choose which of these two methods would be followed; rather, it required that each shareholder be given the option of choosing how to cast his votes. A.S.C.A. § 30.0142. Fa'atiliga v. Lutali, 4 A.S.R.2d 1.

Where notice of corporate election was in the newspaper rather than by mail or personal delivery as required in the corporate by-laws, but where there was no testimony that any shareholder had not in fact received notice of the meeting, the alternative method of notice was not shown to have interfered with the shareholders' right to vote. Fa'atiliga v. Lutali, 4 A.S.R.2d 1.

A statutory provision that corporate directors be elected at the annual meeting does not preclude the shareholders from removing members of the board of directors and holding a special election to elect replacement directors. A.S.C.A. § 30.0141(a). Lutali v. Foster, 24 A.S.R.2d 39.

A statutory provision that corporate directors be elected at the annual meeting does not preclude the shareholders from removing members of the board of directors and holding a

special election to elect replacement directors. A.S.C.A. § 30.0141(a). Lutali v. Foster, 24 A.S.R.2d 39.

§ 5(11) —Dissenters & Their Rights

RESERVED

§ 5(12) —Corporate Counsel

Under A.S.C.A. § 31.0104, it is a misdemeanor for an unlicensed or unauthorized person to practice law, and while a party may represent himself as a plaintiff in a lawsuit, he may not represent other plaintiffs; a corporation almost always must be represented by counsel. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

§ 6 Types of Corporations

§ 6(1) —Generally

§ 6(2) —Closely Held Corporation

RESERVED

§ 6(3) —Public Corporation

A public corporation is an instrumentality of the state, founded and owned in the public interest, supported by public funds and governed by those deriving their authority from the state. Safety Systems of Haw. v. Pili, 30 A.S.R.2d 35.

Public corporations are not subject to the garnishment process in the absence of statutory provisions making them liable thereto. Safety Systems of Haw. v. Pili, 30 A.S.R.2d 35.

DBAS is a public body or agency exempt from garnishment without the prior approval of the Governor. A.S.C.A. § 48.1803(b). Safety Systems of Haw. v. Pili, 30 A.S.R.2d 35.

§ 6(4) —Foreign Corporations

RESERVED

§ 6(5) —Eleemosynary Corporations

RESERVED

§ 6(6) —Cooperative Corporations

RESERVED

§ 7 Corporate Powers & Prohibitions

§ 7(1) —General Provisions

RESERVED

§ 7(2) —Powers

RESERVED

§ 7(3) —Transfers of Land

RESERVED

§ 7(4) —Prohibitions

RESERVED

§ 8 The Corporation and Litigation

§ 8(1) —Generally

RESERVED

§ 8(2) —Shareholder Suits

Court would not grant motion to dismiss territorial government as defendant in shareholders' derivative suit on the ground of sovereign immunity where government had created bank, made loans, executed mortgages, acquired stock in corporation, assumed management of the corporation, voted in corporate elections, and undertaken to sell the bank's majority interest in the corporation, since such actions might have given rise to an implicit agreement to be held responsible for breach of obligations thus undertaken. Fa'atiliga v. Lutali, 3 A.S.R.2d 139.

In stockholders' derivative suit, where there was no evidence tending to prove diminution in value of minority stockholders' shares, minority stockholders could not complain that majority stockholder accepted too low a price for its shares. Fa'atiliga v. Lutali, 3 A.S.R.2d 139.

Minority shareholders are entitled to judicial relief against corporate managers or majority shareholders only upon proof that managers or majority shareholders have breached a fiduciary duty to the corporation; that the Court believes the business judgment of the managers or the majority to have been unsound is not a sufficient ground for relief. Haythornwaite v. Transpac Corp., 6 A.S.R.2d 110.

Even when minority shareholder has proved that she will probably prevail at trial on at least some charges of impermissible self-dealing by corporate management, she is not entitled to a preliminary injunction unless she also proves that she or the corporation will be irreparably injured if no interim relief is granted pending trial on the merits. Haythornwaite v. Transpac Corp., 6 A.S.R.2d 110.

In derivative action to inspect books and records of corporation, to withstand motion to dismiss for failure to state cause of action, plaintiffs need only plead that they are stockholders, they made demands to examine records, they have proper purpose, and their demands were refused. Haleck v. TRT, Inc., 6 A.S.R.3d 226 (Trial Div. 2002).

Court denied a motion to dismiss for failure to state a claim which relied on plaintiff's failure to specially plead the elements needed for a shareholder's derivative action, since the pleaded causes of action were personal, not derivative, and plaintiff was seeking redress for herself from the corporation rather than suing on its behalf. T.C.R.C.P. §§ 12(b)(6), 23.1. Beaver v. Craven, 17 A.S.R.2d 6.

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.

Shareholder derivative actions are governed by T.C.R.C.P. 8-12 and T.C.R.C.P. 23.1. Rule 23.1 requires that complaint be verified and allege (1) that plaintiffs were shareholders at time of transactions about which they complain; (2) that action is not collusive one to confer jurisdiction on court of American Samoa; (3) efforts made to obtain relief requested from directors of corporation and, if necessary, from shareholders; and (4) reasons for failure to obtain such relief or for not making the effort. Haleck v. TRT, Inc., 6 A.S.R.3d 226 (Trial Div. 2002).

Derivative actions are actions brought by shareholders on behalf of the corporation where the corporation, although named a defendant, is essentially the real party in interest and the stockholder is best described as the nominal plaintiff. Haleck v. TRT,Inc., 7 A.S.R.3d 133 (Trial Div. 2003).

A suit brought which objects to the use of corporate funds to pay for the defense of individual defendants whose conduct is allegedly contrary to the best interests of the corporation is credible and will not be classified as a tactical motion brought solely to harass. Haleck v. TRT,Inc., 7 A.S.R.3d 133 (Trial Div. 2003).

§ 8(3) —Third Party Suits

Since corporation unrepresented by counsel was presumed to be a relatively sophisticated litigant, court would sign "stipulated judgment" agreed to by the corporation as long as its officers understood that the stipulated judgment was substantially greater than would be taken against the corporation if it simply did not appear. Wattie Exports Limited v. Pacific Industries, Inc., 6 A.S.R.2d 30.

Where defendant returned goods to one corporation owned by plaintiff, rather than to another similarly named corporation also owned by plaintiff with which defendant had a contract, and where both parties in their dealings with each other had shown only so much respect for corporate formality as suited their convenience, defendant was not liable to the second corporation for the goods he had returned to the first. Chang v. Fuiava, 13 A.S.R.2d 1.

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, 24 A.S.R.2d 81.

§ 9 Organic Changes: Amendments, Mergers, and Dissolution

§ 9(1) —General Provisions

RESERVED

§ 9(2) —Amending Formative Documents

RESERVED

§ 9(3) —Mergers

In the case of a corporate merger, one of the combining corporations continues in existence and absorbs the other. The merged corporation is dissolved or ceases to exist. Interocean Ships, Inc. v. Samoa Gases, 29 A.S.R.2d 198.

Under the common law, when a corporation ceases to exist, it ceases to have any capacity to sue or be sued. Interocean Ships, Inc. v. Samoa Gases, 29 A.S.R.2d 198.

The common-law rule recognized that a chose in action to enforce a property right upon merger vests in the successor corporation and no right of action remains in the merging corporation. Interocean Ships, Inc. v. Samoa Gases, 29 A.S.R.2d 198.

§ 9(4) —Dissolution of the Corporation

Corporation may not use dissolution as a method to avoid creditors. Kneubuhl Maritime Services Corp. v. Adams, 8 A.S.R.2d 20.

Where a corporation with outstanding debts and claims against it dissolves and reincorporates, equity will hold all assets traceable to the original corporation liable to discharge the

debts and claims. Kneubuhl Maritime Services Corp. v. Adams, 8 A.S.R.2d 20.

A dissolved corporation ceases to exist as a legal entity, and therefore, has no capacity to be sued. Pacific Endeavors, Ltd. v. Nam's Island Grocery, Inc., 29 A.S.R.2d 213.

The corporate existence of a federal credit union continues for a period of three years from the date of such cancellation of its charter, during which period the liquidating agent, or his duly appointed successor, or such persons as its board shall designate, may act on behalf of a federal credit union for the purpose of collecting and distributing its assets, and it may sue and be sued in its corporate name. 12 U.S.C. § 1766(b)(5). American Samoa Gov't Employees Federal Credit Union v. Mailo, 29 A.S.R.2d 163.

§ 10 Partnerships

§ 10(1) —General Provisions

Where circumstances indicated that parties shared a personal and business relationship, managerial authority, and some ownership over business entity, but entity had failed to properly operate as a corporation, court could treat entity as a partnership. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

The court will not enforce claimed partnership gains derived while the parties were in violation of the American Samoa licensing Act. A.S.C.A. §§ 27.0201 et seq. Papali`i v. Pen, 18 A.S.R.2d 82.

An agreement to violate or inhibit licensing laws is clearly illegal and contrary to public policy. A.S.C.A. §§ 27.0201 et seq. Papali`i v. Pen, 18 A.S.R.2d 82.

An owner of a sole proprietorship is liable for its debts, including debts that were incurred because moneys were advanced on an unfulfilled contract and were never returned. Wing Hop Lee, Ltd. v. Soo, 30 A.S.R.2d 76.

A partner is jointly and severally liable for partnership debts. Wing Hop Lee, Ltd. v. Soo, 30 A.S.R.2d 76.

When a business license is registered in a resident's name to avoid the more restrictive licensing requirements placed on nonresidents, the resident does not escape liability for the debts of the business by claiming that he or she was merely "fronting" for another person who runs the business. Wing Hop Lee, Ltd. v. Soo, 30 A.S.R.2d 76.

Where circumstances indicated that parties shared a personal and business relationship, managerial authority, and some ownership over business entity, but entity had failed to properly operate as a corporation, court could treat entity as a partnership. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

A partnership is an association of two or more persons to carry on, as co-owners, a business for profit. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

A partnership is a voluntary contract between two or more competent persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them, and which is not organized as a corporation. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

§ 10(2) —Formation

When there is no written partnership agreement between the parties the court may look to circumstantial evidence offered by each party to back his oral claim of the presence or absence of a partnership. Johnson v. Coulter, 28 A.S.R.2d 218.

A partnership agreement may be implied from conduct of parties and circumstances. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

One of the fundamental tests to determine the existence of a partnership is whether there exists a community of interest among the parties for business purposes. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

§ 10(3) —Service on a Partnership

Service is made upon a partnership or other unincorporated association by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or law to receive service, pursuant to T.C.R.C.P. Rule 4(d)(3). As such a partnership may be served by serving a person with substantial authority and responsibility over its activities. Pago Petroleum Products, Inc., v. Ye Ahn Moolsoan, Ltd., 25 A.S.R.2d 14.

Service on a representative of a partnership is valid only with respect to the partnership, and does not confer jurisdiction over a partner individually. Jurisdiction over each partner must be acquired by service on a person or entity representing the partner for process purposes. Pago Petroleum Products, Inc., v. Ye Ahn Moolsoan, Ltd., 25 A.S.R.2d 14.

§ 10(4) —Dissolution of Partnership

Partnership may be dissolved by mutual consent prior to time set in partnership agreement and scuh consent may be implied. Partners may modify terms of dissolution set forth in partnership agreements but such modification agreement must be complete as to all its material terms. Rose v. Hall, 1 A.S.R.2d 17 (Trial Div. 1980).

Where partners mutually agree to dissolve their partnership and to transfer their interests to one or both of them in return for assumption of certain partnership liabilities, the mutual promises of the partners constitute the consideration for the agreement. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

A partnership dissolution agreement is valid where it is the product of free and voluntary action on the part of all the partners, after a meeting of the minds, and where the agreement has the effect of settling accounts between the partners themselves. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

Where partnership dissolution agreement divided equipment, assets, claims, and obligations of the company between the parties, designated how the office was to be divided, and occurred after twenty days of discussion, and at least four hours of direct negotiation and consideration of its terms, said agreement contained adequate consideration and was binding upon the parties. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

Injunctive relief was proper where, despite having executed agreement to dissociate himself from company, party continued to act on behalf of company and interfere with its activities. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

Where written agreement to end business relationship and divide a company was the only evidence of parties' intents regarding allocation of the entire range of assets, liabilities, service work and resources in the company, specific performance of the agreement was proper. CSS, Inc. v. Poasa, 5 A.S.R.3d 140 (Trial Div. 2001).

§ 10(5) —Liability for Partnership Debts

Third party doing business with partnership may hold partnership liable as legal entity for debts created in reliance on such partnership, and in such circumstances, each member of partnership is generally personally, or severally, liable for the partnership's debts. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

General partners are jointly and severally liable for any judgment debt of the partnership. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

Where corporation was determined to be partner in association, Court properly concluded that it was jointly liable for judgment against association, and vessel owned by it could rightfully be seized to satisfy partnership debt. Hong v. Chung Yong # 21, 5 A.S.R.3d 197 (Trial Div. 2001).

CRIMINAL LAW

§ 1 General Provisions
2 Liability
2(1) —Mens Rea (Intent)
2(2) —Actus Reus
2(3) —Causation
11 Defenses
3(1) —Generally
3(2) —Insanity
3(3) —Provocation
3(4) —Self-Defense
3(5) —Justification
3(6) —Battered Wife Syndrome
4 Specific Crimes
4(1) —Inchoate Offenses
4(2) —Offenses Against the Person
4(3) —Sexual Offenses
4(4) —Prostitution
4(5) —Offenses Against the Family
4(6) —Abortion
4(7) —Robbery, Arson, Burglary and Related Offenses
4(8) —Stealing and Related Offenses
4(9) —Weapons
4(10) —Gambling
4(11) —Pornography and Related Offenses
4(12) —Offenses Against Public Order
4(13) —Offenses Against the Administration of Justice
4(14) —Offenses Affecting Government
4(15) —Traffic Offenses
4(16) —Drug Offenses
4(17) —Miscellaneous Offenses

§ 1 General Provisions

In criminal case, prosecution must prove case beyond reasonable doubt. American Samoa v. Salanoa, 1 A.S.R. 487.

Conviction upon circumstantial evidence is proper if court is convinced that defendant is guilty beyond reasonable doubt. American Samoa v. Sale, 2 A.S.R. 635.

Person accused of crime is presumed innocent until proven guilty, and in criminal prosecution state has burden of establishing all essential elements of crime and proving guilt beyond reasonable doubt. American Samoa v. Leinati, 2 A.S.R. 644.

Under rule of burden of proof, prosecution is compelled to establish every essential element of crime charged beyond reasonable doubt. American Samoa v. Asuemu, 2 A.S.R. 646.

Accessory before the fact is one who procures, commands, or counsels commission of felony by another but who is not present when felony is committed, and under Code such accessory is principal. CAS 805.) Government v. Tulei, 2 A.S.R. 656.

Conviction is not warranted where evidence is as consistent with innocence as it is with hypothesis of guilt. Government v. Nomura, 2 A.S.R. 658.

In order to sustain conviction on circumstantial evidence, all circumstances proved must be consistent with each other,

consistent with hypothesis that accused is guilty and inconsistent with hypothesis that he is innocent. Government v. Nomura, 2 A.S.R. 658.

Burden of proof beyond a reasonable doubt in criminal cases does not prohibit trier of fact from drawing inferences from the evidence. American Samoa Gov't v. Sale Uo, 4 A.S.R.2d 14.

According to Art. 1, § 6 of the Revised Constitution of American Samoa, does not state that the term “infamous crime” includes only the crimes of murder and rape and excludes all other crimes. American Samoa Gov’t v. Samana, 1 A.S.R.3d 166 (Trial Div. 1997).

A plain reading of this provision of the Revised Constitution suggests that the crimes of rape and murder are merely examples of the much larger category of “infamous crimes.” American Samoa Gov’t v. Samana, 1 A.S.R.3d 166 (Trial Div. 1997).

§ 2 Liability

§ 2(1) —Mens Rea (Intent)

Their testimony indicates that accused may have honestly believed that destroyed plants were one their own land, there can be no criminal intent or mens rea and no conviction since criminal intent is element of trespass. American Samoa v. Leinati, 2 A.S.R. 644.

Territorial forgery statute requires that defendant have created the false writing with intent to defraud, not that he have actually succeeded in defraudying anyone. A.S.C.A. § 46.4115. American Samoa Gov't v. Lefai, 6 A.S.R.2d 78.

Statute providing that assault in the first degree is committed when a person "attempts to kill or cause serious physical injury to another person" requires proof of specific intent. A.S.C.A. § 46.3520 (a)(2). Tauasosi v. American Samoa Gov't, 7 A.S.R.2d 5.

Where a statute requires that a person act intentionally, knowingly, or purposefully, or "attempt" to commit a crime, proof of specific intent is required. A.S.C.A. §§ 46.3503 (a)(1), 46.3503 (a)(2), 46.3520 (a)(1), 46.3520 (a)(2). Tauasosi v. American Samoa Gov't, 7 A.S.R.2d 5.

No proof of specific intent is required by statute providing that a person commits a crime if "under circumstances manifesting extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death. A.S.C.A. §§ 46.3503 (a)(3), 46.3520 (a)(3). Tauasosi v. American Samoa Gov't, 7 A.S.R.2d 5.

A crime that requires proof of specific intent is not a lesser-included offense of a crime that does not require proof of specific intent and must be separately charged. Tauasosi v. American Samoa Gov't, 7 A.S.R.2d 5.

Because third-degree assault can be committed "recklessly" or even "with criminal negligence," a guilty plea does not establish what injuries, if any, were inflicted upon plaintiff, nor does it establish that defendant acted intentionally, an essential element of the tort of battery. A.S.C.A. § 46.3522(a)(1) & (4). Galea`i v. Atofau, 16 A.S.R.2d 76.

When a crime includes an intent element, a finding of guilt in the first part of a bifurcated trial also implicitly includes a finding that the defendant either had the requisite intent or would have had it but for the mental disease or defect. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

Intent to injure or defraud a bank exists when the defendant acts knowingly and the natural result of this conduct would be to injure or defraud the bank, regardless of motive. It is not required that the bank suffer a loss or injury, since the intent of the law is to protect the bank's right to make its own decisions regarding the use of its funds. Furthermore, there exists an inherently fraudulent nature to bank loans made by officers for their own benefit. American Samoa Gov't v. Leiataua, 28 A.S.R.2d. 206.

For purposes of determining criminal culpability under a possession statute, a person need not own the illegal thing but may still have possession of it if the person knows of its presence and has physical control of it, or has the power and intention to control it. The court may reasonably infer that a defendant knew of the presence and had physical control of a gun where the gun was found in a residence that defendant lived in as evidence by his presence in and familiarity with the residence. American Samoa Gov’t v. Se`iuli, 29 A.S.R.2d 176.

§ 2(2) —Actus Reus

Under the "objective territorial" principle of jurisdiction, criminal acts taking place outside a state are within its territorial jurisdiction if those acts produced proscribed effects within the state. American Samoa Gov't v. Lefai, 6 A.S.R.2d 78.

When conduct, taking place within a state, produces its effect in another state, the two states have concurrent jurisdiction over the transaction. American Samoa Gov't v. Lefai, 6 A.S.R.2d 78.

American Samoa court had territorial jurisdiction over criminal defendant who allegedly forged a letter and mailed it in American Samoa, despite the fact that the letter's recipient, and therefore its criminal "effect," was in another jurisdiction. American Samoa Gov't v. Lefai, 6 A.S.R.2d 78.

In providing prison warden with an unsigned document stating the terms of a prisoner's sentence, office of the attorney general was acting to ensure compliance by government officials with an order that had already been publicly announced in the presence of counsel for the government and was already binding on the government as well as on the defendant, and receipt of this document imposed a duty on the warden to inquire further of the court or the attorney general's office, at the very least, before releasing the defendant in direct violation of the notice he had been given. American Samoa Gov't v. Laumoli, 12 A.S.R.2d 111.

§ 2(3) —Causation

"Proximate cause" within the meaning of homicide by vehicle statute is proven if the traffic regulation violated by the defendant was designed to prevent the sort of harm that actually occurred and the violation was a substantial factor in bringing about the accident. A.S.C.A. § 22.0706. American Samoa Gov't v. Sale Uo, 4 A.S.R.2d 14.

An accused cannot escape criminal liability for a vehicular homicide if intervening contributing conduct is foreseeable. American Samoa Gov't v. Mase, 26 A.S.R.2d 119.

Accountability is excused only if the intervening cause supersedes the defendant's original act. American Samoa Gov't v. Mase, 26 A.S.R.2d 119.

§ 3 Defenses

§ 3(1) —Generally

Provocation is not defense to assault, but may be considered as extenuation, and when considering provocation, question is what is impression made on mind of person committing assault. American Samoa v. Willis, 1 A.S.R. 635.

Serious allegations against defendant by victim which provoke assault do not constitute defense or excuse for assault. American Samoa v. Willis, 1 A.S.R. 635.

Lower court’s acquittal of sixteen year old boy who went along with criminals because he feared bodily harm was correct. Government v. Tulei, 2 A.S.R. 656.

Ignorance or mistake of law is no excuse for its violation, and belief of defendant that chief could excuse him from searching for coconut beetle was not excuse for violating law by failing to search. Government v. Si’u, 3 A.S.R. 479.

It is no defense for accused that another person pled guilty to same crime and was not punished. Government v. Si’u, 3 A.S.R. 479.

Where defendant’s eyesight is defective, he is not required to comply with statute requiring that he search for coconut beetle and attaching penalty for failure to do so. Fe’a v. Government, 3 A.S.R. 496.

Defective eyesight is not defense to failure to assist in building village pig wall, such failure being misdemeanor, if defendant could have performed work and been of assistance. Fe’a v. Government, 3 A.S.R. 496.

Plea of statute of limitations may be raised under plea of not guilty. Government v. palafu, 3 A.S.R. 556.

That defendant's conduct was similar to pre-Christian Samoan ceremonial practices was no defense in prosecution for sexual abuse and sodomy, since territorial legislature enacted no statutory exception for such practices. A.S.C.A. §§ 46.3611, 3612. American Samoa Gov't v. Masaniai, 4 A.S.R.2d 156.

American Samoa's criminal law does not, except in a few extraordinary circumstances, allow consent as a justification for the infliction of serious injuries. A.S.C.A. § 46.3523. Galea`i v. Atofau, 16 A.S.R.2d 76.

§ 3(2) —Insanity

A defense of diminished mental capacity consists of showing that a mental disease or defect, although not rendering the defendant "insane," nevertheless prevented him from having the requisite state of mind to be guilty of the charged crime. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

A criminal defendant who puts his mental capacity at issue may be compelled to submit to an examination by the government's expert, who may testify about his observations and conclusions. A.S.C.A. § 46.1304. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

Regarding a defense of diminished mental capacity, when a mental disease or defect is alleged to have resulted in a criminal defendant's "incapacity to intend" rather than in "insanity," the testimony of the government's expert must be limited to the question of such incapacity and may not be considered by the jury for any other purpose. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

The testimony of the government's expert may, in some circumstances, include statements made to him by a criminal defendant during the compelled examination, although the witness may testify only about the alleged mental disease or defect and not about "guilt or innocence" (i.e., about whether the defendant would be guilty in the absence of any such disease or defect). A.S.C.A. § 46.1304. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

All persons are presumed to be sane or mentally competent unless a preponderance of the evidence indicates otherwise. American Samoa Gov't v. Sumajestad, 4 A.S.R.3d 232 (Trial Div. 2000).

In the context of criminal trials, a defendant's competency to stand trial and his or her presentation of an insanity defense require two different legal standards. American Samoa Gov't v. Fa'afia, 7 A.S.R.3d 111 (Trial Div. 2003).

To show that his sanity is truly at issue, a criminal defendant must do more than simply offer undeveloped assertions that the services of a court-appointed psychiatrist would be beneficial, but instead must demonstrate a substantial basis for the defense, presenting specific evidence to demonstrate that his sanity at the time of the offense was questionable. American Samoa Gov't v. Fa'afia, 7 A.S.R.3d 111 (Trial Div. 2003).

§ 3(3) —Provocation

Evidence of accusations made against defendant and of actions of defendant demonstrating she was acting in rage at time she committed assault constitute provocation. American Samoa v. Willis, 1 A.S.R. 635.

§ 3(4) —Self-Defense

A finding of self-defense is a complete defense to a criminal charge of third-degree assault. A.S.C.A. §§ 46.3305 & 46.3522(a). Galea`i v. Atofau, 16 A.S.R.2d 76.

§ 3(5) —Justification

Defendant's matai status in village and status of child victim's family, standing alone, did not establish basis for reasonable inference that defendant had disciplinary authority over child victim. It was not error to reject proposed jury instructions amounting to defense of justification as person entrusted with care, discipline, or safety of minor because defense was not fairly raised by evidence. Am. Samoa Gov't v. Agasiva, 6 A.S.R.3d 251 (Trial Div. 2002).

Concepts of "normal parental discipline" (A.S.C.A. § 45.0103(20)) and "accepted child-rearing practices of culture" (A.S.C.A. § 44.2001(a)(2)) do not have direct application to prosecutions under criminal code. Am. Samoa Gov't v. Agasiva, 6 A.S.R.3d 251 (Trial Div. 2002).

§ 3(6) —Battered Wife Syndrome

RESERVED

§ 4 Specific Crimes

§ 4(1) —Inchoate Offenses

Code makes it crime for persons to conspire to injure or oppress rights of another Samoan under law, and these rights include that of family member to occupy communal land. Leasiolagi v. Fao, 2 A.S.R. 451.

A.S.C.A. § 46.3410 prevents the government from prosecuting criminal defendants for both conspiracy and the underlying offense if they arise out of the "same course of conduct." American Samoa Gov't v. Afuola, 4 A.S.R.3d 110 (Trial Div. 2000).

§ 4(2) —Offenses Against the Person

Code makes it crime for matai or other chief to injure, oppress, or threaten Samoan to deprive him of any right under law, and such right includes right to occupy family lands. Leasiolagi v. Fao, 2 A.S.R. 451.

Assault with deadly weapon is infamous crime and disqualifies candidate from eligibility for matai title. Akeimo v. Mulu, 2 A.S.R. 89.

Mere threat to commit injury is not actionable wrong and does not constitute assault, which must be apparent attempt by violence to do corporal hurt to another. Fesagaiga v. Alo-Pepe, 3 A.S.R. 118.

Slanderous remarks and assault and battery by one party against another cannot be considered by courts in interpreting trust, but do constitute crimes and torts, and court may give warning to that effect to offending party. Tolivale v. Ufanua, 3 A.S.R. 196.

Statute providing that assault in the first degree is committed when a person "attempts to kill or cause serious physical injury to another person" requires proof of specific intent. A.S.C.A. § 46.3520 (a)(2). Tauasosi v. American Samoa Gov't, 7 A.S.R.2d 5.

Because third-degree assault can be committed "recklessly" or even "with criminal negligence," a guilty plea does not establish what injuries, if any, were inflicted upon plaintiff, nor does it establish that defendant acted intentionally, an essential element of the tort of battery. A.S.C.A. § 46.3522(a)(1) & (4). Galea`i v. Atofau, 16 A.S.R.2d 76.

A finding of self-defense is a complete defense to a criminal charge of third-degree assault. A.S.C.A. §§ 46.3305 & 46.3522(a). Galea`i v. Atofau, 16 A.S.R.2d 76.

A defendant cannot successfully claim coercion simply because he pled guilty after relying on counsel's recommendation. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

Where victim was struck by defendant, jury instruction on third degree assault committed when actor attempts to cause physical injury to another person (A.S.C.A. § 46.3522(a)(1)) was only appropriate instruction for lesser included offense of third degree assault. Offenses under A.S.C.A. § 46.3522(a)(3), (4), and (5) focus more on mental effects that

result when victim is put in fear or at risk of injury, or experiences offensive or provocative contact. Am. Samoa Gov't v. Agasiva, 6 A.S.R.3d 251 (Trial Div. 2002).

Disturbing private peace is not lesser included offense of second degree assault in that commission of second degree assault does not require finding on nature of location of incident. Am. Samoa Gov't v. Agasiva, 6 A.S.R.3d 251 (Trial Div. 2002).

Second degree assault is always class D felony regardless of circumstances constituting offense set forth in A.S.C.A. § 46.3521(a). Am. Samoa Gov't v. Agasiva, 6 A.S.R.3d 251 (Trial Div. 2002).

§ 4(3) —Sexual Offenses

Charge of rape is improper where both parties consent to intercourse upon which charge was founded. American Samoa v. Teleti, 1 A.S.R. 342.

Where statute defines the crime of sexual abuse to include the purpose of arousing or gratifying sexual desire, such purpose can be inferred by the trier of fact from the defendant's conduct. American Samoa Gov't v. Masaniai, 4 A.S.R.2d 156.

Statute defining the crime of sodomy does not require proof that defendant committed the act with the purpose of arousing or gratifying sexual desire. A.S.C.A. § 46.3611. American Samoa Gov't v. Masaniai, 4 A.S.R.2d 156.

That defendant's conduct was similar to pre-Christian Samoan ceremonial practices was no defense in prosecution for sexual abuse and sodomy, since territorial legislature enacted no statutory exception for such practices. A.S.C.A. §§ 46.3611, 3612. American Samoa Gov't v. Masaniai, 4 A.S.R.2d 156.

Record adequately supported trial court's finding that defendant had made sexual contact with his daughter without her consent and for the purpose of arousing or gratifying sexual desire. American Samoa Gov't v. Masaniai, 6 A.S.R.2d 114.

The language of American Samoa's penal statutes evidences an intent not to punish "sexual contact" with a child under 12 as severely as "deviate sexual intercourse" or "sexual intercourse" with a child under 12. Am. Samoa Gov't v. Vaai, 6 A.S.R.3d 221 (Trial Div. 2002).

§ 4(4) —Prostitution

RESERVED

§ 4(5) —Offenses Against the Family

An individual can be guilty of the offense of "abuse of a child" if he or she commits one of three categories of offenses, stated in 42 A.S.C.A. § 45.2001(a)(1)(B), with regards to a child—sex crimes, prostitution, or pornography. Am. Samoa Gov't v. Wang, 6 A.S.R.3d 212 (Trial Div. 2002).

§ 4(6) —Abortion

RESERVED

§ 4(7) —Robbery, Arson, Burglary and Related Offenses

RESERVED

§ 4(8) —Stealing and Related Offenses

Petty larceny is a misdemeanor. Government v. Palafu, 3 A.S.R. 556.

Family member may be convicted for larceny for taking plantations or fruit from another family member's plot on family lands. American Samoa v. Iose, 2 A.S.R. 638.

Territorial forgery statute requires that defendant have created the false writing with intent to defraud, not that he have actually succeeded in defraudying anyone. A.S.C.A. § 46.4115. American Samoa Gov't v. Lefai, 6 A.S.R.2d 78.

Under territorial statute, one who makes a contract within the territory to extend credit at the rate of 20 per cent commits the crime of usury and is liable to imprisonment and to forfeiture of the entire amount of the debt. A.S.C.A. § 28.1510. Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc., 9 A.S.R.2d 62.

Under the embezzlement statute, a "person commits the crime of embezzlement if he knowingly misappropriates property of another which has been entrusted to him or which has lawfully come under his control. A.S.C.A. § 46.4104(a). American Samoa Gov't v. Tauala, 25 A.S.R.2d 179.

A person commits the crime of stealing if he appropriates property of another with the purpose to deprive him of it by means of deceit" A.S.C.A. § 46.4103(a). American Samoa Gov't v. Tauala, 25 A.S.R.2d 179.

Normally, "value" is determined by the market value of the thing taken at the time and place of the crime. A.S.C.A. § 46.4102(a). However, when the thing taken is an instrument evidencing debt, that value is the amount due or collectible on it. A.S.C.A. § 46.4102(b)(1). American Samoa Gov't v. Tauala, 25 A.S.R.2d 179.

In a criminal case involving fraud on a bank, the government has the burden to show that the defendant acted with the intent to injure or defraud the bank. American Samoa Gov't v. Leiataua, 28 A.S.R.2d. 206.

Intent to injure or defraud a bank exists when the defendant acts knowingly and the natural result of this conduct would be to injure or defraud the bank, regardless of motive. It is not required that the bank suffer a loss or injury, since the intent of the law is to protect the bank's right to make its own decisions regarding the use of its funds. Furthermore, there exists an inherently fraudulent nature to bank loans made by officers for their own benefit. American Samoa Gov't v. Leiataua, 28 A.S.R.2d. 206.

Harm to a bank is established if there are special circumstances demonstrating injury or risk of injury to the bank despite the obligation of a financially responsible party to the bank. A.S.G. v. Leiataua, 31 A.S.R.2d 89.

§ 4(9) —Weapons

RESERVED

§ 4(10) —Gambling

Gambling and the keeping of gaming facilities is a criminal offense, though an exception exists for occasional bingo games whose profits are used for charitable, religious, or educational purposes. A.S.C.A. § 46.4301-46.4302. Le Vaomatua v. American Samoa Gov't, 23 A.S.R.2d 11.

Money lending is not within the ambit of the gaming statute's proviso exempting gaming for religious, educational, or charitable purpose. A.S.C.A. §§ 46.4301-02. United Congregational Christian Church of the South Bay in Samoa v. McMoore, 28 A.S.R.2d 195.

Under the Johnson Act, any gambling device, including poker machines, is illegal in the territory of American Samoa. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

§ 4(11) —Pornography and Related Offenses

RESERVED

§ 4(12) —Offenses Against Public Order

The public peace disturbance statute, A.S.C.A. § 46.4501(a)(2), is not facially invalid for being overbroad—it narrowly tailors it's required element of "intent to cause public annoyance or alarm, or recklessly creating a risk of it." American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

The public peace disturbance statute, A.S.C.A. § 46.4501(a)(2), does not apply to protest actions which are meant to express a viewpoint rather than to "cause public inconvenience, annoyance, or alarm," and by judicially limiting the application of the statute to non-protected speech, there are no residual overbreadth problems. American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

The "unreasonable noise" provision of the public peace disturbance statute, A.S.C.A. § 46.4501(a) (2), is an objective standard set by community practices, and so is not invalid for being vague; mathematical precision is not required in defining levels of noise, and as a member of the community, the defendant should have been aware that shouting in a public restaurant was unreasonable noise for purposes of the statute. American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

Disturbing private peace is not lesser included offense of second degree assault in that commission of second degree assault does not require finding on nature of location of incident. Am. Samoa Gov't v. Agasiva, 6 A.S.R.3d 251 (Trial Div. 2002).

§ 4(13) —Offenses Against the Administration of Justice

Criminal trial is not a private matter between victim and defendant or his family, and anyone who enters an agreement with the purpose of rendering court unable to proceed by making evidence unavailable may be held in contempt of court. American Samoa Gov't v. Godinet, 7 A.S.R.2d 127.

Criminal contempt statute authorizing the executive to prosecute certain conduct as criminal contempt of court does not limit court's power to act on its own under general contempt statute. A.S.C.A. §§ 3.0203, 46.4617. American Samoa Gov't v. Godinet, 7 A.S.R.2d 127.

General contempt statute may give rise to criminal liability despite existence of separate statute making certain acts criminal offenses. A.S.C.A. §§ 3.0203, 46.4617. American Samoa Gov't v. Godinet, 7 A.S.R.2d 127.

Agreement between prospective witness in criminal proceeding and members of the defendant's family that defendant would leave the territory and victim would refuse to testify constituted resistance to process of court within meaning of contempt statute, even if "process" is construed narrowly to refer to a subpoena and even though the agreement was made prior to the issuance of a subpoena to the witness, since the agreement could not reasonably be construed to mean that the witness would refuse to testify only if she received no subpoena. A.S.C.A. § 3.0203. American Samoa Gov't v. Godinet, 7 A.S.R.2d 127.

Agreement between prospective witness and members of criminal defendant's family that defendant would leave the territory and witness would refuse to testify, made after court's order that defendant stand trial and with the purpose of preventing the trial, constituted resistance to the court's mandate within the meaning of contempt statute. A.S.C.A. § 3.0203. American Samoa Gov't v. Godinet, 7 A.S.R.2d 127.

Where evidence at hearing on order to show cause showed that former warden and other prison officials had wilfully violated court order, but that incumbent warden to whom order to show cause was directed had taken no part in releasing prisoner in violation of court order, the incumbent warden would not be held in contempt of court. American Samoa Gov't v. Etuale (Mem.), 11 A.S.R.2d 154.

Where court had allowed defendant a limited "work release" during a term of detention as a condition of probation, and defendant had wilfully violated the terms of the work release by spending time at home and engaging in social activities during times when he was released solely for purposes of employment, the work release would be revoked and the defendant held in contempt of court. American Samoa Gov't v. Ga`opo`a, 12 A.S.R.2d 108.

Warden's contention that judgment and sentence prohibiting release of prisoner was not binding on him because the copy he initially received did not bear the signatures of the judges was without merit, where sentence had been previously been announced from the bench and where a signed copy of the written order had been served on the government prior to the time the warden willfully disregarded the order. American Samoa Gov't v. Laumoli, 12 A.S.R.2d 111.

Persons continuing to occupy and cultivate land adjudicated as belonging to another family are subject to sanctions for contempt. Lualemaga v. Asifoa, 23 A.S.R.2d 17.

It is a crime for a non-lawyer to represent another person or business entity in court. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

§ 4(14) —Offenses Affecting Government

RESERVED

§ 4(15) —Traffic Offenses

Code of American Samoa specifies speed limits for various road conditions. Tigi v. Government, 4 A.S.R. 894.

Where policeman testifies as to speed of defendant following his automobile and ascertains speed from his speedometer, this would be accurate evidence. Tigi v. Government, 4 A.S.R. 894.

Where defendant admits that he was traveling at a certain speed which he thought lawful but was in fact not lawful, this admission corroborates testimony of witnessing policeman. Tigi v. Government, 4 A.S.R. 894.

Corroboration of testimony of prosecution's witness in traffic case is not required. Tigi v. Government, 4 A.S.R. 902.

Same transaction may constitute both careless driving and speeding, subjecting defendant to conviction for each offense. Tigi v. Government, 4 A.S.R. 902.

In prosecution of driver for act of passenger, government need not prove that driver knew part of passenger extended beyond interior of vehicle. Rees v. Am. Samoa Gov't, 1 A.S.R.2d 47 (App. Div. 1980).

Police officer's uncontroverted testimony that speed limit sign had been posted because the road was near a school did not bind the court to find that the posted limit applied only during school hours. American Samoa Gov't v. Sale Uo, 4 A.S.R.2d 14.

"Proximate cause" within the meaning of homicide by vehicle statute is proven if the traffic regulation violated by the defendant was designed to prevent the sort of harm that actually occurred and the violation was a substantial factor in bringing about the accident. A.S.C.A. § 22.0706. American Samoa Gov't v. Sale Uo, 4 A.S.R.2d 14.

Court could conclude beyond any doubt that defendant who received speeding ticket was the same defendant whose license had previously been suspended after conviction for driving under the influence, although the speeding defendant had signed a different first name to the ticket, where (1) the last names were identical; (2) the signature on the ticket appeared to have been written in the same distinctive handwriting as the signature on the earlier ticket for driving under the influence; (3) the speeding defendant gave the same date of birth and village of residence as the driving under the influence defendant; (4) the speeding defendant did not present the arresting officer with a driver's license; (5) since the license of the driving under the influence defendant was still suspended at the time the speeding ticket was issued, he would not have had his license in his possession, and would have had motive and opportunity to misinform the officer of his identity. American Samoa Gov't v. Malae, 10 A.S.R.2d 99.

Under A.S.C.A. § 22.0708 the injury to any person resulting from the operation of a motor vehicle by a person under the influence of intoxicating liquor creates a felony offense. American Samoa Gov't v. Berry, 25 A.S.R.2d 149.

Under A.S.C.A. § 22.0607(a)(3), a driver having a blood-alcohol level of 0.08% or more is presumed to be "under the influence of intoxicating liquor." Toleafoa v. American Samoa Gov't, 26 A.S.R.2d 20.

Additional evidence regarding driving under the influence may also be presented at trial. A.S.C.A. § 22.0607(b). Toleafoa v. American Samoa Gov't, 26 A.S.R.2d 20.

Once a driver is found to have a blood-alcohol level of 0.08% or more, the statute presumes that he is under the influence

and so is incapable of operating a vehicle safely. This statutory presumption reflects the proven medical fact that ingesting substantial quantities of alcohol impairs one's driving ability. Toleafoa v. American Samoa Gov't, 26 A.S.R.2d 20.

Appellant's contention that his not getting in an accident supports a finding that he was capable of safe driving, this is a "specious argument." The whole point of traffic laws is to prevent accidents, not just to punish drivers after an accident. Toleafoa v. American Samoa Gov't, 26 A.S.R.2d 20.

Only two elements constitute the offense of Driving under the Influence of Alcohol or Other Drugs: (1) the defendant was driving a motor vehicle, (2) while under the influence of alcohol or other drugs. Being a legal and not a medical term, "under the influence" means a person's intoxication has reached "a degree which renders him incapable of safely driving." A.S.C.A. § 22.0707(a). Toleafoa v. American Samoa Gov't, 26 A.S.R.2d 20.

The means of proving "under the influence" varies with each case and may include (1) observations of the defendant's manner of driving, his physical symptoms, and his performance of field sobriety tests; (2) his blood-alcohol level as shown in test results; and (3) admissible statements made by the defendant. Toleafoa v. American Samoa Gov't, 26 A.S.R.2d 20.

If evidence of past crimes speaks more to defendant's proclivity to commit crimes in general, rather than his participation in the crime at hand, it has a high probability of instigating the jury to convict because defendant "is a bad person" - an unallowable inference. American Samoa Gov't v. Bernard, 26 A.S.R.2d 110.

An accused cannot escape criminal liability for a vehicular homicide if intervening contributing conduct is foreseeable. American Samoa Gov't v. Mase, 26 A.S.R.2d 119.

The difference between "suspension" and "revocation" of a driver's license is insignificant for determining whether a defendant has committed a felony for driving while license is suspended in violation of A.S.C.A. § 22.0223. A.S.C.A. § 22.0223. American Samoa Gov't v. Bryce, 27 A.S.R.2d 1.

A.S.C.A. § 22.0803 does not apply to felonies. Under A.S.C.A. § 22.0708 the injury to any person resulting from the operation of a motor vehicle by a person under the influence of intoxicating liquor creates a felony offense. Officers may upon reasonable grounds, arrest persons found near the scene of a felony within a short time after its commission. See A.S.C.A. § 46.0805 (3). American Samoa Gov't v. Berry, 29 A.S.R.2d 1.

Despite assertion that breathalyzer results were erroneous, evidence that Appellant crashed into another vehicle as he was overtaking it, that he admitted to having drunken two beers and a shot of tequila, that he was observed with red eyes and alcohol breath, and that he failed the Horizontal Gaze Nystagmus Test and refused to perform the other two field sobriety tests was sufficient to support jury's finding that he was driving under the influence. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

§ 4(16) —Drug Offenses

Legislature proscribed possession of all species of marijuana in statute specifying Cannabis Sativa L. Am. Samoa Gov't v. Tavili, 1 A.S.R.2d 72 (Trial Div. 1983).

In American Samoa, "it is unlawful for a person to possess a controlled substance." A.S.C.A. § 13.1022(a). Marijuana is a controlled substance within the meaning of § 13.1022(a). A.S.G. v. Mapu, 31 A.S.R.2d 148.

Marijuana need not appear in its "recognizable" or "customary" form for an individual to be guilty of unlawful possession of marijuana. The Fono has explicitly included marijuana resin as a disallowed controlled substance and did not distinguish between typical and atypical forms if marijuana resin. A.S.G. v. Mapu, 31 A.S.R.2d 148.

To establish possession of a controlled substance the government must present evidence that the defendant had dominion and control over the contraband. Suani v. American Samoa Gov't, 1 A.S.R.3d 28 (App. Div. 1997).

Mere fact appellant was defensive and angry under police interrogation and that he lived 90-120 feet from the two marijuana plants growing in nearby bush land is insufficient evidence to permit a conclusion beyond a reasonable doubt that the appellant was in possession of a controlled substance. Suani v. American Samoa Gov't, 1 A.S.R.3d 28 (App. Div. 1997).

Although other individuals occupied premises, where evidence substantiated conclusion that defendant was in charge and control of the searched premises and its contents, including the substantial quantity of growing and harvested marijuana there, the evidence was sufficient to find beyond a reasonable doubt that the defendant produced the seized marijuana. American Samoa Gov't v. Samana, 2 A.S.R.3d 58 (Trial Div. 1998).

In American Samoa, it is unlawful for a person to possess a controlled substance. American Samoa Gov't v. Williams, 4 A.S.R.3d 140 (Trial Div. 2000).

Under the Territory's controlled substance laws, marijuana is classified as a hallucinogen and methamphetamine is defined as a stimulant. American Samoa Gov't v. Williams, 4 A.S.R.3d 140 (Trial Div. 2000).

Where statute prohibited possession of "a controlled substance," rather than "one or more controlled substances," statutory language made the possession of one controlled substance an offense, and possession of more than one substance multiple offenses. American Samoa Gov't v. Williams, 4 A.S.R.3d 140 (Trial Div. 2000).

The offense of Possession of a Controlled Substance (A.S.C.A. § 13.1022)) is codified outside of Title 46 and upon conviction requires a mandatory minimum sentence of imprisonment without parole, or mandatory minimum fine, or both. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

The penalty provisions for Possession of a Controlled Substance (A.S.C.A. § 13.1022) include a required minimum sentence of imprisonment without parole and a requirement that such penalties are mandatory. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

There is only one species of Marijuana for the purposes of criminal possession statutes. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

The legislative intent of A.S.C.A. § 13.1001 was to criminalize possession of any type of marijuana. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

A.S.C.A. § 13.1022 excludes probation from the court's sentencing options. Williams v. Am. Samoa Gov't, 6 A.S.R.3d 35 (App. Div. 2002).

Probation cannot be granted for a conviction of possession of a controlled substance under A.S.C.A. § 13.1022. Fonoti v. Am. Samoa Gov't, 6 A.S.R.3d 77 (App. Div. 2002).

§ 4(17) —Miscellaneous Offenses

Where person tells three witnesses to tell false story in court to support conviction of accused for rape, he is guilty of subornation of perjury. American Samoa v. Salanoa, 1 A.S.R. 487.

Pig running at large would not necessarily be criminal nuisance unless feces of pig were allowed to collect on land in such quantities as to constitute unsanitary nuisance. (CAS 429.) Government v. Nomura, 2 A.S.R. 658.

False statement must be material to issue or question under consideration in order to constitute perjury, and false statement with respect to who types letter does not constitute perjury. Scanlan v. Steffany, 3 A.S.R. 583.

Misleading questions and questions containing more than one proposition to which different answers might be applied will not support conviction for perjury based on their answers. Scanlan v. Steffany, 3 A.S.R. 583.

Evidence was sufficient to convict defendant of unauthorized practice of law where it was established that appellant filed a memorandum in a criminal case containing legal argument offered on behalf of the defendant. A.S.C.A. § 31.0104. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

Evidence was sufficient to convict defendant of unauthorized practice of law where appellant had written letters on behalf of a convicted prisoner stating that defendant was prepared to bring a civil action on behalf of the prisoner "pro se," and proposing a settlement which defendant termed "my personal offer and compromise." A.S.C.A. § 31.0104. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

A matai title bestowed contrary to statute cannot be registered or otherwise recognized; and use of an unregistered matai title is a criminal act. A.S.C.A. §§ 1.0401-1.0414. Toilolo v. Poti, 23 A.S.R.2d 130.

By statute, parents who place their children with relatives in accordance with local customs are technically subjecting themselves to potential criminal prosecution under A.S.C.A. § 45.0370(2) which provides that "[a]ny adult who ..... neglects, or abandons a child is guilty of a Class A Misdemeanor" punishable by up to one year imprisonment or a $1,000.00 fine or both. In Re A Minor Child, 29 A.S.R.2d 20.

The term "infamous crime" is contained in the Fifth Amendment to the United States Constitution, which requires an indictment to hold a person "to answer for a capital, or otherwise infamous crime." Because of the close nexus between the United States and American Samoa Constitutions, the federal definition of "infamous crime" is the intended definition of "infamous crime" in Art. I, § 6 of the Revised Constitution. American Samoa Gov't v. Samana, 1 A.S.R.3d 166 (Trial Div. 1997).

"[I]nfamous crimes" includes, among other things, those crimes for which one may be imprisoned for more than one year. American Samoa Gov't v. Samana, 1 A.S.R.3d 166 (Trial Div. 1997).

It is a crime for a non-lawyer to represent another person or business entity in court. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

CRIMINAL PROCEDURE

§ 1 Rules of Criminal Procedure
- 1(1) —Generally
- 1(2) —Jurisdiction
- 1(3) —Prosecutorial Discretion

2 Criminal Complaints, Indictments and Bills of Information
- 2(1) —Generally
- 2(2) —Indictments
- 2(3) —Amending Information
- 2(4) —Sufficiency of Information
- 2(5) —Arguments Inconsistent with Information
- 2(6) —Bill of Particulars
- 2(7) —Probable Cause Determination
- 2(8) —Multiplicitous Charging
- 2(9) —Pro Se Pleadings

3 Pleas
- 3(1) —Generally
- 3(2) —Court's Duties
- 3(3) —Sufficient Factual Basis
- 3(4) —Voluntarily Made
- 3(5) —Interpretation of Plea Agreements
- 3(6) —Breach of Plea Agreements
- 3(7) —Withdrawal of Pleas

4 Parties & Procedure
- 4(1) —Bifurcated Proceedings
- 4(2) —Severance of Charges or Defendants
- 4(3) —Joinder of Offenses
- 4(4) —Joinder of Defendants

5 Pre-Trial Matters
- 5(1) —Generally
- 5(2) —Initial Appearance
- 5(3) —Continuances
- 5(4) —Competence to Stand Trial
- 5(5) —Motions to Suppress Evidence
- 5(6) —Pre-Trial Conferences
- 5(7) —Notice of Alibi
- 5(8) —Defense Based on Mental Condition
- 5(9) —Notice of Intent to Use Evidence
- 5(10) —Release from Custody
- 5(11) —Discovery Generally
- 5(12) —Depositions
- 5(13) —Disclosure of Information & Witnesses
- 5(14) —Witness Identifications
- 5(15) —Subpoena of Witnesses
- 5(16) —Juveniles
- 5(17) —Collateral Estoppel

5(18) —Failure to Prosecute
5(19) —Immunity from Prosecution
5(20) —Change of Venue
6 Trial
6(1) —Bifurcated Proceedings
6(2) —Due Process of Law
6(3) —Equal Protection
6(4) —Double Jeopardy
6(5) —Self Incrimination
6(6) —Right to a Speedy Trial
6(7) —Trial by Jury
6(8) —Right to a Public Trial
6(9) —Opening and Closing Arguments
6(10) —Motion for Judgment of Acquittal
6(11) —Mistrial
6(12) —Jury Instructions
6(13) —Sufficiency of the Evidence
6(13) —Record of Proceedings
7 Punishment and Sentencing
7(1) —General Provisions
7(2) —Cruel & Unusual Punishment
7(3) —Constitutional Restrictions on Prisons
7(4) —Deportation
7(5) —Probation
7(5)(a) —Generally
7(5)(b) —Terms of Probation
7(5)(c) —Conditions of Probation
7(6) —Parole
7(7) —Parole Revocation
7(8) —Conditions upon Release
7(9) —Work Release
8 Post-Verdict Motions
8(1) — Motion for New Trial
8(2) —Motion for Arrest of Judgment
8(3) —Motion to Vacate Sentence
8(4) —Motion to Correct or Reduce Sentence
8(5) —Stays of Proceedings
8(6) —Habeas Corpus & Conditions of Confinement
8(7) —Miscellaneous Motions
9 Appeals
9(1) —Generally
9(2) —Power of Appellate Court
9(3) —Time for Appeal
9(4) —Appellate Jurisdiction
9(5) —Good Faith
9(6) —Right to Appeal
9(7) —Appellate Standards of Review
10 Interrogation and Miranda

10(1) —Generally
10(2) —Custody
10(3) —Interrogation
10(4) —Waiver of Rights
10(5) — Invoking Miranda Rights
10(6) —Evidence Obtained in Violation of Miranda
11 Searches & Seizures
11(1) —Generally
11(2) —Privacy Expectations
11(3) —Probable Cause for Search Warrant
11(4) —Execution of Search Warrant
11(5) —Knock and Announce Rule
11(6) —Warrantless Searches
11(7) —Terry Stops
11(8) —Vehicle and Inventory Searches
11(9) —Border and Custom Searches
11(10) —Consensual Searches
11(11) —Search Incident to Arrest
11(12) —Plain View Doctrine
11(13) —Open Fields Doctrine & Curtilage
11(14) —Application of Exclusionary Rule
11(15) —Arrests
11(16) —Detention of Foreign Nationals
12 Counsel
12(1) —General Provisions
12(2) —Right to Counsel
12(3) —Effective Assistance of Counsel
12(4) —Prosecutorial Misconduct
13 Extradition
13(1) —General Provisions
13(2) —Extradition Proceedings
13(3) —of Witnesses
13(4) —Evidence

§ 1 Rules of Criminal Procedure

§ 1(1) —Generally

At time United States assumed control of American Samoa, treaty was in effect that applied laws of any nation signing treaty which judge considered appropriate for criminal offenses, and customs of Samoa were applied with respect to natives. American Samoa v. Willis, 1 A.S.R. 635.

Conviction may stand even though no person actually witnessed crime. American Samoa v. Sale, 2 A.S.R. 635.

Clerk of Court has no authority to excuse person from standing trial for criminal offense. Government v. Si'u, 3 A.S.R. 479.

Order issued in open court is binding from the moment it is announced, whether or not it is ever reduced to writing. American Samoa Government v. Laumoli, 12 A.S.R.2d 111.

A.S.C.A. § 46.0501 does not make 18 U.S.C.S. § 3144 applicable to the Territory. A.S.C.A. § 46.0501 brings our criminal procedure into conformance with the Federal Rules of Criminal Procedure, not with every rule of criminal procedure applicable in the federal courts. The term "Federal Rules of Criminal Procedure" refers specifically to the 68

rules, which go by that title. 18 U.S.C.S. § 3144, while a rule of criminal procedure applicable to federal courts, is not part of the Federal Rules of Criminal Procedure. In Re Proceedings to Compel Attendance of May Fitiausi, 29 A.S.R.2d 71.

Criminal procedure in the High Court must conform as nearly as practical to the Federal Rules of Criminal Procedure. The High Court will consider interpretations of the federal rules by federal courts to be highly persuasive in the interpretation of the local rules, which mirror the federal rules. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

§ 1(2) —Jurisdiction

Fact there is no indictment by grand jury nor jury trial in American Samoa does not deprive High Court of jurisdiction over criminal matters arising herein. American Samoa v. Willis, 1 A.S.R. 635.

Court acquires personal jurisdiction in criminal case if defendant is personally served with summons while in American Samoa. Government v. Tobu Boeki, K.K., 4 A.S.R. 843.

Court acquires personal jurisdiction in criminal case against foreign corporation if it has local registered agent or is "doing business" in American Samoa. Government v. Tobu Boeki, K.K., 4 A.S.R. 843.

Unlike federal rules of criminal procedure promulgated under the authority of Congress and binding on federal courts to the same extent as statutes, territorial rules are made by the Court itself, so that a time limit provided by territorial rule is not as obviously jurisdictional as a similar limit provided by federal rule. Rev'd Const. Am. Samoa art. III § 2; A.S.C.A. § 3.1002(c). American Samoa Gov't v. Tile, 8 A.S.R.2d 120.

Because the High Court's rules were promulgated solely on its own authority, they must give way to territorial statutes defining the court's jurisdiction, unless the statutes themselves are unconstitutional. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

A change of venue for a criminal prosecution is not available under the Trial Court Rules of Criminal Procedure. A.S.G. v. Fruean, 31 A.S.R.2d 1.

There is not undue prejudice to a criminal defendant so great as to deny a defendant a fair and impartial trial when newspaper accounts of an assault and the victim's death were largely exculpatory and the government has stipulated that the defendants did not cause the victim's death. A.S.G. v. Fruean, 31 A.S.R.2d 1.

There is no other venue available for ASG's felony prosecutions other than the High Court of American Samoa. A.S.G. v. Pu`aa, 31 A.S.R.2d 73.

§ 1(3) —Prosecutorial Discretion

The exercise of prosecutorial discretion cannot be challenged by one who himself is neither prosecuted nor threatened with prosecution. Fetui v. Am. Samoa Gov't, 2 A.S.R.2d 52 (Trial Div. 1985).

Court will not interfere with the exercise of prosecutorial discretion unless it is shown that such discretion was unconstitutionally vested in the prosecutor or that it has been abused or exercised in an arbitrary, capricious, or discriminatory manner. American Samoa Gov't v. Julio, 9 A.S.R.2d 128.

§ 2 Criminal Complaints, Indictments, and Bills of Information

§ 2(1) —Generally

Court rule providing for criminal prosecution by petition contravenes statute and usurps discretionary function of executive branch, thereby violating constitutionally mandated separation of powers. Lutali v. Pereira, 1 A.S.R.2d 58 (Trial Div. 1981).

Although power to govern derives from Congress, government of American Samoa possesses characteristics of a state and local government, and may therefore prosecute felonies by information rather than indictment. Am. Samoa Gov't v. Simona, 1 A.S.R.2d 91 (Trial Div. 1983).

Indictment by grand jury is not a fundamental right and is not required in American Samoa. Simona v. Am. Samoa Gov't, 2 A.S.R.2d 9 (App. Div. 1984).

Cases in other jurisdictions taking an extremely narrow view of the power of courts to construe indictments, motivated by a vestigial regard for the technical rules of common law pleading or by concern for the separation of powers between grand juries and prosecutors, are not helpful in determining the validity of a criminal information in a territory that does not have grand juries and in which pleadings are to be construed in order to do justice. Rule 7, Trial Court Rules of Criminal Procedure. American Samoa Gov't v. Tauasosi, 3 A.S.R.2d 66.

Even if an arrest was illegal, a bill of information setting forth criminal charges is not necessarily void. U.S. Const. Amend. IV. American Samoa Gov't v. Meleisea, 24 A.S.R.2d 32.

Even if an arrest was illegal, a bill of information setting forth criminal charges is not necessarily void. U.S. Const. Amend. IV. American Samoa Gov't v. Tagaloa, 24 A.S.R.2d 37.

Under T.C.R.Cr.P. 8(b), multiple defendants may be charged in a single information where it is alleged that different acts were part of a scheme constituting forgery, and joinder is proper if all of the offenses charged arose out of the same series of transactions. American Samoa Gov't v. Afuola, 4 A.S.R.3d 84 (Trial Div. 2000).

Under the Rules of Criminal Procedure, an information is required to set forth a plain, concise, and definite written statement of the essential facts constituting the offense charged. Am. Samoa Gov't v. Wang, 6 A.S.R.3d 212 (Trial Div. 2002).

§ 2(2) —Indictments

Provisions of Article V and VI of amendments to Constitution of United States relating to right to be tried on indictment returned by grand jury and jury of peers do not apply to American Samoa because form of government was established to suit conditions of locality, and justice cannot be administered according to form in United States. American Samoa v. Willis, 1 A.S.R. 635.

Indictment by grand jury is not a fundamental right and is not required in American Samoa. Simona v. Am. Samoa Gov't, 2 A.S.R.2d 9 (App. Div. 1984).

§ 2(3) —Amending an Information

An information may generally be amended in form or substance at any time prior to verdict as long as the substantial rights of a defendant are not prejudiced. T.C.R.Cr.P. 8. American Samoa Gov't v. Bryce, 27 A.S.R.2d 1.

An amendment to an information will be allowed as long as the defendant is well apprised. T.C.R.Cr.P. 8. American Samoa Gov't v. Bryce, 27 A.S.R.2d 1.

T.C.R.Cr.P. 7(e) grants the Court discretion to permit the prosecution to amend an information if no additional or different offense is charged. American Samoa Gov't v. Afuola, 4 A.S.R.3d 110 (Trial Div. 2000).

If a criminal defendant has had sufficient time to prepare for the amended information such that he is not considered to be taken by surprise, he is not prejudiced and the amendment is permitted. Am. Samoa Gov't v. Toilolo, 6 A.S.R.3d 106 (Trial Div. 2002).

A key to determining whether a proposed change in an information will result in prejudice to the criminal defendant is consistency in the underlying factual accusations. Am. Samoa Gov't v. Toilolo, 6 A.S.R.3d 106 (Trial Div. 2002).

Where original information included factual allegations of all the elements of the additional charge in amended information, where defendants were provided three months to prepare for trial, and where defendants failed to show prejudice from new charge, aside from greater probability of conviction, amendment to information was proper. Am. Samoa Gov't v. Toilolo, 6 A.S.R.3d 106 (Trial Div. 2002).

§ 2(4) —Sufficiency of Information

The sufficiency of a criminal information is to be judged by whether it states the essential facts of the alleged crime in a way that gives the defendant fair notice of what he is being charged with. Rule 7, Trial Court Rules of Criminal Procedure. American Samoa Gov't v. Tauasosi, 3 A.S.R.2d 66.

Language in an information alleging that defendant "fired a shotgun toward certain people" implicitly charged that defendant intended the probable results of such an act. Rule 7, Trial Court Rules of Criminal Procedure. American Samoa Gov't v. Tauasosi, 3 A.S.R.2d 66.

Where a criminal information was otherwise sufficient to charge intentional second degree murder, and where throughout the proceedings the prosecution had obviously been attempting to prove that defendant had acted intentionally and there had been no objection from defense counsel, the inclusion of the word "recklessly" in a part of the information separate from the description of the alleged conduct was mere surplusage rather than an essential limiting term in the information. American Samoa Gov't v. Tauasosi, 3 A.S.R.2d 66.

Criminal charge using statutory language is permissible providing the statute sets forth fully, directly and expressly, without any uncertainty or ambiguity, all the elements needed to comprise the offense intended to be punished. T.C.R.Cr.P. 7(c). American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

Though a bill of information must plainly, concisely, and definitely state in writing the essential facts constituting the offense charged, it need not set forth facts and evidentiary details needed to establish each element of the charged offense. T.C.R.Cr.P. 7(c). American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

Bill of information charging sodomy without specifying which of the various sexual acts constituting an element of the offense was alleged, sufficiently informed defendant of the nature of the charges to enable him to prepare his defense and did not subject him to double jeopardy since he could refer to the entire record of the preliminary examination, not just the bill of information, when claiming double jeopardy from a subsequent prosecution. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

A bill of information using the language of the criminal statute is sufficient as long as the statute sets forth all of the elements

constituting the offence. American Samoa Gov't v. Luki, 21 A.S.R.2d 84.

Intended to give a criminal defendant adequate notice of the charge against him, a bill of information is made with sufficient specificity if it fully and unambiguously sets forth the elements constituting the offense. American Samoa Gov't v. Schuster, 24 A.S.R.2d 15.

A bill of particulars is not required as long as a defendant has enough information to adequately prepare a defense, avoid surprise at trial, and protect him against a second prosecution for an inadequately described offense; as such, a defendant is required to look at all of the government's sources and not simply the information formally charging him with the crime. American Samoa Gov't v. Wilson, 24 A.S.R.2d 26.

A bill of particulars is not required as long as a defendant has enough information to adequately prepare a defense, avoid surprise at trial, and protect him against a second prosecution for an inadequately described offense; as such, a defendant is required to look at all of the government's sources and not simply the information formally charging him with the crime. American Samoa Gov't v. Meleisea, 24 A.S.R.2d 32.

Merely reciting the statutory language of the offense does not satisfy the requirement of T.C.R.Cr.P. 7(c)(1) that the information contain a "plain, concise and definite written statement of the essential facts constituting the offense charged." American Samoa Gov't v. Loau, 4 A.S.R.3d 142 (Trial Div. 2000).

Where circumstances indicated that there was a victim of crime, and a weapon used in its perpetration, government was obliged to identify both in its information. American Samoa Gov't v. Loau, 4 A.S.R.3d 142 (Trial Div. 2000).

Failure of government to identify victim of assault in its information exposed defendant to double jeopardy. American Samoa Gov't v. Loau, 4 A.S.R.3d 142 (Trial Div. 2000).

Failure of government to identify weapon used in assault in its information prejudiced defendant's ability to prepare for trial. American Samoa Gov't v. Loau, 4 A.S.R.3d 142 (Trial Div. 2000).

Where government had not pled information with sufficient specificity, Court opted to allow Defendant to move for Bill of Particulars and warn government of future dismissal rather than to grant Defendant's request for immediate dismissal. American Samoa Gov't v. Loau, 4 A.S.R.3d 142 (Trial Div. 2000).

T.C.R.Cr.P. 7(c)(1) requires a definite written statement of the essential facts constituting the offense charged in a criminal information, and where a criminal information recites the statutory language as to an offense, and asserts a date of the offense, but does not name the victim, it does not sufficiently put the defendant on notice, and potentially subjects him to multiple prosecutions. American Samoa Gov't v. Faumuina, 4 A.S.R.3d 196 (Trial Div. 2000).

Dismissal of a defective criminal information is not warranted where it can be cured in response to a bill of particulars as to the identity of the victim and the specifics of the actions constituting the offense. American Samoa Gov't v. Faumuina, 4 A.S.R.3d 196 (Trial Div. 2000).

An information is to be measured by two criteria: 1) whether the facts stated show the essential elements of the offense charged so as to enable a defendant to prepare his or her defense; and 2) whether the facts alleged are sufficient to ensure against double jeopardy in a second prosecution. Am. Samoa Gov't v. Wang, 6 A.S.R.3d 212 (Trial Div. 2002).

A continuing offense may be charged without specifying individual acts as a basis for criminal conduct. Am. Samoa Gov't v. Wang, 6 A.S.R.3d 212 (Trial Div. 2002).

The offenses of Promoting Prostitution and Abuse of Child, when defendant alleged to have encouraged prostitution, are continuing course of conduct offenses that can be charged without specifying individual acts. Am. Samoa Gov't v. Wang, 6 A.S.R.3d 212 (Trial Div. 2002).

Where defendant alleged to committed offenses of Promoting Prostitution and Abuse of Child by encouraging child to engage in prostitution, jury did not need to agree that victims had committed a particular act of prostitution in order to convict. Am. Samoa Gov't v. Wang, 6 A.S.R.3d 212 (Trial Div. 2002).

An information using only statutory language is permissible as long as the statute sets forth fully, directly, and expressly, without any uncertainty or ambiguity, all the elements necessary to constitute the offense intended to be punished. Am. Samoa Gov't v. Wang, 6 A.S.R.3d 212 (Trial Div. 2002).

A criminal defendant is expected to look at all of the sources provided by the government and not simply at the information formally charging him with the crime. Am. Samoa Gov't v. Wang, 6 A.S.R.3d 212 (Trial Div. 2002).

§ 2(5) —Arguments Inconsistent with Information

Where prosecution explicitly and unequivocally argued that the defendant should be found guilty of intentional second-degree murder, and defense counsel responded by contesting the charge on the merits rather than by asserting its inconsistency with the information, defense counsel had waived any variance between the information and a conviction of intentional second degree murder or any lesser-included offense. American Samoa Gov't v. Tauasosi, 3 A.S.R.2d 66.

§ 2(6) —Bill of Particulars

A bill of particulars is not required as long as a defendant has enough information to adequately prepare a defense, avoid surprise at trial, and protect him against a second prosecution for an inadequately described offense; as such, a defendant is required to look at all of the government's sources and not simply the information formally charging him with the crime. American Samoa Gov't v. Wilson, 24 A.S.R.2d 26.

A bill of particulars is not required as long as a defendant has enough information to adequately prepare a defense, avoid surprise at trial, and protect him against a second prosecution for an inadequately described offense; as such, a defendant is required to look at all of the government's sources and not simply the information formally charging him with the crime. American Samoa Gov't v. Meleisea, 24 A.S.R.2d 32.

A bill of particulars may be amended at any time subject to such conditions as justice requires, pursuant to T.C.R.Cr.P. Rule 7(f). American Samoa Gov't v. Tali, 25 A.S.R.2d 21.

The bill of particulars, an ancient aid to pleading and procedure, has survived in the federal rules of procedure for criminal cases, but not for civil cases. It provides a basis upon which the defense can formulate strategy when the charges, though legally sufficient, are vaguely stated. American Samoa Gov't v. Tali, 25 A.S.R.2d 21.

The criteria for sufficiency of a bill of particulars is whether the defendant has been fully informed of the charges well in advance of trial, and has been afforded ample opportunity to prepare his defense. To be fully informed of the charges means that the bill of particulars sufficiently apprises the defendant of the theory of the charge against him, and of the general character of the evidence sustaining the charge. American Samoa Gov't v. Tali, 25 A.S.R.2d 21.

Dismissal of a defective criminal information is not warranted where it can be cured in response to a bill of particulars as to the identity of the victim and the specifics of the actions constituting the offense. American Samoa Gov't v. Faumuina, 4 A.S.R.3d 196 (Trial Div. 2000).

§ 2(7) —Probable Cause Determinations

No criminal information can be filed in the High Court without a prior judicial determination that probable cause exists to believe the defendant committed the crime with which he is charged. T.C.R.C.P. 5.1. Galea`i v. Atofau, 16 A.S.R.2d 76.

§ 2(8) —Multiplicitous Charging

Government's attempt to charge both forgery and conspiracy for a single forgery constituted multiplicitous charging and was not allowed. American Samoa Gov't v. Afuola, 4 A.S.R.3d 110 (Trial Div. 2000).

The proper remedy for a multiplicitous information is an election or consolidation of the offending counts, and dismissal of the surplus counts. American Samoa Gov't v. Afuola, 4 A.S.R.3d 110 (Trial Div. 2000).

Where the Government improperly charges multiplicitous counts in its information, the entire indictment need not be dismissed, but leave should be granted to amend the information. American Samoa Gov't v. Afuola, 4 A.S.R.3d 110 (Trial Div. 2000)

§ 2(9) —Pro Se Pleadings

In examining *pro se* pleadings, the court does so without regard to the technical niceties demanded of attorney-drafted pleadings. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

§ 3 Pleas

§ 3(1) —Generally

If a defendant wishes to limit the scope of his civil liability without unreservedly admitting his guilt, he can seek to enter a plea of nolo contendere, although the government or the Court might reject such a plea bargain, or the Court might accept the plea and impose the maximum legal sentence. Galea`i v. Atofau, 16 A.S.R.2d 76.

A plea of nolo contendere is recognized as having no effect beyond the action in which it is entered and no evidentiary value as an admission of guilt. American Samoa Gov't v. Solaita, 27 A.S.R.2d 9.

A nolo contendere plea is provided for the purpose of facilitating compromise in the plea bargaining process by allowing the accused to avoid an admission of guilt and the attendant evidentiary impact of that admission in potential future proceedings. American Samoa Gov't v. Solaita, 27 A.S.R.2d 9.

The High Court generally rejects plea agreements under T.C.R.Cr. P. 11 (e)(1)(C) that remove the court's discretion in sentencing except in very rare occasions where the interests of justice were found to be better served by their acceptance. American Samoa Gov't v. Masaniai, 28 A.S.R.2d 7.

A plea agreement that does not state a disposition allowable under applicable law is invalid. The Territory's criminal law has been codified, so the fact that a disposition is not disallowed does not make it available to the sentencing court. A.S.C.A. §§ 46.3102-3104. American Samoa Gov't v. Nofoagatotoa, 30 A.S.R.2d 20.

There is only one exception to the general requirement that the court must deal with criminal offenders as proscribed in Chapter 19 of the Criminal Justice Act (A.S.C.A. § 46.1901 et seq.). This exception provides for the option of deferred proceedings, upon a plea of guilt or finding of guilt, in the context of a possession of a controlled substance charge, under Title 13. A.S.C.A. § 13.1024. There is no parallel provision for deferred proceedings in the context of assault related prosecutions. American Samoa Gov't v. Nofoagatotoa, 30 A.S.R.2d 20.

Where prisoner alleged that plea agreement entered was not one he had agreed to and that instead of pleading guilty to Counts I and VI, he had been forced to plea to counts I, II, and V, court would not address the illegality of his punishment under counts II and V as prisoner had not yet begun serving those sentences. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

§ 3(2) —Court's Duties

When criminal defendant has agreed to plead guilty in exchange for agreement by prosecutor to request a particular sentence, court must specifically warn defendant that prosecutor's recommendation is not binding on the court and that he will have no right to withdraw his guilty plea if the court imposes a harsher sentence. Rule 11(e)(2), Trial Court Rules of Criminal Procedure. Uiliata v. American Samoa Gov't, 3 A.S.R.2d 102.

§ 3(3) —Sufficient Factual Basis

To satisfy rule requiring court to find a factual basis for accepting a guilty plea, the sentencing judge must develop a record of that basis, for example by having the accused describe his criminal conduct, or by asking the defendant whether he understands the charges against him and whether he committed the acts charged in the indictment. T.C.R.Cr.P. Rule 11(f). Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Judicial assessment of factual basis for accepting a guilty plea may be made at any time prior to judgment and sentencing and may be based on any evidence sufficiently articulated in the record. T.C.R.Cr.P. Rule 11(f). Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Difference between defendant's testimony and prosecution evidence did not preclude court from finding sufficient factual basis for accepting guilty plea when aggregation of evidence fully justified acceptance of plea. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

§ 3(4) —Voluntarily Made

The fear of receiving a greater sentence does not negate the voluntariness of a plea. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

A guilty plea is valid only if it is voluntarily and intelligently made. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

A guilty plea is voluntarily and intelligently made if it is done with sufficient awareness of the relevant circumstances and likely consequences. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

§ 3(5) —Interpretation of Plea Agreements

When criminal defendant has agreed to plead guilty in exchange for agreement by prosecutor to request a particular sentence, court must specifically warn defendant that prosecutor's recommendation is not binding on the court and that he will have no right to withdraw his guilty plea if the court imposes a harsher sentence. Rule 11(e)(2), Trial Court Rules of Criminal Procedure. Uiliata v. American Samoa Gov't, 3 A.S.R.2d 102.

Where prosecutor and defendant differed over whether waiver of preliminary hearing alone or whether waiver and plea to third case were consideration for dismissal of first two cases, dismissal of two cases in exchange for the waiver was unlikely and therefore agreement properly construed in government's favor. American Samoa Gov't v. Felise, 1 A.S.R.3d 171 (Trial Div. 1997).

Despite differing interpretations of agreement, neither interpretation specifically prohibited prosecutor from presenting facts of two alleged escapes as basis for probation revocation in other, unrelated case. Therefore, prosecutor did not breach agreement with defendant. American Samoa Gov't v. Felise, 1 A.S.R.3d 171 (Trial Div. 1997).

In determining the scope of a plea agreement, the Court looks to the reasonable understanding of the parties. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

§ 3(6) —Breach of Plea Agreements

Despite differing interpretations of agreement, neither interpretation specifically prohibited prosecutor from presenting facts of two alleged escapes as basis for probation revocation in other, unrelated case. Therefore, prosecutor did not breach agreement with defendant. American Samoa Gov't v. Felise, 1 A.S.R.3d 171 (Trial Div. 1997).

For a plea agreement to be valid, the government must honor its plea bargain with the defendant. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

Where government had promised not to recommend any specific sentence beyond what was recommended by the probation officer, and then, when probation officer made no recommendation, advocated the maximum sentence for two

counts, to run consecutively, prosecutor breached promise that was part of plea agreement. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

It is irrelevant whether a breach of the plea agreement is intentional or not, it is a breach nonetheless. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

There is no such thing as harmless error in sentencing when a prosecutor has breached a plea agreement. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

The proper remedy for breach of a promise to refrain from making a sentencing recommendation is resentencing before judges different than those who imposed the sentence. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

Where defendant's sentence had been vacated and he had received new date for sentencing by different judges, he nonetheless was not entitled reasonable bail prior to the new sentencing hearing based on his guilty pleas and previous attempt to escape the territory. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

§ 3(7) —Withdrawal of Pleas

RESERVED

§ 4 Parties & Procedure

§ 4(1) —Bifurcated Proceedings

During the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the court limited the evidence to whether the defendant is or would be guilty, assuming the absence of any mental disease or defect such as would render him incapable of understanding the difference between right and wrong, incapable of conforming his conduct to such a standard, or otherwise incapable of having any requisite mental element of the crimes charged or of any lesser-included offenses. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

During the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, though necessarily concerned with the defendant's thoughts relevant to the charged offenses, the court limited both parties from addressing such questions by expert testimony from psychiatrists or psychologists or by other evidence calculated to show that defendant did or not have a mental disease or defect. A.S.C.A. §§ 46.1301-46.1302, 46.1304. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

During the "guilt" phase of a bifurcated criminal trial, the government may not make any use of statements made by the defendant to the government's expert witness or of any evidence discovered as a result of such statements that would not ultimately have been discovered had the statements not been made, unless the defendant put a fact at issue which could only be effectively addressed by the otherwise-inadmissible evidence and if required in the interest of justice. A.S.C.A. §§ 46.1301-46.1302, 46.1304. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

If the defendant is found guilty of one or more crimes in the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the trial will proceed to the second stage, during which the parties may present evidence on whether the defendant had a mental disease or defect which would either support an insanity defense or tend to negate the existence of any requisite mental elements of the crime or crimes. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

During the second phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the government may use evidence obtained during its expert's examination of the defendant or as a result of such evidence, including but not limited to statements made by the defendant to the expert. A.S.C.A. §§ 46.1301-46.1302, 46.1304. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

§ 4(2) —Severance of Charges or Defendants

The decision to sever properly joined defendants is at the trial court's discretion and should be granted only if there is a serious risk that a joint trial would compromise a defendant's specific trial right or prevent the jury from making a reliable judgment about guilt or innocence. T.C.R.Cr.P. 8(b), 14. American Samoa Gov't v. Fealofa'i, 24 A.S.R.2d 10.

The decision to sever properly joined defendants is at the trial court's discretion and should be granted only if there is a serious risk that a joint trial would compromise a defendant's specific trial right or prevent the jury from making a reliable judgment about guilt or innocence. T.C.R.Cr.P. 8(b), 14. American Samoa Gov't v. Schuster, 24 A.S.R.2d 15.

In exercising their discretion as to granting separate trials, most courts refuse to grant a severance despite the anticipated exculpatory testimony of a co-defendant. T.C.R.Cr.P. 14. American Samoa Gov't v. Schuster, 24 A.S.R.2d 15.

The decision to sever properly joined defendants is at the trial court's discretion and should be granted only if there is a serious risk that a joint trial would compromise a defendant's specific trial right or prevent the jury from making a reliable judgment about guilt or innocence. T.C.R.Cr.P. 8(b), 14. American Samoa Gov't v. Tauai, 24 A.S.R.2d 23.

The decision to sever properly joined defendants is at the trial court's discretion and should be granted only if there is a serious risk that a joint trial would compromise a defendant's

spec ific trial right or prevent the jury from making a reliable judgment about guilt or innocence. T.C.R.Cr.P. 8(b), 14. American Samoa Gov't v. Wilson, 24 A.S.R.2d 26.

The decision to sever properly joined defendants is at the trial court's discretion and should be granted only if there is a serious risk that a joint trial would compromise a defendant's specific trial right or prevent the jury from making a reliable judgment about guilt or innocence. T.C.R.Cr.P. 8(b), 14. American Samoa Gov't v. Meleisea, 24 A.S.R.2d 32.

In exercising their discretion as to granting separate trials, most courts refuse to grant a severance despite the anticipated exculpatory testimony of a co-defendant. T.C.R.Cr.P. 14. American Samoa Gov't v. Meleisea, 24 A.S.R.2d 32.

The court will grant severance only if there is a serious risk that a joint trial would compromise a specific trial right to one of the defendants or prevent the jury from making a reliable judgment about guilt or innocence. American Samoa Gov't v. Fairholt, 28 A.S.R.2d 26.

The trial court abuses its discretion in refusing a severance when the defendant is denied a fair trial because the prejudice in a joint trial cannot be effectively alleviated and thus compels separate trials. A.S.G. v. Pu`aa, 31 A.S.R.2d 73.

The existence of antagonistic defenses among codefendants is cause for severance when the defenses conflict to the point of being irreconcilable and mutually exclusive. A.S.G. v. Pu`aa, 31 A.S.R.2d 73.

The court clearly has a continuing duty at all stages of the trial to grant severance if prejudice does appear. A.S.G. v. Pu`aa, 31 A.S.R.2d 73.

The decision to order severance is left within the sound discretion of the trial court and is reviewed for an abuse of discretion. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

The touchstone for determining whether severance is necessary in the context of mutually antagonistic defenses is whether the jury is unable to assess the guilt or innocence of each defendant on an individual and independent basis. Mutually exclusive defenses are said to exist when acquittal of one codefendant would necessarily call for the conviction of the other. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Mere comment by co-defendant's counsel as to evidence of defendant's guilt does not constitute his acting as second prosecutor such as to require severance of defendants. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Trial court's redaction of part of co-defendant's statement before presentation to the jury does not require severance where portion redacted did not exculpate the defendant. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

When right to confrontation problems may be caused by hearsay statements of a codefendant to be used in joint trial, a court must consider remedial action, including severance. American Samoa Gov't v. Ropati, 3 A.S.R.3d 104 (Trial Div. 1999).

T.C.R.Cr.P. 14 allows severance of defendants for trial if the prejudice to a defendant outweighs the interests of judicial economy where it is shown that a joint trial would compromise a specific trial right or would prevent the jury from making a reliable judgment regarding the guilt or innocence of each defendant; antagonistic defenses are not prejudicial per se. American Samoa Gov't v. Afuola, 4 A.S.R.3d 110 (Trial Div 2000).

§ 4(3) —Joinder of Offenses

All evidence tending to show guilt is broadly prejudicial, but does not preclude joinder of similar charges under T.C.R.Cr.P. 8. T.C.R.Cr.P. 8. American Samoa Gov't v. Bryce, 27 A.S.R.2d 1.

Judicial economy and legitimate public interests favor a joinder of all offenses against the accused. American Samoa Gov't v. Antonio, 28 A.S.R.2d 165.

Whether joinder of offenses or defendants is appropriate is determined on a case by case basis. American Samoa Gov't v. Antonio, 28 A.S.R.2d 165.

Judicial economy and legitimate public interests favor a joinder of all offenses against the accused. American Samoa Gov't v. Antonio, 28 A.S.R.2d 165.

Whether joinder of offenses or defendants is appropriate is determined on a case by case basis. American Samoa Gov't v. Antonio, 28 A.S.R.2d 165.

Counts pertaining to the same defendant under T.C.R.Cr.P. 8(a) may be joined if they are of the same or similar character, even if the offenses are distinct and unrelated. Rule 8(a) recognizes the adverse effect on defendants of having evidence of multiple unrelated crimes presented in one proceeding, but this negative effect is outweighed by gains in trial economy when one of the criteria of the rule are met. For this reason, a defendant must show strong or substantial prejudice flowing from the joinder to demonstrate an abuse of discretion by a trial court. American Samoa Gov't v. Antonio, 28 A.S.R.2d 165.

All evidence tending to show guilt is broadly prejudicial, but does not preclude joinder of similar charges under T.C.R.Cr.P. 8. T.C.R.Cr.P. 8. American Samoa Gov't v. Bryce, 27 A.S.R.2d 1.

§ 4(4) —Joinder of Defendants

Whether joinder of offenses or defendants is appropriate is determined on a case by case basis. American Samoa Gov't v. Antonio, 28 A.S.R.2d 165.

T.C.R.Cr.P. 14 does not give one co-defendant the standing to raise the issue of prejudice due to joinder on behalf of his co-defendants. If one co-defendant's testimony might prejudice others, it is their decision whether or not to move for a severance. American Samoa Gov't v. Fairholt, 28 A.S.R.2d 26.

Whether joinder of offenses or defendants is appropriate is determined on a case by case basis. American Samoa Gov't v. Antonio, 28 A.S.R.2d 165.

The trial court must weigh the prejudice to a defendant by a joint trial against the interests of judicial economy, and factor in the means of lessening the detriment. A.S.G. v. Pu`aa, 31 A.S.R.2d 73.

Under T.C.R.Cr.P. 8(b), multiple defendants may be charged in a single information where it is alleged that different acts were part of a scheme constituting forgery, and joinder is proper if all of the offenses charged arose out of the same series of transactions. American Samoa Gov't v. Afuola, 4 A.S.R.3d 84 (Trial Div. 2000).

Under T.C.R.Cr.P. 8(b), multiple defendants may be charged in a single information where it is alleged that different acts were part of a scheme constituting forgery, and joinder is proper if all of the offenses charged arose out of the same series of transactions. American Samoa Gov't v. Afuola, 4 A.S.R.3d 110 (Trial Div. 2000).

§ 5 Pre-Trial Matters

§ 5(1) —Generally

While pre-trial motions in criminal matters should ordinarily be heard in a timely manner, an inflexible policy in this regard is inappropriate. Each situation must be individually considered. American Samoa Gov't v. Tali, 25 A.S.R.2d 21.

§ 5(2) —Initial Appearance

T.C.R.Cr.P. 5(a) and A.S.C.A. § 46.0807(b) serve different purposes, and are not inconsistent. Rule 5(a) is meant to apply when a person is arrested and it is contemplated that he will be charged with a crime. Section 46.0807(b), on the other hand, contemplates the situation where a person is arrested and needs to be held for some period of time for his own safety or to protect the public safety, but will not be charged with a crime. American Samoa Gov't v. Lolesio, 30 A.S.R.2d 24.

§ 5(3) —Continuances

In the interest of judicial economy, we place the burden on defendants to give the court sufficient reason to continue trial. American Samoa Gov't v. Fairholt, 28 A.S.R.2d 26.

§ 5(4) —Competence to Stand Trial

The Court may order a mentally incompetent defendant to be confined for a maximum of 120 days; within 120 days a hearing shall be held to determine whether the defendant has become competent to stand trial and, if not, whether there is a substantial probability that he will attain competency within one year or the maximum term of imprisonment for the crime charged. A.S.C.A. § 46.1305 American Samoa Gov't v. Taylor, 16 A.S.R.2d 44.

The Court may order a mental examination of a defendant. A.S.C.A. § 46.1303. American Samoa Gov't v. Taylor, 16 A.S.R.2d 44.

A defendant will be found incompetent to stand trial if he does not have a sufficient and present ability to consult with his lawyer with a reasonable degree of rational understanding or a rational as well as factual understanding of the proceedings against him. American Samoa Gov't v. Taylor, 18 A.S.R.2d 42.

Although tests to assess general intelligence, capability of abstract thought, and presence of mental disorders had not been specifically "validated" for Samoans or Pacific Islanders as a group, there was little risk that such tests would give false results when applied to a Samoan defendant in determining his competency to stand trial. American Samoa Gov't v. Taylor, 18 A.S.R.2d 42.

All persons are presumed to be sane or mentally competent unless a preponderance of the evidence indicates otherwise. American Samoa Gov't v. Sumajestad, 4 A.S.R.3d 232 (Trial Div. 2000).

The court is explicitly authorized by A.S.C.A. § 46.1303 to order psychiatric evaluations of criminal defendants to determine competence to stand trial. American Samoa Gov't v. Fa'afia, 7 A.S.R.3d 111 (Trial Div. 2003).

In the context of criminal trials, a defendant's competency to stand trial and his or her presentation of an insanity defense require two different legal standards. American Samoa Gov't v. Fa'afia, 7 A.S.R.3d 111 (Trial Div. 2003).

Incompetence to stand trial is a factor when determining whether due process requires a court-appointed expert on the issue of insanity. American Samoa Gov't v. Fa'afia, 7 A.S.R.3d 111 (Trial Div. 2003).

The test for determining whether an individual is competent to

stand trial is whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him. American Samoa Gov't v. Fa'afia, 7 A.S.R.3d 111 (Trial Div. 2003).

§ 5(5) —Motions to Suppress Evidence

Provision in American Samoa constitution that requires exclusion of evidence does not entitle Defendant to litigate Fourth Amendment claim before magistrate as well as trial court. Am. Samo Gov't v. Foma'i, 1 A.S.R.2d 61 (Trial Div. 1982).

Trial judge's findings of facts at a suppression hearing are reviewed for clear error. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

§ 5(6) —Pre-Trial Conferences

RESERVED

§ 5(7) —Notice of Alibi

RESERVED

§ 5(8) —Defense Based on Mental Condition

Under A.S.C.A. § 46.1303, the court may order a psychiatric evaluation on the motion of either party or sua sponte. American Samoa Gov't v. Sumajestad, 4 A.S.R.3d 232 (Trial Div. 2000).

The scope of the court-ordered mental examination in a criminal case, unless otherwise specified, is to determine whether (1) defendant is competent to stand trial and (2) whether he was sane at the time of the criminal act charged. American Samoa Gov't v. Sumajestad, 4 A.S.R.3d 232 (Trial Div. 2000).

Defendant's action in turning himself in to police with a cache of controlled substances in his possession was not conduct in and of itself so bizarre as to constitute a showing sufficient to require the court to order a psychiatric evaluation. American Samoa Gov't v. Sumajestad, 4 A.S.R.3d 232 (Trial Div. 2000).

Due process requires a court to provide an indigent defendant access to a competent psychiatrist if he shows that his sanity at the time of the offense will be a significant factor at trial. American Samoa Gov't v. Fa'afia, 7 A.S.R.3d 111 (Trial Div. 2003).

To show that his sanity is truly at issue, a criminal defendant must do more than simply offer undeveloped assertions that the services of a court-appointed psychiatrist would be beneficial, but instead must demonstrate a substantial basis for the defense, presenting specific evidence to demonstrate that his sanity at the time of the offense was questionable. American Samoa Gov't v. Fa'afia, 7 A.S.R.3d 111 (Trial Div. 2003).

Criminal defendant's declaration that he intended to use insanity as an affirmative defense, alone, did not suffice to establish a substantial basis for ordering a court-appointed psychiatrist. American Samoa Gov't v. Fa'afia, 7 A.S.R.3d 111 (Trial Div. 2003).

§ 5(9) —Notice of Intent to Use Evidence

RESERVED

§ 5(10) —Release from Custody

A prisoner already in custody who is merely returned to custody following an escape does not possess the liberty interest protected by T.C.R.Cr.P. 5. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

The fact that the trial court judge, during in-chambers conference, remarked that if appellant were found guilty, he would be held in custody pending sentencing did not constitute a threat that the judge would penalize appellant for exercising his right to a jury trial. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

First degree assault, possession of a controlled substance, and the production of a controlled substance are "infamous crime[s]" which are not bailable under the Revised Constitution if, a) the presumption is great that the Defendant committed the crime, and, b) releasing the Defendant will constitute a danger to the community. American Samoa Gov't v. Samana, 1 A.S.R.3d 166 (Trial Div. 1997).

The Revised Constitution requires the Court to determine whether the Defendant is a threat to society, and does not require the heightened standard of proof by "clear and convincing" evidence. American Samoa Gov't v. Samana, 1 A.S.R.3d 166 (Trial Div. 1997).

18 U.S.C.A. § 3148 (concerning bail) contains no provision specifying its application to American Samoa. American Samoa Gov't v. Stephens, 2 A.S.R.3d 117 (Trial Div. 1998).

Bail may be revoked if the reviewing court is satisfied that conditions of bail have been violated, and that the defendant is unlikely to abide by conditions of release. American Samoa Gov't v. Stephens, 2 A.S.R.3d 117 (Trial Div. 1998).

That a person is unlikely to abide by conditions of release may be established by a preponderance of the evidence. American Samoa Gov't v. Stephens, 2 A.S.R.3d 117 (Trial Div. 1998).

Bail decisions rest on predictions of a defendant's future behavior, and a defendant's past violations of a release order

barring contact with the complainant shed light on this issue. American Samoa Gov't v. Stephens, 2 A.S.R.3d 117 (Trial Div. 1998).

A defendant's submission that he is no longer a danger to the complainant since she has left American Samoa will not be accepted where his intimidation and harassment of her caused her to flee to Boise, Idaho where he has called her at her current place of employment, and his motion for reconsideration of bail revocation will be denied. American Samoa Gov't v. Stephens, 2 A.S.R.3d 117 (Trial Div. 1998).

A motion to suppress field test results, on the basis that the tests are not scientifically valid, will not be granted where the government asserts that it intends to use them at trial to establish chain of custody and not to prove the nature of the substance; but if the government fails to introduce further forensic evidence as to the nature of the substance, the defendant may renew his motion. American Samoa Gov't v. Kaplan, 3 A.S.R.3d 86 (Trial Div. 1999).

In deciding whether to grant defendant a bond the court may consider: (1) defendant's demonstrated propensity for violent behavior toward others, (2) attempts to contact and influence victims, (3) efforts to deceive the court in obtaining release on bond, (4) the nature of the charges and (5) the attendant circumstances as deposed to by the arresting officer in his affidavit in support of the arrest warrant. American Samoa Gov't v. Siaumau, 4 A.S.R.3d 247 (Trial Div. 2000).

Bond may be denied where it appears defendant not only committed an infamous crime but that he is a danger to the complainant and society if released on bail. American Samoa Gov't v. Siaumau, 4 A.S.R.3d 247 (Trial Div. 2000).

Bond denied to defendant, charged with multiple assaults, where defendant had demonstrated a propensity for violent behavior toward others, has attempted to contact and influence the victim in protective custody with the government, and presented fraudulent bail documents to the court. American Samoa Gov't v. Siaumau, 4 A.S.R.3d 247 (Trial Div. 2000).

From the face of the statute, the court does not appear to have discretion in ordering forfeiture of bail if a condition of the bond is violated. T.C.R.Cr.P. 46(e)(1). American Samoa Gov't v. Togialeoli, 30 A.S.R.2d 130.

Failure to appear for trial and violating travel restrictions are ample justification for forfeiture of a bond. American Samoa Gov't v. Togialeoli, 30 A.S.R.2d 130.

Where defendant's sentence had been vacated and he had received new date for sentencing by different judges, he nonetheless was not entitled reasonable bail prior to the new sentencing hearing based on his guilty pleas and previous attempt to escape the territory. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

§ 5(11) —Discovery Generally

Request that government investigate each of its prospective witnesses at criminal trial in order to ascertain whether any witness had a criminal record in another jurisdiction, and inform defense counsel of any such record, was beyond the scope of defendant's right to discovery. American Samoa Gov't v. Talamoa, 10 A.S.R.2d14.

Photographs are discoverable, as they do not explicitly nor implicitly fall under the confines of T.C.R.Cr.P. 16(a)(2). American Samoa Gov't v. Isaia, 29 A.S.R.2d 224.

§ 5(12) —Depositions

The taking of depositions in criminal cases is generally disfavored. Am. Samoa Gov't v. Tuilagi, 7 A.S.R.3d 61 (Trial Div. 2003).

T.C.R.Cr.P. 15 allows depositions in cases of exceptional circumstances. Am. Samoa Gov't v. Tuilagi, 7 A.S.R.3d 61 (Trial Div. 2003).

The court looks to several factors in determining whether a party in a criminal case has demonstrated exceptional circumstances warranting the taking of a deposition. Such factors include: (1) whether the desired witness is unavailable to testify at trial, (2) whether the witness' testimony is material to the moving party's case and (3) whether the taking of the deposition would cause injustice to the nonmoving party. Am. Samoa Gov't v. Tuilagi, 7 A.S.R.3d 61 (Trial Div. 2003).

§ 5(13) —Disclosure of Information & Witnesses

Provision of territorial constitution prohibiting deprivation of life, liberty, or property without due process of law prohibits prosecution from suppressing any evidence favorable to an accused where the evidence is material either to guilt or punishment. Rev'd Const. Am. Samoa art. I § 2. American Samoa Gov't v. Talamoa, 10 A.S.R.2d14.

General request by defense counsel for any evidence in the possession of the prosecution that might tend to exculpate the defendant was within the scope of rule prohibiting suppression of material evidence favorable to the accused. Rev'd Const. Am. Samoa art. I § 2. American Samoa Gov't v. Talamoa, 10 A.S.R.2d14.

When a defendant makes a request for discovery and disclosure of exculpatory information, the prosecutor's responses are inadequate when the prosecutor does not make a diligent inquiry from all relevant branches of government, as he or she must answer for the government as a whole. American Samoa Gov't v. Whitney, 20 A.S.R.2d 46.

In responding to a defendant's request for discovery and disclosure of exculpatory information, the prosecutor must identify specifically by category the reason for which an item is not produced. American Samoa Gov't v. Whitney, 20 A.S.R.2d 46.

Once the potential for an unfair trial has been cured, no Brady violation is possible, since Brady is premised on the right to a fair trial. American Samoa Gov't v. Whitney, 20 A.S.R.2d 46.

A non-capital criminal defendant is not constitutionally or procedurally entitled to a list of the prosecution's prospective witnesses. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 2; T.C.R.Cr.P. 16(a)(2). American Samoa Gov't v. Wilson, 24 A.S.R.2d 26.

Failure to disclose, or late disclosure of, evidence is prejudicial when the evidence would provide a significant chance of establishing a reasonable doubt that would not otherwise exist. American Samoa Gov't v. Solaita, 27 A.S.R.2d 9.

To establish a Brady violation, a defendant must demonstrate that the prosecution suppressed evidence that was favorable to the defense or exculpatory and was material. American Samoa Gov't v. Solaita, 27 A.S.R.2d 9.

The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish "materiality" in the constitutional sense. American Samoa Gov't v. Solaita, 27 A.S.R.2d 9.

A defendant must show a "significant chance" that the evidence suppressed by the government would have produced reasonable doubt as to guilt. American Samoa Gov't v. Solaita, 27 A.S.R.2d 9.

Identities of rebuttal witnesses are not freely discoverable. T.C.R.Cr.P. 16. American Samoa Gov't v. Solaita, 27 A.S.R.2d 9.

T.C.R.Cr.P. 12(d)(2) implicitly allows a defendant to request that the government provide him with a list of the evidence it intends to use at trial for its case in chief. However, Rule 12(d)(2) is not explicitly mandatory, except for a defendant's discovery of items listed in T.C.R.Cr.P. 16(a). Nor is a sanction provided. American Samoa Gov't v. Isaia, 29 A.S.R.2d 224.

The government should normally provide notice of its intention to use evidence at trial, either on its own initiative, see T.C.R.Cr.P. 12(d)(1), or upon the request of defense counsel. See T.C.R.Cr.P. 12(d)(2). In appropriate cases, where the government has failed to comply with a defendant's request, the court will compel compliance. American Samoa Gov't v. Isaia, 29 A.S.R.2d 224.

The informer's privilege is in reality the government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. American Samoa Gov't v. Samana, 30 A.S.R.2d 1.

The public interest in protecting the flow of information must be balanced against the individual's right to prepare his defense. Where the disclosure of an informer's identity is relevant and helpful to the defense of an accused, or is essential to a fair determination of the cause, the privilege must give way. American Samoa Gov't v. Samana, 30 A.S.R.2d 1.

An in camera hearing to disclose an informant's identity is not granted merely because a confidential informant was relied on to obtain a search warrant. The confidential informant must also somehow be important to the government's case in chief. American Samoa Gov't v. Samana, 30 A.S.R.2d 1.

If a defendant can develop sufficient evidence which puts the existence or reliability of the confidential informant in question, the defendant may move for an in camera hearing on the question of disclosure of the informant's identity. American Samoa Gov't v. Samana, 30 A.S.R.2d 1.

The court may hold an in camera hearing with a confidential informant to aid in determining whether an affiant made a false statement knowingly or recklessly when the defendant does not have enough evidence to quash a warrant but has presented evidence in that direction. American Samoa Gov't v. Samana, 30 A.S.R.2d 37.

Mere categorical denials of a person's culpability by third parties are not exculpatory such that they must be preserved by the police and are not Brady material. American Samoa Gov't v. Pearson, 2 A.S.R.3d 63 (Trial Div. 1998).

Although Brady applies to evidence with cross-examination value, evidence may not be proffered where it is known to be untruthful, and such proffer would be professional misconduct by an attorney. American Samoa Gov't v. Pearson, 2 A.S.R.3d 63 (Trial Div. 1998).

§ 5(14) —Witness Identifications

Eyewitness identification evidence is unreliable and must be suppressed as violating due process if suggestive identification procedures have led to a very substantial likelihood of irreparable misidentification. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

Identification obtained by an impermissibly suggestive identification procedure may be admitted if it was nonetheless reliable, considering the totality of the circumstances, since

the critical factor determining admission is reliability. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

In assessing the reliability of identification evidence obtained by an impermissibly suggestive identification procedure, courts must consider the witness' chance to view the criminal when the crime occurred, his attentiveness, how accurately he previously described the criminal, how certainly he identified the defendant when confronted with him, and how much time elapsed between the crime and the confrontation, and weigh against such factors the corrupting effect of the suggestive identification. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

Though identification procedure whereby complainant identified defendant in a one-on-one confrontation at police station was impermissibly suggestive, under the totality of the circumstances it was not so unfair as to violate due process, since complainant identified defendant without police prompting or comment, had seen him shortly before the crime, and at the scene of the crime had described physical characteristics and clothing of her assailant which matched defendant and had pointed out a third party who not only had also seen defendant before the crime but then identified him to the police immediately afterwards. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

Even an impermissibly suggestive identification procedure does not render identification testimony inadmissible if, in the totality of circumstances, the identification was nonetheless reliable. American Samoa Gov't v. Fealofa'i, 24 A.S.R.2d 10.

In determining the admissibility of identification testimony, the corrupting effect of the suggestive identification is weighed against (1) the witness' opportunity to view the criminal at the time of the crime, (2) the witness' degree of attention, (3) the accuracy of his prior description of the criminal, (4) the level of certainty demonstrated at the confrontation, and (5) the time between the crime and confrontation. American Samoa Gov't v. Fealofa'i, 24 A.S.R.2d 10.

Even an impermissibly suggestive identification procedure does not render identification testimony inadmissible if, in the totality of circumstances, the identification was nonetheless reliable. American Samoa Gov't v. Schuster, 24 A.S.R.2d 15.

In determining the admissibility of identification testimony, the corrupting effect of the suggestive identification is weighed against (1) the witness' opportunity to view the criminal at the time of the crime, (2) the witness' degree of attention, (3) the accuracy of his prior description of the criminal, (4) the level of certainty demonstrated at the confrontation, and (5) the time between the crime and confrontation. American Samoa Gov't v. Schuster, 24 A.S.R.2d 15.

Even an impermissibly suggestive identification procedure does not render identification testimony inadmissible if, in the totality of circumstances, the identification was nonetheless reliable. American Samoa Gov't v. Maiava, 24 A.S.R.2d 20.

In determining the admissibility of identification testimony, the corrupting effect of the suggestive identification is weighed against (1) the witness' opportunity to view the criminal at the time of the crime, (2) the witness' degree of attention, (3) the accuracy of his prior description of the criminal, (4) the level of certainty demonstrated at the confrontation, and (5) the time between the crime and confrontation. American Samoa Gov't v. Maiava, 24 A.S.R.2d 20.

A one-on-one show up is inherently suggestive; however, suggestiveness of the identification process does not, by itself, merit suppression. American Samoa Gov't v. Bernard, 26 A.S.R.2d 56.

The factors to be considered in determining the admissibility of identification testimony are the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and confrontation. American Samoa Gov't v. Bernard, 26 A.S.R.2d 56.

Suggestive show-up identification procedures may deny an accused the fairness of due process. American Samoa Gov't v. Leali`ie`e, 4 A.S.R.3d 113 (Trial Div. 2000).

Suggestive show-up identification procedures do not render an identification inadmissible if it is still reliable under the totality of circumstances. American Samoa Gov't v. Leali`ie`e, 4 A.S.R.3d 113 (Trial Div. 2000).

In determining whether an identification is reliable under the totality of circumstances, the Court must weight five principal factors against the corrupting effect of a suggestive identification: (1) the opportunity of the witness to view the criminal at the time of the crime, (2) the witness' degree of attention, (3) the accuracy of the witness' prior description of the criminal, (4) the level of certainty demonstrated at the confrontation, and (5) the time between the crime and the confrontation. American Samoa Gov't v. Leali`ie`e, 4 A.S.R.3d 113 (Trial Div. 2000).

Where defendant was placed in room unhandcuffed, together with other individuals in civilian clothing and uniformed officers, where defendant was not placed in any distinguishing location and where victim was asked to look through window to see if she recognized anyone inside, such procedures were not so suggestive as to outweigh other circumstances supporting reliability of identification. American Samoa Gov't v. Leali`ie`e, 4 A.S.R.3d 113 (Trial Div. 2000).

§ 5(15) —Subpoena of Witnesses

Under Article I, Section 6 of the Revised Constitution of American Samoa, a defendant accused of a crime is guaranteed the right to compel the attendance of witnesses in his/her favor. American Samoa Gov't v. Talamoni, 27 A.S.R.2d 123.

However, a subpoena may be quashed if a trial court determines the subpoena to be an oppressive and unreasonable use of the process of the court. American Samoa Gov't v. Talamoni, 27 A.S.R.2d 123.

Under the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, Haw. Rev. Stat. ch. 836 (1993) ("Uniform Act"), there are two requirements for the extradition of a witness: (1) the territory of which the request is made must have a reciprocal provision for "commanding persons within its borders to attend and testify in criminal prosecutions . . . in [Hawaii]"; and (2) the witness requested must be "material." However, a witness may not be extradited from American Samoa because it has not adopted the Uniform Act. It also has no analogous provision for extraditing material witnesses to other jurisdictions or for securing witnesses in foreign jurisdictions to testify here. In Re Proceedings to Compel Attendance of May Fitiausi, 29 A.S.R.2d 71.

§ 5(16) —Juveniles

SEE FAMILY LAW § 3(5) – RIGHTS IN COURT

Prosecution may not wait until juvenile defendant reaches 18 and then prosecute defendant as adult—this decision must be made by High Court. Government v. Fuaalii, 4 A.S.R. 828.

There is no constitutional right to be tried as a juvenile in criminal matters; legislature may therefore vest in attorney general the discretion whether to institute ordinary criminal proceedings or juvenile proceedings against a minor fourteen years of age or older, who has allegedly committed a violent crime. American Samoa Gov't v. Julio, 9 A.S.R.2d 128.

In the absence of statute creating right to certification hearing to determine whether to prosecute minor as a juvenile or an adult, the minor has no due process right to such a hearing. American Samoa Gov't v. Julio, 9 A.S.R.2d 128.

Territorial statute vesting discretion in attorney general to proceed against certain minors as adults was not constitutionally defective due to alleged inconsistency with general purpose of juvenile justice statute to accord special treatment to minors, since both the general rules of statutory construction and the specific language of another statutory provision indicated that the exception was deliberate and purposeful. A.S.C.A. §§ 45.0103(9)(B)(I), 45.0115(c)(2)(a). American Samoa Gov't v. Julio, 9 A.S.R.2d 128.

A.S.C.A. § 45.0115(c)(2) confers upon the Attorney General's Office power to prosecute an individual 14 years or older as an "adult" for felony crimes involving violence. American Samoa Gov't v. Pino, 1 A.S.R.3d 193 (Trial Div. 1997).

The judiciary in American Samoa has the power under to certify an underage individual as an adult for the purposes of criminal proceedings under A.S.C.A. § 45.0115(c)(1). However, it has no power to interfere with a prosecution under A.S.C.A. § 45.0115(c)(2). American Samoa Gov't v. Pino, 1 A.S.R.3d 193 (Trial Div. 1997).

The Juvenile Justice Act exclusively uses "chronological age," and not "mental age" to determine whether or not a particular defendant qualifies for treatment as a "child" or as an "adult." American Samoa Gov't v. Pino, 1 A.S.R.3d 193 (Trial Div. 1997).

The Juvenile Justice Act was designed to encompass any and all situations in which children break the law, and was not intended to permit certain juveniles to commit misdemeanor assaults without subjecting them to answer for their behavior through some form of adjudicatory proceeding. American Samoa Gov't v. Fa'apito, 1 A.S.R.3d 199 (Trial Div. 1997).

A.S.C.A. Sec. 45.0115(c)(2) does not prevent the Attorney General from charging certain children with misdemeanors as well as felonies, under certain circumstances, including when the child's conduct is a crime of violence. American Samoa Gov't v. Fa'apito, 1 A.S.R.3d 199 (Trial Div. 1997).

While there are a number of other provisions in the Juvenile Justice Act that talk about dealing with children as adults only in the context of felony charges, the Act expressly contemplates prosecution of children for felonies and misdemeanors. American Samoa Gov't v. Fa'apito, 1 A.S.R.3d 199 (Trial Div. 1997).

Where the government prosecutes a child as an adult for a crime of violence the child is not a "juvenile" within the meaning of the Juvenile Justice Act and the High Court cannot assert jurisdiction over the matter under A.S.C.A. Sec. 3.0208(a)(4). American Samoa Gov't v. Fa'apito, 1 A.S.R.3d 199 (Trial Div. 1997).

Where the government prosecutes a child as an adult for a crime of violence, the High Court does not have jurisdiction over this case under A.S.C.A. Sec. 45.0115(a)(1), which grants the trial division of the High Court exclusive jurisdiction over cases concerning "any delinquent child, as defined in subsections (2) and (9) of 45.0103", because a child charged with a crime of violence is excluded from the definition of "delinquent child" under A.S.C.A. Sec.

45.0103(9)(B)(I). American Samoa Gov't v. Fa'apito, 1 A.S.R.3d 199 (Trial Div. 1997).

§ 5(17) —Collateral Estoppel

Territorial government was not estopped from rearresting a prisoner where: (1) the prisoner, although ineligible for parole, had been paroled because of a clerical error; (2) prisoner had been released for only twenty-eight days before his rearrest, so that he had not been reintegrated into the community and could show no substantial injury resulting from his release and rearrest; (3) since there had been no significant reintegration into the community, no serious injustice was worked by the rearrest; and (4) since the prisoner had been recently convicted of a violent crime, it was not clear that the public interest would not be unduly damaged by the estoppel. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

Even under the mutuality doctrine, which has largely been abandoned, the government could sue a convicted criminal for civil damages, and the defendant would be estopped to deny the facts entailed by his conviction. Galea`i v. Atofau, 16 A.S.R.2d 76.

Collateral estoppel applies whether defendant's conviction resulted from a trial or from a guilty plea, even if induced by a plea bargain. Galea`i v. Atofau, 16 A.S.R.2d 76.

With the abandonment of the mutuality requirement, individual victims of crime can now benefit from collateral estoppel in the same ways and to the same extent that the government has always done. Galea`i v. Atofau, 16 A.S.R.2d 76.

Majority rule gives judgments based on guilty pleas the same collateral effect as other criminal convictions and, as such, are conclusive of all issues that would have been resolved by a conviction following a trial. Galea`i v. Atofau, 16 A.S.R.2d 76.

The traditional requirement is that a party should be estopped only with respect to those matters that were genuinely at issue and genuinely decided in the earlier case. Galea`i v. Atofau, 16 A.S.R.2d 76.

At least when a defendant's admission to a crime was made upon the advice of competent counsel, collateral estoppel applies with respect to issues which were distinctly and directly put at issue by the pleadings, which were central rather than peripheral to the proceeding, and which were essential to the outcome. Galea`i v. Atofau, 16 A.S.R.2d 76.

If a defendant wishes to limit the scope of his civil liability without unreservedly admitting his guilt, he can seek to enter a plea of nolo contendere, although the government or the Court might reject such a plea bargain, or the Court might accept the plea and impose the maximum legal sentence. Galea`i v. Atofau, 16 A.S.R.2d 76.

Neither a guilty plea nor a verdict after trial estops the defendant with respect to any issue not squarely resolved by the judgment; with respect to these elements a plaintiff must present evidence other than the guilty plea, and a defendant is free to controvert any such evidence. Galea`i v. Atofau, 16 A.S.R.2d 76.

Because a guilty plea in a prior criminal action necessarily eliminates a full and contested presentation of evidence on the issues and may only indicate a compromise or an expectation of a more advantageous disposition of a criminal accusation, the policy underlying collateral estoppel would not be truly served by making a guilty plea conclusive in a civil action. Amisone v. Talaeai, 23 A.S.R.2d 52.

§ 5(18) —Failure to Prosecute

Where the government seeks to resume a prosecution over five and one half years after it filed a criminal complaint and obtained a warrant for the defendant's arrest, this constitutes an unreasonable failure, neglect, or refusal to prosecute which would authorize the court to dismiss the case. American Samoa Gov't v. Lavata'i, 1 A.S.R.3d 164 (Trial Div. 1997).

§ 5(19) —Immunity from Prosecution

When a witness testifies for the government in the expectation of immunity from prosecution, such a person has an equitable claim to immunity from prosecution. American Samoa Gov't v. Hunkin, 3 A.S.R.3d 116 (Trial Div. 1999).

The court's approval is not needed in order for a prosecutor's grant of immunity to be binding; however, the prosecutor should give notice to the court of any immunity it grants. American Samoa Gov't v. Hunkin, 3 A.S.R.3d 116 (Trial Div. 1999).

§ 5(20) —Change of Venue

Motion for change of venue based on pre-trial publicity and alleged actual prejudice resulting therefrom was premature where jury panel had yet to undergo *voir dire*. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

Change of venue is an unsuitable remedy to address jury prejudice in American Samoa. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

A.S.C.A. § 46.0601 is not directed to changes of venue based on potential jury prejudice, but applies in circumstances where it would be more convenient for the court to sit elsewhere. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

A change of venue is not constitutionally required so long as the court assures a fair trial. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

§ 6 Trial

§ 6(1) —Bifurcated Proceedings

The bifurcated-proceedings statute divides the inquiry into whether the defendant "committed the criminal act charged" and whether he was "insane at the time of the commission of the criminal act." A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

In a bifurcated criminal trial, the jury is not exposed to evidence of the defendant's mental capacity until the jury makes an independent finding as to whether the defendant committed the act charged. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

Although a defense of diminished mental capacity is arguably comprehended within the "guilt" phase of a bifurcated trial, the interests in a fair trial and an orderly proceeding may be better served by reserving all evidence of mental disease or defect for the "insanity" phase because a jury is likely to view the evidence as being highly probative of issues other than the criminal defendant's mental state, and a limiting instruction would likely be ineffective. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

During the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the court limited the evidence to whether the defendant is or would be guilty, assuming the absence of any mental disease or defect such as would render him incapable of understanding the difference between right and wrong, incapable of conforming his conduct to such a standard, or otherwise incapable of having any requisite mental element of the crimes charged or of any lesser-included offenses. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

During the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, though necessarily concerned with the defendant's thoughts relevant to the charged offenses, the court limited both parties from addressing such questions by expert testimony from psychiatrists or psychologists or by other evidence calculated to show that defendant did or not have a mental disease or defect. A.S.C.A. §§ 46.1301-46.1302, 46.1304. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

During the "guilt" phase of a bifurcated criminal trial, the government may not make any use of statements made by the defendant to the government's expert witness or of any evidence discovered as a result of such statements that would not ultimately have been discovered had the statements not been made, unless the defendant put a fact at issue which could only be effectively addressed by the otherwise-inadmissible evidence and if required in the interest of justice. A.S.C.A. §§ 46.1301-46.1302, 46.1304. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

If the defendant is found guilty of one or more crimes in the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the trial will proceed to the second stage, during which the parties may present evidence on whether the defendant had a mental disease or defect which would either support an insanity defense or tend to negate the existence of any requisite mental elements of the crime or crimes. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

During the second phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the government may use evidence obtained during its expert's examination of the defendant or as a result of such evidence, including but not limited to statements made by the defendant to the expert. A.S.C.A. §§ 46.1301-46.1302, 46.1304. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

Defense counsel's motion for a bifurcated criminal trial constituted an implicit waiver of any objection to a procedure which, although clearly consistent with the legislative purpose of the bifurcated-trial statute, is not clearly authorized regarding a defense of diminished mental capacity. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

In a bifurcated criminal trial, the jury is not exposed to evidence of the defendant's mental capacity until the jury makes an independent finding as to whether the defendant committed the act charged. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

§ 6(2) —Due Process of Law

SEE CONSTITUTIONAL LAW § 7(1) – DUE PROCESS

Police may initiate prosecution for traffic offense by issuing ordinary traffic citation and summons even well after all parties have left the scene of the offense, and due process does not require usual procedural protection of full criminal prosecution. A.S.C.A. §§ 22.0802, 22.0803. American Samoa Gov't v. Ofa, 6 A.S.R.2d 1.

Court order for confinement of prisoner, after his trial and conviction for attempted rape, was issued pursuant to due process of law and could be enforced without further judicial proceedings. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Due process of law was not denied to a convict who had been released from detention in violation of court order and who was subsequently re-arrested, where (1) convict's lawyer was

notified immediately of his re-arrest and did not request a hearing, (2) a hearing was held as soon as the convict's new lawyer requested one; (3) the scope and period of confinement after re-arrest did not exceed that imposed by the original court order, which had itself been issued pursuant to due process of law. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

That some people may misconstrue an otherwise clear judgment and sentence, and even that a clerical employee of the parole board did misconstrue it, does not render the judgment and sentence so vague and ambiguous as to deprive the person convicted of due process of law. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

Reincarceration of an inadvertently released prisoner denies due process of law only where, under all the circumstances of the case, reincarceration would contravene fundamental principles of liberty and justice. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

Reincarceration of an inadvertently released prisoner did not deny due process of law where the release was due to a ministerial mistake and where, having been released for only twenty-eight days prior to his rearrest, the prisoner had not been so thoroughly reintegrated into society that his rearrest would contravene fundamental principles of liberty and justice. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

Provision of territorial constitution prohibiting deprivation of life, liberty, or property without due process of law prohibits prosecution from suppressing any evidence favorable to an accused where the evidence is material either to guilt or punishment. Rev'd Const. Am. Samoa art. I § 2. American Samoa Gov't v. Talamoa, 10 A.S.R.2d14.

The heart of due process in parole revocation cases is a concern for basic fairness --- the non-arbitrary treatment of a probationer or parolee by the state. American Samoa Gov't v. Lam Yuen, 11 A.S.R.2d 118.

Requirements of due process in parole revocation proceedings include the parolee's right to hear the evidence against him, to be heard in person and to present witnesses and documentary evidence, and to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing such confrontation. American Samoa Gov't v. Lam Yuen, 11 A.S.R.2d 118.

In some cases, such as when an illegal sentence was pronounced on a defendant unrepresented by counsel or when the circumstances surrounding an error of law made it impossible for counsel to call it to the Court's attention within ten days, a statutory ten-day limit might amount to an unconstitutional denial of liberty without due process of law. U.S. Const. Amends. V, XIV; Revised Const. of American Samoa art. I, § 2; A.S.C.A. § 46.2402(a). American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

That a criminal may be unable to determine the exact punishment and exceptions to punishment does not render criminal statutes unconstitutional; a person is only entitled to know the maximum punishment available. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

No constitutional right to rehabilitation at public expense exists, nor do statutes authorizing rehabilitation programs or early release give any particular criminal a constitutionally protected "liberty interest" in participating in them. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Denial of an interpreter generally requires a showing of actual prejudice to the defense to justify reversal on appeal. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

Defendant's appeal of an interlocutory order denying his asserted absolute right to appointment of an interpreter on request falls within the collateral order exception since he is asserting a right not to be tried under such circumstances, and such right is effectively unreviewable, since denial of an interpreter generally requires a showing of prejudice to obtain a reversal. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

Neither the Due Process Clause of the Fifth Amendment nor the right to a fair trial guaranteed by the Sixth Amendment gives a non-indigent defendant the right to a court-appointed and government-paid interpreter. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

Trial judge has wide discretion in deciding whether to appoint an interpreter and need not accept defendant's assertion that he needs one as dispositive, but must balance defendant's right to confrontation and effective assistance against the public's interest in the economical administration of criminal law. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

American Samoa Constitution guarantees a court-appointed interpreter only to an indigent defendant who will otherwise be unable to understand the proceedings against him or to communicate with his counsel. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

The overlap of the statutes defining sodomy and deviate sexual assault does not violate a criminal defendant's due process. A.S.C.A. §§ 46.3611, 46.3612. American Samoa Gov't v. Whitney, 20 A.S.R.2d 29.

There is no need for application of the rule of lenity, where two statutes that overlap do not possess internal conflict or ambiguity. American Samoa Gov't v. Whitney, 20 A.S.R.2d 29.

When the statutes in question clearly define the conduct proscribed and the punishment available under each, due process is satisfied. American Samoa Gov't v. Whitney, 20 A.S.R.2d 29.

In passing both a sodomy and a deviate sexual assault statute, the Fono has indicated that a prosecutor has the discretion to chose between charging a Class B or Class C felony for the same conduct. A.S.C.A. §§ 46.3611, 46.3612. American Samoa Gov't v. Whitney, 20 A.S.R.2d 29.

As each of two statutes has its own penalty provisions, neither a prosecutor nor a defendant is free to choose among various sentencing provisions. American Samoa Gov't v. Whitney, 20 A.S.R.2d 29.

A non-capital criminal defendant is not constitutionally or procedurally entitled to a list of the prosecution's prospective witnesses. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 2; T.C.R.Cr.P. 16(a)(2). American Samoa Gov't v. Wilson, 24 A.S.R.2d 26.

Although a defendant is not to be prejudiced because of his indigent circumstances, he is not entitled to a transcript as of right simply upon demand. American Samoa Gov't v. Suiaunoa, 24 A.S.R.2d 161.

If, as a matter of trial strategy, counsel declines to cross-examine a witness or avoids asking certain questions, the defendant's right to confront witnesses is not violated. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

A demonstration of actual prejudice is a necessary but not sufficient element of a due process claim arising from pre-accusatory delay. The court must also consider the reasons for the delay as well as the prejudice to the accused. American Samoa Gov't v. Logovi`i, 30 A.S.R.2d 143.

In considering the reasons for pre-accusatory delay, broad leeway is given for prosecutorial discretion and legitimate investigative purposes. Conversely, a delay that is imposed for purely tactical reasons is probably violative of due process. American Samoa Gov't v. Logovi`i, 30 A.S.R.2d 143.

When a pre-accusatory delay is caused by prosecutorial neglect rather than by intentional tactical delay, the evidence of actual prejudice to the defendant must be compelling to sustain a dismissal based on due process. American Samoa Gov't v. Logovi`i, 30 A.S.R.2d 143.

The unavailability of witnesses resulting from an extended delay is not enough by itself to demonstrate that the defendant cannot receive a fair trial. The defendant must show how the testimony of the missing witnesses would have been exculpatory. American Samoa Gov't v. Logovi`i, 30 A.S.R.2d 143.

Even where Court is uninfluenced by the prosecutor's sentencing recommendation, due process requires that the sentence be vacated. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

Where the government seeks an enhanced sentence based on allegations of recidivism, due process requires that the defendants be given adequate notice and an opportunity to be heard on the recidivism issue prior to sentencing. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

Where criminal defendant had moved to exclude evidence of his prior conviction, and motion was heard prior to sentencing, he had received notice and been afforded an opportunity to be heard in accordance with the requirements of due process and his enhanced sentence was therefore constitutional. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

Suggestive show-up identification procedures may deny an accused the fairness of due process. American Samoa Gov't v. Leali`ie`e, 4 A.S.R.3d 113 (Trial Div. 2000).

Use of defendant's pre-arrest, pre-Miranda silence as substantive evidence of guilt at trial does not violate privilege against self-incrimination or right to due process. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

A fair trial in a fair tribunal is a basic requirement of due process. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

Due process requires that a jury trial include: (1) a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power; (2) a panel of impartial, indifferent jurors; and (3) a verdict based on evidence received in open court, not from outside sources. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

§ 6(3) —Equal Protection

SEE CONSTITUTIONAL LAW § 7(2) – EQUAL PROTECTION

Statutory scheme under which the same act may be punished under either of two statutes, with prosecutor having discretion to choose under which statute to prosecute, does not violate equal protection clause of federal constitution. U.S. Const. amend. 14. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

Statutory scheme under which two statutes define two different crimes, but proof of extra element is required by statute prescribing higher penalty, does not violate equal protection clause of federal constitution. U.S. Const. amend. 14. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

Statute drawing a distinction between people whose licenses were suspended for driving under the influence and people whose licenses were suspended for other reasons had a rational basis, since classification was based on conduct rather than status and legislature believed there was a special need to deter and punish drunken driving. A.S.C.A. § 22.0223. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

Even under equal protection analysis more stringent than the rational basis test, statute punishing those who drove after their licenses had been suspended for driving under the influence did not create unconstitutional classification, since (1) statutory distinction was not incoherent or unclear; (2) court should not substitute its opinion for that of the legislature on relative culpability, need for deterrence, and other factors necessary to determine range of appropriate sentences for various offenses; (3) drunken driving does appear to present special problems that might suggest the need for special statutory treatment. U.S. Const. amend 14; A.S.C.A. § 22.0223. American Samoa Gov't v. Macomber, 8 A.S.R.2d 182.

There is a rational basis for a legislative distinction between (1) people who drive under the influence and then drive with a suspended license; and (2) those who commit other sorts of conduct punishable by suspension and then drive with a suspended license; therefore, a statute embodying such a distinction did not deny equal protection of the laws. U.S. Const. Am. 14. Macomber v. American Samoa Gov't, 12 A.S.R.2d 29.

The freedom to travel is one of the freedoms a convicted criminal may lose; therefore, a requirement that a convict spend part or all of his probation outside the Territory does not unconstitutionally abridge any such right. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

To prevail under the defense of selective prosecution, a defendant must show that his prosecution was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification, and that others similarly situated have not been prosecuted. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

Selective prosecution claims are reviewed under ordinary equal protection standards. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

A claim for selective prosecution based on the publicity in a case is analyzed under the rational basis standard. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

Under the rational-basis test, the government need only show that its actions are rationally related to a legitimate state interest. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

§ 6(4) —Double Jeopardy

When each of two crimes requires proof of an element not included in the other, and when defendant sought severance of the two charges and immediately pleaded guilty to the less serious offense, trial on the other charge does not constitute double jeopardy. American Samoa Gov't v. Moafanua, 4 A.S.R.2d 33.

A crime that requires proof of specific intent is not a lesser-included offense of a crime that does not require proof of specific intent and must be separately charged. Tauasosi v. American Samoa Gov't, 7 A.S.R.2d 5.

Bill of information charging sodomy without specifying which of the various sexual acts constituting an element of the offense was alleged, sufficiently informed defendant of the nature of the charges to enable him to prepare his defense and did not subject him to double jeopardy since he could refer to the entire record of the preliminary examination, not just the bill of information, when claiming double jeopardy from a subsequent prosecution. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

For double-jeopardy purposes, a crime is a separate offense and not a lesser-included offense if each statutory provision requires proving a fact which the other does not. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 6. American Samoa Gov't v. Fealofa'i, 24 A.S.R.2d 10.

For double-jeopardy purposes, a crime is a separate offense and not a lesser-included offense if each statutory provision requires proving a fact which the other does not. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 6. American Samoa Gov't v. Schuster, 24 A.S.R.2d 15.

The entire record, and not simply the information or indictment, is scrutinized in a double-jeopardy challenge. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 6. American Samoa Gov't v. Meleisea, 24 A.S.R.2d 32.

Prison discipline does not preclude a subsequent criminal prosecution based on double jeopardy. American Samoa Gov't v. Lafoga, 30 A.S.R.2d 110.

Appellant's convictions for both Driving under the Influence (A.S.C.A. § 22.0707) and Careless Driving Causing Injury and Property Damage (A.S.C.A. § 22.0701) did not contravene A.S.C.A. § 46.3107(3) as neither violation was necessarily a violation of the other. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

The double jeopardy clause of the Fifth Amendment applies to alterations in sentencing. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

At the core of the double jeopardy clause is the principle that a defendant must not be punished more than once for the same

offense. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

A trial court's determination as to whether a criminal defendant's double jeopardy rights have been violated is reviewed de novo. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

American Samoa's double jeopardy clause affords the same protections as does the Federal Constitution. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

The double jeopardy clause of American Samoa's constitution protects an accused against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

Determination of the "same offense" is the cornerstone of any double jeopardy analysis. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

American Samoa utilizes the same-elements test, otherwise known as the 'Blockburger test,' which inquires whether each offense contains an element not contained in the other; if not, they are the same offense and double jeopardy bars additional punishment and successive prosecution. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

A.S.C.A. § 46.3107(4) does not speak to subsequent prosecutions, but is applicable only when determining whether one specific statute allows for multiple convictions arising out of one transaction. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

A single transaction can give rise to distinct offenses under separate statutes without violating the Double Jeopardy Clause. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

A.S.C.A. § 46.3107(4) did not apply to case where defendant had been charged under three separate statutes, and none of the charges arose out of the same statute. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

A lesser included offense is one whose elements are a subset of the charged offense. Am. Samoa Gov't v. Vaai, 6 A.S.R.3d 221 (Trial Div. 2002).

When there are overlapping statutes providing different penalties no lesser offense instruction need be given. Am. Samoa Gov't v. Vaai, 6 A.S.R.3d 221 (Trial Div. 2002).

When some statutory provisions expressly mention a requirement, the omission of that requirement from other statutory provisions implies that the legislature intended both the inclusion of the requirement and the exclusion of the requirement. Am. Samoa Gov't v. Vaai, 6 A.S.R.3d 221 (Trial Div. 2002).

§ 6(5) —Self Incrimination

In a joint trial, co-defendants have the right to refuse to testify based on their privilege against self-incrimination. American Samoa Gov't v. Fairholt, 28 A.S.R.2d 26.

The trial court must, upon request, instruct the jury that no inference can be drawn from defendant's refusal to testify. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Prosecution's comment on a defendant's silence, which occurs after arrest and Miranda warnings, is not allowed. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

Article I, Section 6 of the Revised Constitution of American Samoa prohibits a person from being compelled to testify against himself or herself in a criminal case. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

Although self-incriminating statements of a suspect under interrogation without a prior Miranda warning are subject to the exclusionary rule, the suspect must be in custody and subject to official interrogation. American Samoa Gov't v. Galumalemaga, 5 A.S.R.3d 24 (Trial Div. 2001).

Defendant returning from unsupervised work release was subjected to routine search on prison grounds which revealed contraband in his shoe. Without threats, deceptions, intimidations, or Miranda warnings, officer conducting search began on-the-scene questioning and defendant immediately answered. Defendant's right against self-incrimination was not violated and statements to officer are admissible. American Samoa Gov't v. Galumalemaga, 5 A.S.R.3d 24 (Trial Div. 2001).

The Revised Constitution of American Samoa guarantees individuals the right against self-incrimination and requires that any confession be voluntary. American Samoa Gov't v. Alataua, 5 A.S.R.3d 77 (Trial Div. 2001).

The right against self-incrimination requires that anyone in police custody be advised, before interrogation by the police, of his or her right to remain silent, and right to counsel. American Samoa Gov't v. Alataua, 5 A.S.R.3d 77 (Trial Div. 2001).

Use of defendant's pre-arrest, pre-Miranda silence as substantive evidence of guilt at trial does not violate privilege against self-incrimination or right to due process. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

Independent evidence that someone committed an alleged crime is the traditional minimal means of corroboration permitting admission of a defendant's incriminating statements. Am. Samoa Gov't v. Ropati, 7 A.S.R.3d 69 (Trial Div. 2003).

§ 6(6) —Right to a Speedy Trial

In case of misdemeanors, prosecution must be commenced within six months after commission of crime or offense. (CAS 807.) Government v. Palafu, 3 A.S.R. 556.

There is no fixed formula for determining when the right to a speedy trial has been violated; each case must be determined on its own facts. Rev'd Const. Am. Samoa, art. 1 § 6. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

Relevant factors in determining if right to speedy trial violated include the length of delay, the reasons for the delay, whether defendant demanded trial, and the prejudice to defendant resulting from delay. Rev'd Const. Am. Samoa, art. 1 § 6. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

Defendant's right to speedy trial was not violated, even though the delay was over a year and a prompt trial had been demanded, where the reasons for the delay were substantial, including the need to entertain and grant motions to quash many subpoenas inappropriately issued by defendant and also to conduct competency examinations; and where defendant was not substantially prejudiced by the delay, as he was not incarcerated and the documentary nature of the evidence minimized the danger of fading memories. Rev'd Const. Am. Samoa, art. 1 § 6. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

A defendant's right to a speedy trial in a criminal prosecution is protected by Article I Section 6 of the Revised Constitution of American Samoa. American Samoa Gov't. v. Togialua, 3 A.S.R.3d 78 (1999).

Accused's right to a speedy trial had not been abridged where jury trial was set for a time nearly seven (7) months post-arraignment, where defendant did not object to trial date at original trial setting, where defendant was charged with a homicide-related offense requiring substantial preparation and where criminal caseload of court was significant. American Samoa Gov't v. Togiailua, 3 A.S.R.3d 78 (1999).

The right of a defendant in a criminal prosecution to a speedy trial is a fundamental right of an accused guaranteed by Article I, Section 6 of the Revised Constitution of American Samoa of 1966, and the Sixth Amendment to the United States Constitution. American Samoa Gov't v. Majhor, 7 A.S.R.3d 147 (Trial Div. 2003).

The right of a defendant in a criminal prosecution to a speedy trial attaches when a defendant is officially accused. American Samoa Gov't v. Majhor, 7 A.S.R.3d 147 (Trial Div. 2003).

Whether the right to a speedy trial has been violated must be determined on case-by-case basis and balancing the length of delay, reasons for delay, timeliness and vigor of the defendant's assertion of the right, and the degree of prejudice to the defendant. American Samoa Gov't v. Majhor, 7 A.S.R.3d 147 (Trial Div. 2003).

A threshold showing that the length of delay is presumptively prejudicial to the defendant usually triggers the need to consider the remaining factors. In general one year is presumptively prejudicial. American Samoa Gov't v. Majhor, 7 A.S.R.3d 147 (Trial Div. 2003).

In addressing the right to a speedy trial, the court considers whether the delay is deliberate, neutral, or valid. Intentional prosecutorial delay, usually for some strategic purpose, is always suspect. American Samoa Gov't v. Majhor, 7 A.S.R.3d 147 (Trial Div. 2003).

Unless the defendant is suffering actual prejudice by the delay, the timeliness of her speedy trial demand does not of itself override the reasons for delay noted above. American Samoa Gov't v. Majhor, 7 A.S.R.3d 147 (Trial Div. 2003).

Recognized prejudice from delay usually encompasses oppressive pretrial incarceration, anxiety and concern, or impairment of defenses. The defendant must demonstrate actual prejudice in one or more of these three areas, or in some other significant way. American Samoa Gov't v. Majhor, 7 A.S.R.3d 147 (Trial Div. 2003).

In light of justifiable reasons for the delay, the defendant's pretrial incarceration and heightened anxiety, if any, during the delay are not persuasive reasons to proceed with the trial within a week. American Samoa Gov't v. Majhor, 7 A.S.R.3d 147 (Trial Div. 2003).

§ 6(7) —Trial by Jury

Disqualification of jurors in Samoa on basis of their inability to speak, read, or understand English would defeat concept of randomness that underlies idea of trial by impartial jury. American Samoa Gov't v. Agasiva, 4 A.S.R.2d 110.

A defendant does not have the right to a trial by any particular jury or jurors, but only to a trial by a competent and impartial jury. U.S. Const. Amend. VI. American Samoa Gov't v. Fealofa'i, 24 A.S.R.2d 10.

No right exists for a citizen of another country to be tried in American Samoa by a jury of his compatriots. A.S.C.A. § 46.1504(1). American Samoa Gov't v. Schuster, 24 A.S.R.2d 102.

It is the exclusive function of the jury to determine the credibility of witnesses, resolve evidentiary conflicts and draw reasonable inferences from proven facts. American Samoa Gov't v. Tauala, 25 A.S.R.2d 179.

In the absence of any contrary evidence, the court will not assume a tainted jury. American Samoa Gov't v. Snow, 26 A.S.R.2d 78.

It is the trial court's province to determine whether or not news media materials have the possibility of prejudicing the jury. A special jury voir dire is not essential to that determination, and a defendant has no right to be granted this procedure. American Samoa Gov't v. Snow, 26 A.S.R.2d 78.

Having neglected to request a sequestered jury, defendant cannot now complain of the jury's minimal exposure to daily life. American Samoa Gov't v. Snow, 26 A.S.R.2d 78.

No rule requires a jury to deliberate for any set length of time, and a verdict reached in about five minutes will be upheld. American Samoa Gov't v. Su`a, 31 A.S.R.2d 8.

A juror may not impeach his own verdict once the jury has been discharged. American Samoa Gov't v. Su`a, 31 A.S.R.2d 8.

While "extraneous" influences on the jury's deliberations can overturn a jury verdict, evidence of discussions among jurors, intimidation or harassment of one juror by another, and other intrajury influences on the verdict is not competent to impeach a verdict. American Samoa Gov't v. Su`a, 31 A.S.R.2d 8.

A.S.C.A. § 3.0232(b), which seems to mandate that jury voir dire is the court's exclusive province, prevails over any court rule to the contrary. See T.C.R.Cr.P. 24(a). American Samoa Gov't v. Pu`aa, 31 A.S.R.2d 73.

The fact that the trial judge alerted Appellant's counsel as to the costs associated with a jury trial constituted no cognizable prejudice to Appellant as Appellant ultimately received a jury trial. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

A.S.C.A. § 3.0232(b) requires all jury trials to be heard before two associate judges sitting with either the Chief or Associate Justice, even if the jury trial is held before the district court. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

Every defendant charged with an offense carrying a maximum possible punishment of over 6 months of imprisonment, whether appearing before the High Court or the district court, has the right to a jury trial. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

Due process requires that a jury trial include: (1) a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power; (2) a panel of impartial, indifferent jurors; and (3) a verdict based on evidence received in open court, not from outside sources. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

Due process is violated when inflammatory and pervasive publicity taints a jury pool, resulting in preconceived ideas by often misinformed jurors. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

There are two ways in which to show that a jury has been unfairly tainted against a criminal defendant—presumed (or inherent) prejudice and actual prejudice. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

In order to demonstrate actual prejudice to a jury trial defendant, he or she must show that it is reasonably likely that a fair and impartial jury cannot be secured. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

Actual prejudice to criminal defendant by pretrial publicity can only be discerned by reviewing both the extent and nature of the pre-trial publicity and the responses of the prospective jurors through *voir dire*. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

Motion for change of venue based on pre-trial publicity and alleged actual prejudice resulting therefrom was premature where jury panel had yet to undergo *voir dire*. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

A showing of presumed prejudice is rare, and is reserved for exceptional cases where the influence of the news media negatively pervades the proceedings, either in the community or courtroom. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

Unlike actual prejudice, presumed prejudice can be proven without *voir dire* of potential jurors, but in order to do so, a criminal defendant bears a heavy burden and must show oversaturation of highly sensationalized news coverage against him or her. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

Where criminal defendants produced six newspaper articles covering events leading up to their trials for promoting prostitution and also a number of letters to the editor slanted against them on account of their race, but failed to show any coverage in the radio or television mediums, Court refused to find presumed prejudice at pre-trial stage, but would allow defendants to demonstrate actual prejudice at *voir dire* phase of trial. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

Where issue of tainted jury was raised, pre-trial, before court, defense attorneys were allowed opportunity to submit questionnaires, in advance of trial, so that issue of juror prejudice could be thoroughly addressed. American Samoa Gov't v. Fang, 7 A.S.R.3d 104 (Trial Div. 2003).

§ 6(8) —Right to a Public Trial

Neither the rights to free speech and a free press nor a criminal defendant's constitutional right to a public trial preclude a court from excluding members of the public from the courtroom during the testimony of juvenile complaining witness in a rape case, where the court has determined after a public hearing that such exclusion is necessary to protect the witness's psychological well-being or to prevent her from being harassed and intimidated. American Samoa Gov't v. Masaniai, 4 A.S.R.2d 156.

Trial judge may exclude spectators from the courtroom during testimony when necessary to protect or shield the witness; to prevent embarrassment or emotional disturbance; or to enable a reluctant witness to testify to material facts. American Samoa Gov't v. Masaniai, 6 A.S.R.2d 114.

Trial judge properly decided, after a public hearing at which each spectator had an opportunity to express reasons for his or her desire to remain in the courtroom, that the public should be excluded during the testimony of a youthful rape victim when trial judge found that certain spectators wished to be present in order to intimidate the witness. American Samoa Gov't v. Masaniai, 6 A.S.R.2d 114.

Exclusion of spectators from courtroom under exigent circumstances did not violate criminal defendant's right to a public trial or the public's right to be present. U.S. Const. Amends. I, VI. American Samoa Gov't v. Masaniai, 6 A.S.R.2d 114.

§ 6(9) —Opening and Closing Arguments

A trial court has wide latitude and discretion in supervising the time limits, the scope, and the extent of argument and summation. Rulings on such issues are subject to review for abuse of discretion. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

In case where closing argument limited to two minutes, strong evidence was presented of Appellant's guilt, and rule limiting closing argument had dubious effect on jury's verdict, it was not abuse of discretion to impose such a time limitation. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

Where counsel fails to timely object to the trial court's rulings on the time limits, scope, and extent of argument, there must be a showing of plain error to afford a basis of reversal. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

Where the evidence against a defendant is overwhelming and would not have affected the jury's verdict, the Court's time limitation on closing arguments will not constitute plain error. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

§ 6(10) —Motion for Judgment of Acquittal

After the jury returns a guilty verdict, a defendant may move that the court set aside the verdict and enter a judgment of acquittal. T.C.R.Cr.P. Rule 29(c). American Samoa Gov't v. Tauala, 25 A.S.R.2d 179.

In considering a motion for acquittal, a trial court must determine whether, viewing all the evidence in the light most favorable to the Government and drawing all reasonable inferences and credibility choices in favor of the jury's verdict, a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt. American Samoa Gov't v. Tauala, 25 A.S.R.2d 179.

The court should set aside a guilty verdict only if the evidence weighs heavily enough against the verdict that a miscarriage of justice may have occurred, not merely because the court might have reached a different result. American Samoa Gov't v. Samana, 2 A.S.R.3d 58 (Trial Div. 1998).

Despite bad conduct of government agents during trial, reversal is not warranted on the basis of cumulative error; where there is no trial error of significance, there is no cumulative error. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

In considering a motion for acquittal, a trial court must determine whether, viewing all the evidence in the light most favorable to the Government and drawing all reasonable inferences and credibility choices in favor of the jury's verdict, a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt. American Samoa Gov't v. Leali`ie`e, 4 A.S.R.3d 113 (Trial Div. 2000).

§ 6(11) —Mistrial

Mistrial issues are usually fact intensive, and, therefore, are largely within the trial court's discretion. American Samoa Government v. Solaita, 27 A.S.R.2d 9.

A mistrial is a last resort and should not be declared absent a showing of a high degree of necessity, or manifest necessity. American Samoa Government v. Solaita, 27 A.S.R.2d 9.

In granting a mistrial, a trial court must explicitly find no reasonable alternatives. American Samoa Government v. Solaita, 27 A.S.R.2d 9.

Where prosecutors have improperly introduced evidence of defendant's pleas of nolo contendere in previous criminal

proceedings, court will not grant a mistrial, but will strike and disregard the evidence. American Samoa Gov't v. Solaita, 27 A.S.R.2d 9.

The decision of whether to move for a mistrial rather than continuing with the empaneled jury is purely strategic, and therefore not challengeable on appeal. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

Although government agents behave reprehensibly during a trial by talking to newspaper reporters and discussing their testimony with each other in direct violation of a trial court's orders, and by initially lying to the trial court about such violations, and by lying under oath during cross-examination about meeting with the prosecution to discuss testimony, and although the agents are held in contempt by the trial court, it is not necessarily error to deny a motion for mistrial under such circumstances. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

A trial court should grant a mistrial for prosecutorial misconduct if it appears more probable than not that the alleged misconduct affected the jury's verdict. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

A trial court's denial of a mistrial motion is reviewed to determine if such denial was an abuse of discretion. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Where an officer's misconduct occurs in open court, and defense counsel is given every opportunity to make hay out of the officer's misleading answers in cross-examination and in closing argument, and because catching a government agent prevaricating on the stand provides a significant boost to a defense, such behavior does not make a compelling case for a mistrial. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

§ 6(12) —Jury Instructions

Jury instructions may be written in simple, conversational language. Lavata'i v. Am. Samoa Gov't, 2 A.S.R.2d 8 (App. Div. 1984).

Where government's case is based on more than just a defendant's presence, and the jury is properly instructed on all elements of the crime, then a 'mere presence' instruction is unnecessary. American Samoa Gov't v. Samana, 2 A.S.R.3d 58 (Trial Div. 1998).

The trial court must, upon request, instruct the jury that no inference can be drawn from defendant's refusal to testify. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Whether the court's instructions to the jury correctly state the elements of a crime or adequately covered a defendant's proffered defense is reviewed de novo. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

Defense counsel's failure to request a "no inference" instruction is not outside the wide range of professionally competent assistance which is constitutionally required, nor does such failure demonstrate a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different; competent counsel could specifically choose not to request such instruction because it can be perceived as highlighting in the jurors' minds the defendant's failure to testify. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Whether a given jury instruction is an adequate substitute for a defendant's requested instruction is reviewed as a matter of law, and there is no error where the trial court rejects a defendant's request that the jury be instructed that if it "believes that a witness willfully and deliberately testified falsely, then it may disregard all of the witness' testimony," and instead instructs the jury that "in considering the testimony of any witness, you may take into account whether the witness willfully testified falsely in any respect," since such instruction is an adequate substitute for the requested one, and though it may not be as strongly worded as the requested instruction, the meaning of the instruction is identical in that a witness' untruthfulness as to one issue may be used in evaluating the witness' answers on other issues. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Whether a trial court's instructions adequately present a defendant's theory of the case is a question of law reviewed de novo. Fonoti v. Am. Samoa Gov't, 6 A.S.R.3d 77 (App. Div. 2002).

A trial court's formulation of jury instructions is reviewed for an abuse of discretion. Fonoti v. Am. Samoa Gov't, 6 A.S.R.3d 77 (App. Div. 2002).

When reviewing jury instructions, the relevant inquiry is whether the instructions as a whole are misleading or inadequate to guide the jury's deliberation. Fonoti v. Am. Samoa Gov't, 6 A.S.R.3d 77 (App. Div. 2002).

Generally, a defendant is entitled to an instruction on any defense for which sufficient evidence exists for a jury to find in his favor, but is not entitled to a particular form of an instruction so long as the jury is adequately instructed on the defendant's theory of the defense. Fonoti v. Am. Samoa Gov't, 6 A.S.R.3d 77 (App. Div. 2002).

§ 6(13) —Sufficienct Evidence/Burden of Proof

The jury's finding that an injury had occurred was not clearly erroneous where there was testimony that the victim

"experienced pain in his legs, side and back." Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

Where the evidence against a defendant is so strong that the absence of the purported error would not have changed the jury's verdict, plain error is seldom found. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

For an appellant to prevail on a claim of insufficient evidence, he must show that no rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found the essential elements of the crime beyond a reasonable doubt. Suani v. American Samoa Gov't, 1 A.S.R.3d 28 (App. Div. 1997).

In evaluating the sufficiency of the evidence the inquiry is not whether the evidence excludes every hypothesis except guilt, but whether the trial court could reasonably arrive at its verdict. Suani v. American Samoa Gov't, 1 A.S.R.3d 28 (App. Div. 1997).

There is sufficient evidence to support a conviction if, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

In reviewing sufficiency of the evidence claims the appellate court determines whether viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

In reviewing sufficiency of the evidence claims the appellate court determines whether viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

It is well within the province of the jury to draw reasonable inferences from proven facts. Thus, circumstantial evidence and inferences drawn from it may be sufficient to sustain a conviction. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Where government introduced uncontradicted testimony that defendant transported a suitcase containing several hundred grams of methamphetamine to Samoa, paid for his first class airline ticket in cash, the clothes in the suitcase fit defendant and although defendant claimed to have been paid $500 at the Honolulu airport to take a suitcase of unknown contents to Samoa, he had only $5.29 on his person at the time of his arrest in Samoa, the jury could reasonably infer defendant knew he was transporting contraband. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Beyond a reasonable doubt should not be treated as an impossible hurdle. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

Upon review of facts, verdict must stand if it is determined that rational trier of fact could find guilt beyond reasonable doubt. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

If, upon review of the facts, it is determined that a rational trier of fact could find guilt beyond reasonable doubt, the verdict must stand. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

In reviewing a trial court's findings of fact, the test is not whether facts in the record may support a decision for the appellant, but whether sufficient evidence supported the trial court's decision. Williams v. Am. Samoa Gov't, 6 A.S.R.3d 35 (App. Div. 2002).

The standard of beyond a reasonable doubt is not treated as an impossible hurdle. Williams v. Am. Samoa Gov't, 6 A.S.R.3d 35 (App. Div. 2002).

Where government's expert witness performed 2 of the 3 standard forensic tests to determine whether substance was marijuana, was unable to perform the third due to the fact that the substance was no longer in plant form, but nonetheless concluded that the substance was marijuana, there was sufficient evidence to support jury's finding that the substance in defendant's possession was marijuana. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

The test for determining if there is sufficient evidence to support a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Fonoti v. Am. Samoa Gov't, 6 A.S.R.3d 77 (App. Div. 2002).

A jury has the the exclusive province of determining the credibility of witnesses and an appellate court must assume that the jury resolved all credibility matters in a manner which supports the verdict. Fonoti v. Am. Samoa Gov't, 6 A.S.R.3d 77 (App. Div. 2002).

§ 6(14) —Record of Proceedings

Electronic recording device satisfies statutory requirement for a stenographic record and a trial de novo is not required for an appeal from district court when an adequate record has been made below. Vaela'a v. Am. Samoa Gov't, 1 A.S.R.2d 70 (App. Div. 1983).

§ 7 Punishment

§ 7(1) —General Provisions

There is no regulation affixing maximum sentence for assault and battery in Samoa, and there is no law of United States making assault and battery a crime and affixing sentence thereto, since federal courts apply laws of states in which assault and battery occurred. American Samoa v. Willis, 1 A.S.R. 635.

Where there is no federal law for assault and battery and no law in American Samoa, court will look to laws of territories and states which are available to determine maximum sentence. American Samoa v. Willis, 1 A.S.R. 635.

Sentence of six months imprisonment for assault and battery is equal to maximum in Alaska and California for first offense, and although severe, is not illegal, it being within the power of trial court. American Samoa v. Willis, 1 A.S.R. 635.

Imprisonment in Samoa is construed to mean imprisonment at hard labor during whole or any part of sentence. Akeimo v. Mulu, 2 A.S.R. 89.

Court may take into consideration fact accused thought he was excused from searching for beetle by chief in mitigation of sentence for violating statute requiring such search. Government v. Si'u, 3 A.S.R. 479.

According to law, felony is a crime which is punishable by death or imprisonment for life or more than one year, and all other crimes are misdemeanors. (CAS 801.) Government v. Palafu, 3 A.S.R. 556.

Sentence of 30 years at ordinary labor for second degree murder is less than maximum life imprisonment provided by law and cannot as matter of law be considered unreasonable or excessive punishment. (CAS 4.0453.) Fanene v. Government, 4 A.S.R. 957.

The reasons for imprisonment include preventing the defendant from committing other crimes, rehabilitation, deterrence of others, and punishment. Am. Samoa Gov't v. To'oto'o, 2 A.S.R.2d 86 (App. Div. 1985).

Although no crimes or criminals are identical, similar crimes committed by similar defendants should receive similar sentences. Am. Samoa Gov't v. To'oto'o, 2 A.S.R.2d 86 (App. Div. 1985).

Insofar as T.C.R.Cr.P. 35 purports to extend or abolish the mandatory deadline for alleging errors of law in a criminal sentence, it is in direct conflict with the statute; as such, the statute must prevail over the judge-made rule. A.S.C.A. § 43.2402(a). T.C.R.Cr.P. 35. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

The Court may correct an illegal sentence at any time. T.C.R.Cr.P. 35. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Although T.C.R.Cr.P. 35 is derived, almost verbatim, from the Federal Rules of Criminal Procedure, the federal courts are not subject to a statutory, jurisdictional limitation such as applies to the High Court of American Samoa. A.S.C.A. § 43.2402(a); T.C.R.Cr.P. 35; Fed. R. Crim. P. 35. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

A bill of attainder and ex post facto law, under Rev. Const. Am. Samoa, art. 1, § 13, apply only to criminal laws. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

A bill of attainder imposes punishment without judicial process. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

An ex post facto law creates a crime out of an innocent act when it was committed or applies a harsher penalty than the one in force when a criminal act was committed. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

T.C.R.Cr.P. 35(a), which states that an illegal sentence may be corrected at any time, conflicts with and must give way to A.S.C.A. § 46.2402, which requires that a motion for new trial shall be filed within ten days after entry of the judgment or sentence. American Samoa Gov't v. Leiataua, 30 A.S.R.2d 157.

The sentencing court may take into account retributive goals as well as rehabilitative goals, when framing an appropriate sentence. American Samoa Gov't v. Tua`ililiu, 30 A.S.R.2d 151.

A judgment and sentence entered over 10 years ago is final and not open to further reconsideration by the sentencing court. Any relief from sentence, in the way of commutation, lies exclusively within the executive's competence. See Section 9, Art. IV, Rev`d. Const. of Am. Samoa. A.S.G. v. Adams, 31 A.S.R.2d 112.

The intended deterrent effect of the sentence in a criminal case is of paramount importance. American Samoa Gov't v. Pu'aa, 1 A.S.R.3d 170 (Trial Div. 1997).

The term "custody", used in A.S.C.A. § 22.0223, is not statutorily defined and its common meaning is broader than "confinement" which is limited to detention in a penal institution. Sagapolutele v. American Samoa Gov't, 3 A.S.R.3d 34 (App. Div. 1999).

The common law has traditionally allowed courts the discretion to combine confinement with probation, work release and other alternatives as opposed to mandating straight confinement. Sagapolutele v. American Samoa Gov't, 3 A.S.R.3d 34 (App. Div. 1999).

Where statute required convicted offender to spend at least 90 days in custody, court could, at its discretion fashion a sentence which included work release or other sentencing alternatives. Sagapolutele v. American Samoa Gov't, 3 A.S.R.3d 34 (App. Div. 1999).

The sentencing court's dispositional options under A.S.C.A. § 13.1022 are substantially limited, and probation is not an appropriate disposition there. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

The power to commute sentences is reserved to the Governor under Article IV, Section 9 of the Revised Constitution of American Samoa. The Court may not, pursuant to a writ of habeas corpus or otherwise, commute a prisoner's sentence. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

§ 7(2) —Cruel & Unusual Punishment

Requiring prisoners to perform road work does not inflict cruel and unusual punishment. U.S. Const. Amend. VIII. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

Allegations that prison officials treated different inmates differently were neither proved nor entitled to judicial consideration. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

The mere fact that a person who has committed a serious crime is required for that reason to return to his own country is not, absent extraordinary circumstances, either cruel or unusual. U.S. Const., Amend. VIII. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

§ 7(3) —Miscellaneous Constitutional Restrictions

A prison may not constitutionally impose compulsory religious observances, but their imposition does not justify a prisoner's escape. Am. Samoa Gov't v. Taufoou, 2 A.S.R.2d 25 (Trial Div. 1984).

Blanket imposition of religious programs on unconsenting inmate violates establishment and freedom of religion clauses of both federal and territorial constitutions. U.S. Const. Amend. I; Rev'd Const. Am. Samoa art. I, § I.. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

That a criminal may be unable to determine the exact punishment and exceptions to punishment does not render criminal statutes unconstitutional; a person is only entitled to know the maximum punishment available. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

No constitutional right to rehabilitation at public expense exists, nor do statutes authorizing rehabilitation programs or early release give any particular criminal a constitutionally protected "liberty interest" in participating in them. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Prisoners have a constitutional right of access to the courts and a right of access to a threshold level of legal information or aid. Since the High Court maintains the only public law library in the Territory, where an incarcerated criminal defendant is proceeding pro se, the prisoner's demand for access to the High Court library is legitimate. However, the prisoner is not constitutionally guaranteed unlimited access to the law library. Security considerations and avoidance of abuse may require the prisoner to accept occasional, but regular access to the library rather than access according to his whim. The prisoner is only entitled to a reasonable amount of time to use the library. Adams v. Reavis, 1 A.S.R.3d 104 (Trial Div. 1997).

§ 7(4) —Deportation

Although federal courts have generally held that it is beyond the power of a sentencing court to order that the defendant leave the jurisdiction, such orders have been a regular feature of criminal sentences in American Samoa for many years. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Criminal convictions are proper grounds for deportation. A.S.C.A. § 41.0616(4), (6), (9), (10), (11), (16); 8 U.S.C. § 1251(a)(5), (11), (14), (15), (16). American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

A person who has been "convicted of a crime involving moral turpitude committed within 5 years after any entry" is deportable; if he were outside the territory, he would be excludable as a convicted felon. A.S.C.A. §§ 41.0615(8), 41.0617(4). American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

§ 7(5) —Probation

§ 7(5)(a)—Generally

Probation's public protection purpose includes the protection of particular people from the probationer, as well as deterring the probationer from future misconduct. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Under the 1987 amendment to the probation statute, sentencing judges are free to impose probation for reasons other than the rehabilitation-related provisions of the statute. A.S.C.A. §§ 46.2203, 46.2206. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Unless otherwise provided in penalty enactments of Title 46, sentencing court in its discretion may find that appropriate disposition of particular case should involve probation rather

than simply imprisonment. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

The sentencing court's dispositional options under A.S.C.A. § 13.1022 are substantially limited, and probation is not an appropriate disposition there. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

Misconduct by a probationer who has served a period of detention but not completed his full term of probation may be sanctioned by the supervising court, and may be required to serve all or part of the remaining probation term in detention. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

A.S.C.A. § 13.1022 excludes probation from the court's sentencing options. Williams v. Am. Samoa Gov't, 6 A.S.R.3d 35 (App. Div. 2002).

§ 7(5)(b)—Terms of Probation

Sentencing court may require convicted defendant to serve multiple periods of detention as conditions of multiple terms of probation, but the periods of detention must be served concurrently and the aggregate period of detention cannot exceed the statutory maximum. A.S.C.A. §§ 46.2206, 46.2207. American Samoa Gov't v. Masaniai, 6 A.S.R.2d 114.

The Court's power over probationers is strictly limited to the term of the probation, which may not exceed five years. A.S.C.A. § 46.2204. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

A.S.C.A. § 46.2204(a)(1), which provides limitations on the terms during which probation may remain conditional, and A.S.C.A. §46.2206(2), which makes provisions for terms of detention during probation, are in pari materia but are not in contradiction; the former governs the length of time during which a defendant's probation may be revoked, and the latter limits the duration of incarceration during a defendant's probation, and so these statutes are non-contradictory, harmonious, and therefore valid. American Samoa Gov't v. Alo, 2 A.S.R.3d 91 (Trial Div. 1998).

The "term" of probation is the length of a defendant's probation as determined by the sentencing court within the maximum limits established by statute. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

The statutes do not provide any clear grant of authority for the courts to enlarge a probation terms. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

Unless earlier terminated by the court, the term of probation generally expires at the end of its duration. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

The law authorizes the court under certain circumstances to discharge a defendant from the conditions of probation prior to the expiration of his term of probation. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

A.S.C.A. § 46.2209 only allows modification or enlargement of conditions of probation, not the length of the term of probation. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

The statutory powers of the court to enforce conditions of probation must be initiated (or made manifest) prior to the expiration of the term of probation. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

Probation cannot remain "conditional" beyond the maximum term. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

§ 7(5)(c)—Conditions of Probation

Release of prisoner within two weeks after court had sentenced him to a year of detention as condition of probation, whether called a furlough, work release, reward for good behavior, compassionate leave, or by another label, violated statutes and court order. American Samoa Gov't v. Doletorts, 3 A.S.R.2d 63

Prisoner serving a term of detention as a condition of probation was under the direct jurisdiction of the court, which had the power to prescribe conditions of detention. American Samoa Gov't v. Masaniai, 5 A.S.R.2d 152.

Where court had ordered that prisoner not be allowed to leave correctional facility without permission of the court except for emergency medical treatment, prison officials had no authority to allow prisoner to appear in court for post conviction motions without requesting permission of court. American Samoa Gov't v. Masaniai, 5 A.S.R.2d 152.

Court's purpose in imposing detention as a condition to probation, during which jurisdiction over the prisoner remains with the High Court rather than with prison officials, is to enable the court to monitor and control the extent to which prisoners are allowed to leave the correctional facility. American Samoa Gov't v. Masaniai, 5 A.S.R.2d 152.

Amendment to probation statute, allowing court to impose detention as a condition of probation for up to one-third of the maximum term of imprisonment, was intended to give court the power to prevent the early release of dangerous criminals. A.S.C.A. § 46.2206. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Parole and conditional probation statutes provide two alternative modes of sentencing, with the mandatory period of detention limited to one-third of the sentence in both cases but

conditional probation statute allowing the court to exercise greater control over the conditions of detention. A.S.C.A. §§ 46.2206, 46.2304, 46.2701 et seq. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Statute allowing court to impose detention as a condition of probation did not violate the constitutional provision allowing governor to grant pardons, since any prisoner pardoned by the governor could no longer be incarcerated. Rev. Const. Am. Samoa art. IV § 9; A.S.C.A. § 46.2206. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Where probation statute originally provided that probation could be imposed only in cases where incarceration was not necessary for the protection of the public, and also provided that a brief period of detention could be imposed as a condition of probation, but statute was later amended to provide that such detention could be imposed for up to fifteen years, the later enactment implicitly amended the earlier; court could therefore impose detention as a condition of probation not only for the purpose of rehabilitation, but also where incarceration was deemed necessary for the protection of the public. A.S.C.A. §§ 46.2203, 46.2206. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

There is no inconsistency in suspending a "sentence of imprisonment" while simultaneously imposing "detention" as a condition of probation, where statutes use these terms to denote two alternative modes of sentencing. A.S.C.A. §§ 46.2206, 46.2301 et seq. Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

The High Court has continuing jurisdiction to terminate or modify the conditions of probation throughout the entire term of probation. A.S.C.A. § 46.2205. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

An untimely motion for a new trial was construed to be one to terminate conditions of probation. A.S.C.A. § 46.2205. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

The High Court has the power to impose detention as a condition of probation for a period equivalent to one-third of the maximum sentence of imprisonment authorized by law. A.S.C.A. § 46.2206. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Conditions of probation are valid if they are reasonably related either to rehabilitation or to public protection, at least if the entire sentence considered as a whole was reasonably calculated to achieve both of these purposes. A.S.C.A. § 46.2205. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

In imposing conditions of probation, the sentencing judge is well-situated to know whether a particular offender needs to be insulated from his past environment, his associates, his victim, or those who assisted in his prosecution, as well as the best methods to assure such insulation. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

Requiring a probationer to reside in a certain place may be imposed for the protection of the public, particularly the victim and others who may have assisted in the prosecution, and to remove the defendant from an environment found to have contributed to his criminal behavior. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

The freedom to travel is one of the freedoms a convicted criminal may lose; therefore, a requirement that a convict spend part or all of his probation outside the Territory does not unconstitutionally abridge any such right. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

In a criminal case, a court may require a defendant to leave the territory as a condition of probation and may impose other probationary conditions reasonably related to the purposes of probation beyond those conditions enumerated in the statute. A.S.C.A. §§ 41.0614, 46.2205. American Samoa Gov't v. Salu, 22 A.S.R.2d 48.

Although increasing a criminal penalty is to subject the defendant to double punishment for the same offense in violation of the Fifth Amendment to the United States Constitution, the court may modify a period of detention ordered as a condition of probation in view of changed circumstances. American Samoa Gov’t v. Leiataua, 30 A.S.R.2d 93.

The common law has traditionally allowed courts the discretion to combine confinement with probation, work release and other alternatives as opposed to mandating straight confinement. Sagapolutele v. American Samoa Gov’t, 3 A.S.R.3d 34 (App. Div. 1999).

“Conditions” of probation are those requirements established by the court for the defendant to follow during part or all of the term of probation. Pedro v. Am. Samoa Gov’t, 6 A.S.R.3d 27 (App. Div. 2002).

Detention during the term of probation is designated by statute as a permissible condition of probation. Pedro v. Am. Samoa Gov’t, 6 A.S.R.3d 27 (App. Div. 2002).

Conditions of probation may generally be revoked or modified at any time by the court. Pedro v. Am. Samoa Gov’t, 6 A.S.R.3d 27 (App. Div. 2002).

Where a defendant violates a condition of probation prior to the expiration or termination of his probation term, the court may revoke probation and either require execution of a previously suspended sentence, impose an authorized sentence upon a defendant, or continue the defendant on probation with

existing, modified or enlarged conditions of probation. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

A.S.C.A. § 46.2209 only allows modification or enlargement of conditions of probation, not the length of the term of probation. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

The statutory powers of the court to enforce conditions of probation must be initiated (or made manifest) prior to the expiration of the term of probation. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

Probation cannot remain "conditional" beyond the maximum term. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

§ 7(6) —Parole

Employee of Attorney General may make recommendation to Parole Board for reduction of sentence. (CAS 4.0203.) Fanene v. Government, 4 A.S.R. 957.

Powers of pardon and parole granted to executive by statutes and constitution do not give the executive carte blanche to ignore court orders and sentences. American Samoa Gov't v. Doletorts, 3 A.S.R.2d 63.

Where prisoner had not served one-third of his sentence of imprisonment, parole board had no jurisdiction to entertain his application for parole, and parole board order was of no legal effect. A.S.C.A. §§ 46.2304, 46.2702. Atuatasi v. Moaali`itele, 8 A.S.R.2d 53.

Where one section of parole statute provided that parole should not be given unless institutional confinement is deemed unnecessary, and later amendment to another section of the statute was clearly designed to allow court to impose probation and conditional detention in certain cases where confinement is deemed necessary, the general rule stated in the earlier provision does not operate as a limitation on the power granted by the later provision. A.S.C.A. §§ 46.2203, 46.2206. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Statute providing for parole of prisoner who has served one-third of his sentence of imprisonment has no application to probationer whose sentence of imprisonment has been suspended and who is serving a term of detention, for a period no greater than one-third of the suspended sentence of imprisonment, as a condition of his probation. A.S.C.A. §§ 46.2203, 46.2206(3), 46.2209. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Prisoner whose sentence of imprisonment was suspended but who was required to serve a term of detention as a condition of probation, under a statute providing that such term could be no greater than one-third of the suspended sentence of imprisonment, was not unfairly deprived of the opportunity to apply for parole, since he would be released from detention on the same day that he would otherwise have been eligible to apply for parole. A.S.C.A. §§ 46.2206, 46.2304, 46.2701 et seq. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Warden who released prisoner in violation of court order, on the authority of invalid order of parole board, was in continuing violation of court order for as long as the prisoner remained at large. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Prisoner who was sentenced to detention as a condition of probation, under statute limiting such conditional detention to one-third of the maximum prescribed term of imprisonment for the crime of which he was convicted, was not arbitrarily denied access to parole where under parole statute he would have been required to serve one-third of his sentence before becoming eligible for parole. A.S.C.A. §§ 46.2206, 46.2304(a)(1). Atuatasi v. American Samoa Gov't, 9 A.S.R.2d 67.

§ 7(7) —Parole Revocation

Parole revocation process may be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial. American Samoa Gov't v. Lam Yuen, 11 A.S.R.2d 118.

The heart of due process in parole revocation cases is a concern for basic fairness --- the non-arbitrary treatment of a probationer or parolee by the state. American Samoa Gov't v. Lam Yuen, 11 A.S.R.2d 118.

Requirements of due process in parole revocation proceedings include the parolee's right to hear the evidence against him, to be heard in person and to present witnesses and documentary evidence, and to confront and cross-examine adverse witnesses unless the hearing officer specifically finds good cause for not allowing such confrontation. American Samoa Gov't v. Lam Yuen, 11 A.S.R.2d 118.

Transcript from a preliminary examination may be considered at a parole revocation hearing. American Samoa Gov't v. Lam Yuen, 11 A.S.R.2d 118.

When a criminal court imposes a term of imprisonment with execution suspended, the sentence is the term of imprisonment, which does not begin unless and until probation is revoked. This sentence is distinct from any detention that is a condition of probation. American Samoa Gov't v. Leiataua, 30 A.S.R.2d 157.

Unlike a criminal sentence, the court may modify a detention that is a condition of probation under changed circumstances

without finding that the party has violated probation. American Samoa Gov't v. Leiataua, 30 A.S.R.2d 157.

Although A.S.C.A. § 46.2072(b) does not create strict time parameters for considering or acting upon a parole application, it does plainly indicate that the application must be evaluated "[u]pon receipt." This language clearly does not permit the Parole Board to unduly delay consideration of a parole application in order to get several hearings out of the way at the same time, or for other reasons of convenience. American Samoa Gov't v. Adams, 29 A.S.R.2d 160.

The decision by the Board of whether or not to release a prisoner on parole is a discretionary matter. American Samoa Gov't v. Adams, 29 A.S.R.2d 180.

This list of three conditions of release is not a comprehensive enumeration of what may be required, but is instead an enumeration of the minimum requirements. The statutory language is inclusive and not preclusive, and the Board is free to place other conditions upon parole which it finds "reasonable," as long as the enumerated minimum requirements are included. American Samoa Gov't v. Adams, 29 A.S.R.2d 180.

Where parole has been revoked, the parole violator serves not only the balance of his unexpired prison term but also, as an additional prison term, all of his or her parole term. Pedro v. Am. Samoa Gov't, 6 A.S.R.3d 27 (App. Div. 2002).

§ 7(8) —Conditions upon Release

Evidence that members of convict's family had been having economic and psychological problems since his incarceration was insufficient to justify his release pending appeal, where the crimes of which he had been convicted were serious felonies involving sexual abuse of a minor child, his behavior in connection with the crimes and the subsequent proceedings had been characterized by violence and other revenge against family members, and the appeal schedule had been accelerated so as to minimize the period of detention between conviction and appellate review. American Samoa Gov't v. Masaniai, 5 A.S.R.2d 143.

Court that ordered defendant released from mental institution, to which he had been committed after being found not guilty of first degree murder by reason of insanity, did not act unconstitutionally in imposing conditions (1) that he reside with his wife in Los Angeles unless granted permission by the court to reside elsewhere; (2) that he refrain from use of alcohol; and (3) that he consult with a physician periodically. American Samoa Gov't v. Satele, 7 A.S.R.2d 154.

Court order permitting release of a prisoner should not be construed to require the release of the prisoner when such release would be contrary to the best judgment of the commissioner of public safety and when defendant's counsel had not informed the court that release had been denied by the commissioner. American Samoa Gov't v. Felise (Mem.), 11 A.S.R.2d 132.

Attempts by warden and prisoner to cover their tracks, by omitting any record of the prisoner's comings and goings from the prison log book and by lying in court when asked whether the prisoner had been released, were inconsistent with their contentions that they had not fully understood the court's order prohibiting release of the prisoner. American Samoa Gov't v. Laumoli, 12 A.S.R.2d 111.

Where defendant had been found not guilty by reason of insanity of two murder charges, trial judge's conclusions that a controlled environment was necessary to minimize the risk that the defendant's dangerous condition would recur was supported in the record, and new evidence purporting to show that defendant was no longer dangerous was based primarily on defendant's physical weakness and lack of co-ordination, court could not conclude that defendant would no longer be dangerous if released into the general population. American Samoa Gov't v. Satele, 14 A.S.R.2d 95.

In light of the Court's concern about defendant's proximity to the victim, evidence supporting a request for work release should include the testimony or affidavit of the proposed employer setting forth the terms of employment; the testimony or affidavit of the Warden of the Correctional Facility indicating whether the defendant is, in his judgment, a good candidate for work release; and testimony of the Child Protection officials who have been counseling the victim and her family. American Samoa Gov't v. Li`a, 16 A.S.R.2d 23.

The Commissioner of Public Safety does not possess unbridled discretion to release willy nilly persons sentenced by the court to a term of imprisonment at the Territorial Correctional Facility. See A.S.C.A. § 46.2303(c). A.S.G. v. Ki, 31 A.S.R.2d 118.

§ 7(9) —Work Release

A.S.C.A. § 46.2521 vests supervision of the work release program at the Territorial Correctional Facility with the Warden and therefore the Court lacks authority to grant work release pursuant to a writ of habeas corpus. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

§ 8 Post-Verdict Motions

§ 8(1) —Motion for New Trial

New trial will not be granted because of absence of witness unless absence was ground of application for continuance or valid excuse is given for not having made application. Tigi v. Government, 4 A.S.R. 902.

Party cannot speculate on winning a favorable verdict despite absence of witness and when failing, successfully ask for new trial. Tigi v. Government, 4 A.S.R. 902.

A motion for new trial is addressed to the sound discretion of the trial court and trial court's decision will not be overturned on review except upon manifest abuse. Am. Samoa Gov't v. To'oto'o, 2 A.S.R.2d 61 (App. Div. 1985).

A motion for a new trial in a criminal case "shall be filed within 10 days after the announcement of judgment or sentence." A.S.C.A. § 46.2402(a). American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

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.

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.

What is essential to a motion for a new trial is that it be filed within the statutory period and that it fully apprises the court of the asserted errors in the judgment or sentence, so that the trial court may consider for itself whether any such errors occurred and make appropriate corrections. American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

In some cases, such as when an illegal sentence was pronounced on a defendant unrepresented by counsel or when the circumstances surrounding an error of law made it impossible for counsel to call it to the Court's attention within ten days, a statutory ten-day limit might amount to an unconstitutional denial of liberty without due process of law. U.S. Const. Amends. V, XIV; Revised Const. of American Samoa art. I, § 2; A.S.C.A. § 46.2402(a). American Samoa Gov't v. Falefatu, 17 A.S.R.2d 114.

In the context of a motion for a new trial, the purpose of this particularity requirement is to avoid unnecessary appeals by giving the trial court itself a chance to correct any errors it may have made. Toleafoa v. American Samoa Gov't, 26 A.S.R.2d 20.

T.C.R.Cr.P. Rule 33 provides that the court, on a defendant's motion, may grant a new trial if required in the interest of justice. When the court considers such a motion, the burden is on a convicted defendant to show that some error was committed and that error was prejudicial to him. American Samoa Gov't v. Snow, 26 A.S.R.2d 78.

The 10-day time period mandated by A.S.C.A. § 46.2402(a) for filing a motion for new trial does not begin to accrue until the defendant is sentenced. American Samoa Gov't v. Tiumalu, 28 A.S.R.2d 136.

The court will treat a motion for new trial, which was filed after verdict but before sentencing, as being timely filed. American Samoa Gov't v. Tiumalu, 28 A.S.R.2d 136.

Under T.C.R.Cr.P. 33, the court can grant a new trial to a defendant "if required in the interest of justice." American Samoa Gov't v. Suani, 29 A.S.R.2d 189.

Although it is within the court's discretion whether to grant a new trial, the court will not do so unless it has clearly erred in its findings or conclusions during the original trial. American Samoa Gov't v. Suani, 29 A.S.R.2d 189.

A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. American Samoa Gov't v. Suani, 29 A.S.R.2d 189.

T.C.R.Cr.P. 35(a), which states that an illegal sentence may be corrected at any time, conflicts with and must give way to A.S.C.A. § 46.2402, which requires that a motion for new trial shall be filed within ten days after entry of the judgment or sentence. American Samoa Gov't v. Leiataua, 30 A.S.R.2d 157.

A new trial may be granted to a criminal defendant if required in the interests of justice. American Samoa Gov't v. Samana, 2 A.S.R.3d 58 (Trial Div. 1998).

Except under special circumstances, the rules of criminal procedure do not allow a defendant to continually raise new arguments after others fail, and where a motion is styled as one for reconsideration, but actually seeks a de novo hearing to present new evidence, it goes beyond the bounds of a motion for new trial/reconsideration. American Samoa Gov't v. Pearson, 2 A.S.R.3d 102 (Trial Div. 1998).

A motion for new trial/reconsideration is designed to give the trial court the opportunity to correct errors and make appropriate changes, if necessary, in order to obviate unnecessary appeals. American Samoa Gov't v. Pearson, 2 A.S.R.3d 102 (Trial Div. 1998).

In reviewing a motion for new trial, the court has broad power to grant relief. It is within the court's discretion to weigh the evidence and consider the credibility of the witnesses. Am. Samoa Gov't v. Ropati, 7 A.S.R.3d 69 (Trial Div. 2003).

A new trial should be granted only if it is in the interest of justice, and when a court finds there to have been no legal errors, there is no reason to grant such motion. Am. Samoa Gov't v. Ropati, 7 A.S.R.3d 69 (Trial Div. 2003).

§ 8(2) —Motion for Arrest of Judgment

RESERVED

§ 8(3) —Motion to Vacate Sentence

Although a defendant cannot be convicted of a crime unless the evidence establishes his guilt beyond a reasonable doubt, a conviction should not be vacated merely because at some time after the conviction the accumulation of evidence against the defendant falls slightly below this standard. American Samoa Gov't v. Masaniai, 4 A.S.R.2d 183.

That a complaining witness in a sexual assault case later recants her testimony does not of itself require that the conviction be vacated. American Samoa Gov't v. Masaniai, 4 A.S.R.2d 183.

Conviction of father for sex crimes against his minor daughter should not be vacated on account of later statement by the complaining witness that she had testified falsely at trial, at least where (1) other witnesses reaffirmed their testimony concerning defendant's admissions and (2) court concluded from testimony and demeanor of complaining witness that she had testified truthfully at trial and had been moved to recant only because of pressure from her family and a desire to help her father. American Samoa Gov't v. Masaniai, 4 A.S.R.2d 183.

§ 8(4) —Motion to Correct or Reduce Sentence

Motion for reduction of sentence must be made within 120 days of sentencing; this time limit cannot be extended. T.C.R.Cr.P. Rules 35, 45. American Samoa Gov't v. Tile, 8 A.S.R.2d 120.

§ 8(5) —Stays of Proceedings

In determining whether a legal question is substantial enough to grant a stay of execution of a criminal sentence or release pending appeal, a substantial question is a close question or one that very well could be decided the other way. American Samoa Gov't v. Leiataua, 30 A.S.R.2d 130.

Because the language of A.S.C.A. § 46.2401 is weighted against granting a stay of execution of a criminal sentence, a person seeking a stay bears the burden of showing that a close question of law exists. American Samoa Gov't v. Leiataua, 30 A.S.R.2d 130.

When two criminal sentences are identical and are running concurrently, the upholding of one is sufficient to deny the stay of execution without examination of the other. American Samoa Gov't v. Leiataua, 30 A.S.R.2d 130.

§ 8(6) —Habeas Corpus & Conditions of Confinement

Actual custody is not necessary for habeas corpus relief. Tumui v. Fa'alevao, 2 A.S.R.2d 33 (Trial Div. 1983).

Evidence that members of convict's family had been having economic and psychological problems since his incarceration was insufficient to justify his release pending appeal, where the crimes of which he had been convicted were serious felonies involving sexual abuse of a minor child, his behavior in connection with the crimes and the subsequent proceedings had been characterized by violence and other revenge against family members, and the appeal schedule had been accelerated so as to minimize the period of detention between conviction and appellate review. American Samoa Gov't v. Masaniai, 5 A.S.R.2d 143.

Habeas corpus proceeding serves to question the lawfulness of a conviction and confinement, not the merits of the underlying criminal charge, and such a proceeding must not be used as substitute for appeal. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Under the rule requiring court to read pleadings broadly when necessary to promote justice, court would view prisoner's second motion for reduction of sentence as a petition for habeas corpus rather than dismissing it as a repetition of previously denied motion. T.C.R.C.P. Rule 8(f). American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

Counsel's failure to file a requested appeal of a criminal conviction violates defendant's right to effective assistance of counsel, justifies habeas corpus relief without a showing by defendant of prejudice or doubtfulness of guilt, and entitles defendant to an out-of-time appeal. U.S. Const. Amend. VI. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

While the judiciary cannot ordinarily employ writ of habeas corpus to review prison management or the conditions of a prisoner's otherwise lawful confinement, exceptional prison circumstances rising to the level of constitutional deprivations are within the court's jurisdiction. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

Prisoner was entitled to habeas corpus relief from prison conditions that placed him in danger of grave physical and psychological harm. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

While the judiciary cannot ordinarily employ writ of habeas corpus to review prison management or the conditions of a prisoner's otherwise lawful confinement, exceptional prison circumstances rising to the level of constitutional deprivations are within the court's jurisdiction. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

Prisoner was entitled to habeas corpus relief from prison conditions that placed him in danger of grave physical and psychological harm. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

Territorial government, having taken a person into custody and sought his commitment on the ground that he was a danger to himself and others, had an obligation to provide adequate treatment for his condition. American Samoa Gov't v. Tofiga, 14 A.S.R.2d 30.

The Government's right to hold a prisoner gives rise to a correlative duty to protect that prisoner against assault and injury, especially when the prisoner is an immigration detainee who has been convicted of no crime. Rakhshan v. Tuilefano, 18 A.S.R.2d 18.

A prisoner detained for immigration purposes is entitled to relief from conditions of confinement that include exposure to other inmates of proven vicious temperament. Rakhshan v. Tuilefano, 18 A.S.R.2d 18.

It is not unreasonable to confine an immigration detainee and other non-dangerous inmates within an enclosed building for two hours a day while a dangerous inmate exercises and attends religious services. Rakhshan v. Tuilefano, 18 A.S.R.2d 46.

When a dangerous inmate threatens other inmates, he and not the others, should be isolated. Rakhshan v. Tuilefano, 18 A.S.R.2d 46.

The Government has the discretion to save money by detaining inmates in the Tafuna Correctional Facility, rather than in a high-security institution in the United States, provided that it can do so without violating its constitutional and legal obligations to protect fellow inmates and members of the general public from those whom it has taken within its custody. Rakhshan v. Tuilefano, 18 A.S.R.2d 46.

The writ of habeas corpus or "the great writ" is to provide "immediate relief from illegal detention." Suisala v. Moaali`itele, 6 A.S.R 2d 15, 18 (Trial Div. 1987). Habeas corpus is not a vehicle for the courts to inquire into management of the prison system, unless "exceptional circumstances" rise to the level of "constitutional deprivation." American Samoa Gov't v. Adams, 29 A.S.R.2d 160.

When an incarcerated criminal must leave the jurisdiction of the court in order to receive the specialized medical diagnosis then indicated, the medical release gives the person a temporary reprieve from the period of detention and dilutes the punishment, rehabilitative, and deterrent aspects of the detention. The addition of one half-day of detention, or more if appropriate, for every day of release from detention is intended to strengthen the detention objectives in a way that is rationally related to the manner in which it was weakened by the reprieve from detention. American Samoa Gov't v. Leiataua, 30 A.S.R.2d 93.

When an incarcerated criminal must leave the jurisdiction of the court in order to receive the specialized medical diagnosis then indicated and the person further weakens the detention purposes by needlessly prolonging the stay in outside the jurisdiction, added detention time may aim at inducing the criminal to complete medical tests and return to American Samoa in a timely manner. American Samoa Gov't v. Leiataua, 30 A.S.R.2d 93.

The court has jurisdiction on matters of prison administration, an executive function based on our inherent jurisdiction to ensure that the court's process is properly enforced and not negated through arbitrary executive action. A.S.G. v. Ki, 31 A.S.R.2d 118.

The Revised Constitution of American Samoa provides for the writ of habeas corpus under Article I, Section 7. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

The writ of habeas corpus provides immediate relief from illegal detention. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

A.S.C.A. § 46.2521 vests supervision of the work release program at the Territorial Correctional Facility with the Warden and therefore the Court lacks authority to grant work release pursuant to a writ of habeas corpus. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

The power to commute sentences is reserved to the Governor under Article IV, Section 9 of the Revised Constitution of American Samoa. The Court may not, pursuant to a writ of habeas corpus or otherwise, commute a prisoner's sentence. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

Where prisoner moved for writ of habeas corpus, court properly considered only the term of imprisonment under which he was currently serving, not additional terms which he was to serve in the future and which were consecutive to his present one. Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

Habeas corpus is not a vehicle for the courts to inquire into management of the prison system, unless "exceptional circumstances" exist, rising to the level of a "constitutional deprivation." Siaumau v. Am. Samoa Gov't, 7 A.S.R.3d 130 (Trial Div. 2003).

§ 8(7) —Post Verdict Motions Generally

A defendant's rights under the Sixth Amendment to the United States Constitution and Article I, section 14 of the Revised

Constitution of American Samoa to be present at trial does not entitle a defendant to be present at post-judgment motions. Am. Samoa Gov't v. Vaitautolu, 2 A.S.R.2d 70 (Trial Div. 1985).

The Trial Division of the High Court lacks any authority to overturn final judgments and sentences in criminal matters. Any relief from the judgment and sentence is exclusively within the executive's authority through commutation, reprieve or pardon. A.S.G. v. McKenzie, 31 A.S.R.2d 151.

§ 9 Appeals

§ 9(1) —Generally

Evidence supports appellant's knowledge of right to appeal and lack of desire to appeal. Fanene v. Government, 4 A.S.R. 957.

Trial court rule authorizing the government to file a new criminal complaint for the same offense after dismissal of the complaint by district court for lack of probable cause provided government with an adequate remedy where government claimed the complaint should not have been dismissed. T.C.R.Cr.P. 5.1(b). American Samoa Gov't v. District Court, 10 A.S.R.2d 18.

Appellate court could not assume, from the mere fact of dismissal of criminal complaints by the district court that dismissal resulted from misconstruction of a statute rather than the insufficiency of the evidence. A.S.C.A. § 46.2405(a)(1). American Samoa Gov't v. Hirata, 12 A.S.R.2d 22.

Where defendant asserts a right, which is or includes a right not to bear the burden of the suit itself, regardless of the outcome, he may immediately appeal a denial of that right under the collateral order exception. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

Although a defendant is not to be prejudiced because of his indigent circumstances, he is not entitled to a transcript as of right simply upon demand. American Samoa Gov't v. Suiaunoa, 24 A.S.R.2d 161.

Under A.C.R. 10(b)(2), the appellant is required to provide the Appellate Division with record adequate to permit a fair and adequate review. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

§ 9(2) —Power of Appellate Court

It is not province of appellate court to determine credibility of conflicting evidence, since presumption is in favor of verdict, and appellate court will not interfere when evidence is conflicting, if there is material evidence to support verdict such as admission by defendant himself that he was owner of pig which went astray in violation of criminal statute. American Samoa v. Makuati, 1 A.S.R. 663.

Ordinarily it is not within province of appellate court to determine credibility of conflicting evidence since presumption is in favor of verdict and appellate court will not interfere when evidence is conflicting if there is material evidence tending to support verdict. American Samoa v. Sale, 2 A.S.R. 635.

In case of appeals from District Court, Appellate Division of the High Court may review facts as well as law, and in criminal appeals, appellate court may set aside judgment of conviction, order new trial, commute, reduce, or suspend execution of sentence. Fe'a v. Government, 3 A.S.R. 496.

Appellate court may commute, reduce (but not increase) or suspend execution of sentence. (CAS 3.0503) Tigi v. Government, 4 A.S.R. 894.

Appellate court will use authority to reduce or modify sentence. (CAS 3.0503) Tigi v. Government, 4 A.S.R. 902.

Power of Appellate Division to reduce or suspend execution of sentence is only present when timely appeal is filed. (CAS 3.0503) Fanene v. Government, 4 A.S.R. 957.

Order on appeal is effectively unreviewable when a showing of prejudice to the defense is required to obtain a reversal. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

Appellate court will not set aside trial court's findings of fact in absence of clear error. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

§ 9(3) —Time for Appeals

In order for Appellate Court to have jurisdiction, Notice of Appeal to Appellate Division of the High Court must be filed within 30 days after judgment of trial court. Fanene v. Government, 4 A.S.R. 957.

Legislative intent to procedural statute is that time for appeals should be limited in manner similar to other jurisdictions. Fanene v. Government, 4 A.S.R. 957.

Although courts of American Samoa apply federal rules only "where it is applicable," this does not confer upon Appellate Division jurisdiction to extend time for appeal even if special circumstances exist. Fanene v. Government, 4 A.S.R. 957.

American Samoa procedure for appeals from Trial Division to Appellate Division of the High Court incorporates United States Federal Rules' provisions as to time and procedure. Fanene v. Government, 4 A.S.R. 957.

Where appeal is not taken within time fixed by statute, jurisdiction cannot be conferred upon appellate court by consent of parties or by waivers. Fanene v. Government, 4 A.S.R. 957.

In appeal proceeding there is no right to a transcript without charge after time for appeal has expired. Fanene v. Government, 4 A.S.R. 957.

§ 9(4) —Appellate Jurisdiction

Although courts of American Samoa apply federal rules only "where it is applicable," this does not confer upon Appellate Division jurisdiction to extend time for appeal even if special circumstances exist. Fanene v. Government, 4 A.S.R. 957.

Where appeal is not taken within time fixed by statute, jurisdiction cannot be conferred upon appellate court by consent of parties or by waivers. Fanene v. Government, 4 A.S.R. 957.

It would be inappropriate to grant interim relief on an appealed motion when the court believes it is without jurisdiction of the appeal. Kim v. American Samoa Government, 17 A.S.R.2d 1.

§ 9(5) —Good Faith

Counsel who believes requested appeal of criminal conviction to be frivolous must so advise the court, request permission to withdraw, and file a brief identifying any points in the record that could conceivably support an appeal. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

In the criminal context, good faith is judged by an objective standard, meaning that an appeal is taken in good faith if it raises a non-frivolous issue. American Samoa Gov't v. Suani, 30 A.S.R.2d 27.

The burden to prove that a criminal appeal is frivolous rests with the government. American Samoa Gov't v. Suani, 30 A.S.R.2d 27.

§ 9(6) —Right to Appeal

Statute authorizing the government to appeal from dismissal of criminal complaint where dismissal arose from construction of statute provided government with an adequate remedy for errors of law by district court. A.S.C.A. § 46.2405. American Samoa Gov't v. District Court, 10 A.S.R.2d 18.

Where statutory right of appeal from alleged errors of law by district court provided government with an adequate remedy, government's petition to High Court for writ of mandamus should be denied. A.S.C.A. § 46.2405. American Samoa Gov't v. District Court, 10 A.S.R.2d 18.

Where the government appeals from an order dismissing criminal charges, it must show that dismissal resulted from the misconstruction of the statute upon which prosecution was founded. A.S.C.A. § 46.2405(a)(1). American Samoa Gov't v. Hirata, 12 A.S.R.2d 22.

§ 9(7) —Appellate Standards of Review

"Plain error" is defined as an error or defect which affects substantial rights. Pule v. American Samoa Gov't, 1 A.S.R.3d 7 (App. Div. 1997).

A trial court's factual findings are deferred to unless clearly erroneous. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Under the plain-error standard there must be (1) error, (2) that is plain, and (3) that affects substantial rights. If all three conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error seriously affects the fairness, integrity, or public reputation of the judicial proceedings. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

Appellate court will not set aside trial court's findings of fact in absence of clear error. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

In determining whether the trial court committed clear error, the test is not whether facts in the record may support a decision for an appellant, but whether sufficient evidence supported the trial court's decision. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

Under the abuse of discretion standard, a reviewing court cannot reverse unless it has a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

An appellate court will not set aside a trial court's findings of fact in the absence of clear error. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

If, upon review of the facts, it is determined that a rational trier of fact could find guilt beyond reasonable doubt, the verdict must stand. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

An appellate court will not set aside a trial court's findings of fact in the absence of clear error. Williams v. Am. Samoa Gov't, 6 A.S.R.3d 35 (App. Div. 2002).

In reviewing a trial court's findings of fact, the test is not whether facts in the record may support a decision for the appellant, but whether sufficient evidence supported the trial court's decision. Williams v. Am. Samoa Gov't, 6 A.S.R.3d 35 (App. Div. 2002).

The standard of beyond a reasonable doubt is not treated as an impossible hurdle. Williams v. Am. Samoa Gov't, 6 A.S.R.3d 35 (App. Div. 2002).

If, upon review of the facts, it is determined that a rational trier of fact could find guild beyond reasonable doubt, the verdict must stand. Williams v. Am. Samoa Gov't, 6 A.S.R.3d 35 (App. Div. 2002).

A trial court's determination as to whether a criminal defendant's double jeopardy rights have been violated is reviewed de novo. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

Trial judge's findings of facts at a suppression hearing are reviewed for clear error. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

A trial judge's determination that reasonable suspicion existed sufficient to justify a stop is reviewed de novo. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

Whether a trial court's instructions adequately present a defendant's theory of the case is a question of law reviewed de novo. Fonoti v. Am. Samoa Gov't, 6 A.S.R.3d 77 (App. Div. 2002).

A trial court's formulation of jury instructions is reviewed for an abuse of discretion. Fonoti v. Am. Samoa Gov't, 6 A.S.R.3d 77 (App. Div. 2002).

When reviewing jury instructions, the relevant inquiry is whether the instructions as a whole are misleading or inadequate to guide the jury's deliberation. Fonoti v. Am. Samoa Gov't, 6 A.S.R.3d 77 (App. Div. 2002).

Whether a criminal defendant has a statutory right to a jury trial is a question of law to be reviewed de novo. Stowers v. Am. Samoa Gov't, 7 A.S.R.3d 16 (App. Div. 2003).

§ 9(8) —Timeliness of Response Briefs

RESERVED

§ 10 Interrogation and Miranda

§ 10(1) —Generally

Defendant's oral confession was not admissible at trial when it had been given during custodial interrogation, after both an oral and a written denial of criminal activity, after police indicated that a confession and the return of allegedly stolen goods would bring a legal end to the matter, and before police administered Miranda warnings. American Samoa Gov't v. Malota, 5 A.S.R.2d 101.

Defendant's written confession was not admissible at trial, even though police had given Miranda warnings, when both the warnings and the confession were immediately preceded by the unconstitutional extraction of an oral confession. American Samoa Gov't v. Malota, 5 A.S.R.2d 101.

The Miranda rule applies in American Samoa. In order for a statement, made by a suspect in custody, to be admissible, the suspect must have voluntarily, knowingly, and intelligently waived his rights to remain silent and to an attorney. The totality of the circumstances surrounding an interrogation must reveal both an uncoerced choice and the requisite level of comprehension in order to conclude that a suspect waived his Miranda rights. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

Territorial law prohibits introduction into evidence of statements by child in response to interrogation by police unless a parent, guardian or legal custodian were advised, at the time of interrogation, of the child's right to remain silent, that any statements made may be used against him in a court of law, of the right to the presence of an attorney during the interrogation, and of the right to have counsel appointed. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

A criminal defendant must be apprised of his or her rights, including the right to remain silent, whenever the accused is subject to custodial interrogation. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

A person must be warned of particular rights, and have validly waived them, prior to any statements being made during custodial interrogation. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

Although self-incriminating statements of a suspect under interrogation without a prior Miranda warning are subject to the exclusionary rule, the suspect must be in custody and subject to official interrogation. American Samoa Gov't v. Galumalemaga, 5 A.S.R.3d 24 (Trial Div. 2001).

On-the-scene investigative questioning in prison setting does not require Miranda warnings. American Samoa Gov't v. Galumalemaga, 5 A.S.R.3d 24 (Trial Div. 2001).

Defendant returning from unsupervised work release was subjected to routine search on prison grounds which revealed

contraband in his shoe. Without threats, deceptions, intimidations, or Miranda warnings, officer conducting search began on-the-scene questioning and defendant immediately answered. Defendant's right against self-incrimination was not violated and statements to officer are admissible. American Samoa Gov't v. Galumalemaga, 5 A.S.R.3d 24 (Trial Div. 2001).

Use of defendant's pre-arrest, pre-Miranda silence as substantive evidence of guilt at trial does not violate privilege against self-incrimination or right to due process. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

A suspect's right against self-incrimination arises in the context of custodial interrogation. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

If a suspect requests counsel during custodial interrogation, interrogation must cease until counsel is made available, even if the suspect later attempts to waive that right. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

The rule that interrogation must cease once a suspect invokes his right to counsel applies even if renewed interrogation concerns a separate investigation. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

The right to have the assistance of counsel attaches at or after the time that judicial proceedings have been initiated. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

After the right to the assistance of counsel attaches, the accused has the right to rely on counsel as a 'medium' between himself and the State. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

The right to the assistance of counsel is violated when the State obtains incriminating statements by knowingly circumventing the accused's right to have counsel present in a confrontation between the accused and a state agent. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

Where right to assistance of counsel attaches, if an accused does not affirmatively request counsel, further interrogation is not forbidden as long as the accused properly waives his right. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

If an accused affirmatively requests the assistance of counsel, further interrogation is prohibited without counsel present, despite a waiver of *Miranda* rights. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

The right to counsel, unlike the right against self-incrimination, only applies to crimes that constitute the same offense. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

When the right to counsel attaches, it encompasses offenses that, even if not formally charged, would be considered the same offense under the *Blockburger* test. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

Miranda warnings are not required when a suspect, not under arrest, voluntarily agrees to accompany police to the station and is released after a brief interview—even though the questioning took place in a coercive atmosphere. Am. Samoa Gov't v. Laumatia, 7 A.S.R.3d 155 (Trial Div. 2003).

§ 10(2) —Custody

Police officers' actions in taking suspect to station, questioning him about crime, and leaving him temporarily with another officer who was to ensure that he did not leave amounted to a custodial interrogation that was illegal if undertaken without probable cause to arrest. American Samoa Gov't v. Malota, 5 A.S.R.2d 101.

Where defendant voluntarily accompanied officers to police station where he was identified by complainant, photographed, given a Miranda warning before making a written statement, and then arrested without a warrant, motion to suppress the photos and statement as fruits of an unlawful seizure was denied since the evidence showed defendant was not in a custodial situation when the photos and statement were taken. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

Defendant's statement made after a police officer asked "What happened?," immediately upon encountering him a short distance from the crime scene, is admissible evidence because the defendant was neither in police custody nor undergoing custodial "interrogation." American Samoa Gov't v. Taylor, 19 A.S.R.2d 105.

A statement made by a person who was not in a custodial situation is not subject to suppression on Miranda grounds. U.S. Const. Amend. V. American Samoa Gov't v. Fealofa'i, 24 A.S.R.2d 10.

A statement made by a person who was not in a custodial situation is not subject to suppression on Miranda grounds. U.S. Const. Amend. V. American Samoa Gov't v. Maiava, 24 A.S.R.2d 20.

A statement made by a person who was not in a custodial situation is not subject to suppression on Miranda grounds. U.S. Const. Amend. V. American Samoa Gov't v. Meleisea, 24 A.S.R.2d 32.

A person is in custodial detention when he or she is deprived of his or her freedom in any significant way. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

Custodial detention may exist even where a suspect is not taken to a police station or placed under arrest. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

In order to determine whether a custodial detention has taken place, courts ask whether, considering the person's age, intellect, experience, and physical condition, the person should have believed that he or she was in custody. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

Where Plaintiff was instructed to exit his house and sit on a step outside while an investigatory search took place, but was not Mirandized or told that he was free to leave, Court nonetheless concluded that questioning occurred while investigation was ongoing and was of relatively short duration such that it did not constitute custodial interrogation. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

Traffic stops are generally not considered to qualify as custodial. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

If an individual is not in custodial interrogation, any self-incriminating statements he or she makes are fully admissible in evidence. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

On-the-scene questioning by police officers to determine whether a crime has been committed or is in progress, as distinguishable from custodial interrogation, does not require Miranda warnings. American Samoa Gov't v. Galumalemaga, 5 A.S.R.3d 24 (Trial Div. 2001).

General test for determining whether there has been custodial interrogation—whether reasonable person would have believed he could not leave freely—has been held inapplicable in prison setting where question is whether, during interrogation, inmate was subjected to more than usual restraint on prisoner's liberty to depart. American Samoa Gov't v. Galumalemaga, 5 A.S.R.3d 24 (Trial Div. 2001).

In determining whether a criminal defendant was, for *Miranda* purposes, in a custodial situation when he or she gave a statement, the inquiry is whether there was a formal arrest or restraint on the person's freedom of movement to the degree associated with a formal arrest. Am. Samoa Gov't v. Laumatia, 7 A.S.R.3d 155 (Trial Div. 2003).

The initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. The relevant inquiry is how a reasonable man in the suspect's position would have understood his situation. Am. Samoa Gov't v. Laumatia, 7 A.S.R.3d 155 (Trial Div. 2003).

Custody does not result simply because an individual is questioned in the "coercive environment" of the station house. Am. Samoa Gov't v. Laumatia, 7 A.S.R.3d 155 (Trial Div. 2003).

§ 10(3) —Interrogation

Defendant's statement made after a police officer asked "What happened?," immediately upon encountering him a short distance from the crime scene, is admissible evidence because the defendant was neither in police custody nor undergoing custodial "interrogation." American Samoa Gov't v. Taylor, 19 A.S.R.2d 105.

Although the police officer had just been given information implicating the defendant in the crime, the question "What happened?" was deemed to have been "investigatory" rather than "accusatory" because the officer was trying to gather preliminary and general information, rather than to elicit a confession. American Samoa Gov't v. Taylor, 19 A.S.R.2d 105.

Territorial law prohibits introduction into evidence of statements by child in response to interrogation by police unless a parent, guardian or legal custodian were advised, at the time of interrogation, of the child's right to remain silent, that any statements made may be used against him in a court of law, of the right to the presence of an attorney during the interrogation, and of the right to have counsel appointed. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

An interrogation takes place when a police officer asks accusatory, rather than investigatory, questions, intended to elicit a confession rather than preliminary and general information. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

§ 10(4) —Waiver of Rights

If a suspect "voluntarily, knowingly and intelligently" waives his rights to remain silent and to an attorney, a statement made by a suspect who is in custody is admissible; this applies to both volunteered statements and statements made after the suspect expressly states that he wants to make a statement and does not want a lawyer are admissible as evidence. U.S. Const. Amend. V. American Samoa Gov't v. Gotoloai, 23 A.S.R.2d 65.

A defendant's statements will not be suppressed when his assertion that his Miranda-rights waiver was coerced is contradicted by his pleadings and a police investigator's testimony. American Samoa Gov't v. Tauai, 24 A.S.R.2d 23.

Where evidence presented established that there was no police intimidation, coercion, or deception, when taking into account minor defendant's age and level of intelligence, waiver of his

Miranda rights was voluntarily, knowingly and intelligently given. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

Fact that defendant's testable intelligence quotient was equal to a second grader did not establish that he was unable to understand his actions in waiving his Miranda rights. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

Low mental ability in and of itself is insufficient to establish that a defendant did not understand his rights. A suspect's inability to read the Miranda form does not necessarily mean that he was unable to understand his rights as they were being read to him. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

Territorial law respecting the Miranda rule is complied with if either the parent or counsel present when Miranda warning read. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

Where a defendant has undergone a psychiatric examination and been found competent to stand trial and assist his counsel it seems logical to conclude that he would have been capable of understanding the very elemental rights that Miranda affords, notwithstanding his academic stunting. American Samoa Gov't v. Pino, 1 A.S.R.3d 195 (Trial Div. 1997).

The Juvenile Justice Act of 1980 provides additional safeguards for juveniles beyond those discussed in Miranda v. Arizona, 384 U.S. 436 (1966). Under ASCA § 45.0204, the "parent, guardian or legal custodian" must be advised of the child's Miranda rights in order for a waiver of those rights to be permissible. American Samoa Gov't v. Pino, 1 A.S.R.3d 195 (Trial Div. 1997).

Where a juvenile is interviewed by police officers in the presence of the juvenile's father the requirements of ASCA § 45.0204 are met. American Samoa Gov't v. Pino, 1 A.S.R.3d 195 (Trial Div. 1997).

Functioning academically at a grade-school level does not necessarily preclude the comprehension of the basic rights Miranda affords. Evidence that a juvenile is able to function adequately outside school, testify clearly and intelligently and assist his counsel may establish the juvenile was and is capable of understanding his Miranda rights. American Samoa Gov't v. Pino, 1 A.S.R.3d 195 (Trial Div. 1997).

The standard of proof to show a valid Miranda waiver is preponderance of the evidence, and a heavier burden of proof does not shift to the prosecution simply because a defendant asserts that he was in a "fragile state" due to intoxication and sleep deprivation, and so unable to properly waive his Miranda rights, where he was still able to engage in meaningful dialogue. American Samoa Gov't v. Pearson, 2 A.S.R.3d 63 (Trial Div. 1998).

Where the totality of the circumstances surrounding an in-custody interrogation reveal that the suspect voluntarily, knowingly, and intelligently waived his rights to remain silent and to an attorney, any statement made by him is admissible. American Samoa Gov't v. Sefo, 2 A.S.R.3d 94 (Trial Div. 1998).

Where a defendant repeatedly responds that he understands the Miranda rights being read to him, the police cannot be required to look beyond his own words and presume that he does not comprehend the plain language of Miranda. American Samoa Gov't v. Vagavao, 3 A.S.R.3d 72 (Trial Div. 1999).

Where the facts are in dispute as to whether an arrestee was fully informed of his Miranda rights, the court's finding of fact on that issue may take into account the experience and training of the officer. American Samoa Gov't v. Kaplan, 3 A.S.R.3d 86 (Trial Div. 1999).

An individual must knowingly, intelligently, and voluntarily waive his Miranda rights prior to custodial interrogation by the police, in order for such questioning to be constitutional. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

The court must look to the totality of the surrounding circumstances to determine whether a confession is made voluntarily. American Samoa Gov't v. Alataua, 5 A.S.R.3d 77 (Trial Div. 2001).

Totality of the circumstances surrounding defendant's post-arrest interrogation demonstrated that his statement was voluntarily made where defendant had previously refused to talk to police officers but had asked to speak to specific officer, was advised of Miranda rights prior to questioning, and where there were no facts indicating defendant was either coerced or threatened. American Samoa Gov't v. Alataua, 5 A.S.R.3d 77 (Trial Div. 2001).

The government bears the burden of proving by a preponderance of the evidence that a defendant waived his *Miranda* rights. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

The government bears the burden of proving by a preponderance of the evidence that a statement was voluntarily made. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

The court's determinations that a criminal defendant has waived his Miranda rights and voluntarily made a confession are both based upon the totality of the circumstances. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

Despite the fact that suspect's right to assistance of counsel had attached, because suspect had not requested counsel, had been warned and had validly waived his rights, there was no constitutional bar to the interrogation. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

Even if a suspect waives his *Miranda* rights, a court must still determine whether his confession was voluntary and obtained according to due process of law. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

The determination as to whether a confession is voluntarily made is based upon the totality of circumstances, including the length of the interrogation, its location, its continuity, the defendant's maturity, education, physical condition, and mental health, the failure of police to advise the defendant of his rights and whether any overt police coercion was employed such as threats, violence or promises. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

A confession is not voluntary if circumstances show that the defendant's will has been overborne or his capacity for self-determination critically impaired. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

§ 10(5) —Invoking Miranda Rights

After a defendant told police interrogators that he wished to have a lawyer before making a statement, it was impermissible for the officers to give the impression that making a statement to the police was required to participate in the legal process, by their responding that the defendant should make a statement and that a copy would be sent to his lawyer, especially in light of the intimidating circumstances he had faced earlier in his incarceration. American Samoa Gov't v. Taylor, 19 A.S.R.2d 105.

Once a defendant invokes his right to counsel, interrogation is to cease until he had been allowed to consult a lawyer. American Samoa Gov't v. Taylor, 19 A.S.R.2d 105.

If the interrogation proceeds in violation of a defendant's right to counsel, the resulting statements of the defendant may not be used as evidence against him--not even statements which, but for the initial invocation of the right to counsel, would seem thoroughly voluntary. American Samoa Gov't v. Taylor, 19 A.S.R.2d 105.

The privilege against self-incrimination is only a privilege against giving testimony or other communicative evidence against oneself, and does not protect the accused from giving real or physical evidence. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

Once a suspect has invoked the right to counsel, he must initiate any subsequent conversation. Am. Samoa Gov't v. Malala, 7 A.S.R.3d 49 (Trial Div. 2003).

§ 10(6) —Evidence Obtained in Violation of Miranda

Court would suppress not only illegally obtained confessions, but also all inculpatory evidence obtained by police consequent to the confessions. American Samoa Gov't v. Malota, 5 A.S.R.2d 101.

Defendant's written confession was not admissible at trial, even though police had given Miranda warnings, when both the warnings and the confession were immediately preceded by the unconstitutional extraction of an oral confession. American Samoa Gov't v. Malota, 5 A.S.R.2d 101.

Where defendant voluntarily accompanied officers to police station where he was identified by complainant, photographed, given a Miranda warning before making a written statement, and then arrested without a warrant, motion to suppress the photos and statement as fruits of an unlawful seizure was denied since the evidence showed defendant was not in a custodial situation when the photos and statement were taken. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

When a statement is suppressed as having been taken in violation of a defendant's right to counsel, the suppression applies not only to the statement but also to any information the government may have discovered as a result of the statement, unless such information would have been "ultimately or inevitably" discovered without the statement. American Samoa Gov't v. Taylor, 19 A.S.R.2d 105.

Defendant's motion to dismiss is denied when he does not move to suppress any particular evidence alleged to have been discovered by the government as a result of a suppressed statement but instead moves for dismissal of the charges unless the government can affirmatively show that it can convict him without the use of any such evidence, especially when the evidence not only fails to show that the government plans to present any impermissible evidence but also indicates that the government has substantial evidence which was not discovered as a result of the suppressed statement. American Samoa Gov't v. Taylor, 19 A.S.R.2d 105.

Merely giving Miranda warnings is insufficient to constitute an "intervening circumstance" severing the causal relationship between an illegal arrest and a confession, and such a confession must be suppressed. Rev. Const. Am. Samoa Art. I, § 5. American Samoa Gov't v. Sefo, 21 A.S.R.2d 32.

A confession will be suppressed if the government fails to meet its burden of showing that probable cause for a warrantless arrest existed when it was made. Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. § 46.0805(3). American Samoa Gov't v. Luki, 21 A.S.R.2d 82.

Only a statement made by a person in a custodial situation is subject to suppression on Miranda grounds. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

Prosecution's comment on a defendant's silence, which occurs after arrest and Miranda warnings, is not allowed. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

A defendant's confession will be suppressed if it was obtained after police effectuated an illegal arrest, unless the causal connection between the arrest and the confession had become so attenuated that the latter shall not be deemed tainted by the former. Am. Samoa Gov't v. Ropati, 7 A.S.R.3d 69 (Trial Div. 2003).

Independent evidence that someone committed an alleged crime is the traditional minimal means of corroboration permitting admission of a defendant's incriminating statements. Am. Samoa Gov't v. Ropati, 7 A.S.R.3d 69 (Trial Div. 2003).

§ 11 Searches & Seizures

§ 11(1) —Generally

The use of artificial means to illuminate a darkened area is not a search and thus triggers no Fourth Amendment protection. American Samoa Gov't v. Loia, 16 A.S.R.2d 1.

There is no legitimate expectation of privacy shielding the portion of the interior of an automobile that may be viewed from outside the vehicle. American Samoa Gov't v. Loia, 16 A.S.R.2d 1.

Once the persons or things named in the warrant are found, the owner or occupant of a house has a legitimate expectation of privacy in areas of the house which have not been searched, and the warrant itself will no longer support police entry into previously unentered rooms. American Samoa Gov't v. Seiuli, 29 A.S.R.2d 26.

Police officers may, upon reasonable suspicion, conduct a "protective sweep" of areas from which an endangering attack may be launched, even if this means entering unentered rooms. When a house is known to be a dangerous place, the potential for danger justifies a "cursory" search of the house and nearby vicinity for additional persons or weapons. American Samoa Gov't v. Seiuli, 29 A.S.R.2d 26.

A search undertaken pursuant to a warrant must be directed in good faith toward the objects specified in the warrant. If the warrant has been allowed to become an object for a "general search" and it is not possible for the court to identify after the fact the discrete items of evidence which would have been discovered had the agents kept their search within the bounds permitted by the warrant, all seized evidence must be suppressed. American Samoa Gov't v. Seiuli, 29 A.S.R.2d 26.

A search undertaken pursuant to a warrant must be directed in good faith toward the objects specified in the warrant. If the warrant has been allowed to become an object for a general search and it is not possible for the court to identify after the fact the discrete items of evidence which would have been discovered had the agents kept their search within the bounds permitted by the warrant, all seized evidence must be suppressed. Am. Samoa Gov't v. Suani, 29 A.S.R. 2d 38.

Due process is violated only where there is flagrant disregard for the limitations of the search warrant, transforming the particularized warrant into a general search. Am. Samoa Gov't v. Suani, 29 A.S.R. 2d 38.

Search warrant duly issued upon application is presumed valid until otherwise shown. American Samoa Gov't v. Lam Yuen, 11 A.S.R.2d 118.

§ 11(2) —Privacy Expectations

Article I, Sec. 5 of the Revised Constitution of American Samoa, which guarantees the right of individuals "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures", protects only those with a legitimate expectation of privacy with respect to the area searched. American Samoa Gov't v. Atafua, 1 A.S.R.3d 174 (Trial Div. 1997).

The right to be free from an unreasonable search is a personal right which may not be vicariously asserted. Even if the police violate someone else's constitutional rights by failing to obtain a warrant before conducting a search on the property, such information does not justify exclusion of the seized evidence in a different person's prosecution. American Samoa Gov't v. Atafua, 1 A.S.R.3d 174 (Trial Div. 1997).

Article I, § 5 of the Revised Constitution of American Samoa guarantees the right of individuals "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." American Samoa Gov't v. Dunham, 1 A.S.R.3d 176 (Trial Div. 1997).

Article I, § 5 of the Revised Constitution of American Samoa attaches privacy rights only to those individuals who have legitimate expectations of privacy with respect to the searched area. American Samoa Gov't v. Dunham, 1 A.S.R.3d 176 (Trial Div. 1997).

Where search at issue took place in the bush, and defendant neither asserted nor demonstrated that he had a property or possessory interest in area, he had no standing to complain of warrantless search. American Samoa Gov't v. Dunham, 1 A.S.R.3d 176 (Trial Div. 1997).

Article I, § 5 of the Revised Constitution of American Samoa parallels the Fourth Amendment to the United States Constitution and provides a safeguard against "unreasonable searches and seizures." American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

Because Fourth Amendment rights are personal, where police exceeded the bounds of a person's consent to search her premises, such violation of that person's rights does not necessarily transmute to another person. American Samoa Gov't v. Pearson, 2 A.S.R.3d 63 (Trial Div. 1998).

The personal rights of the Fourth Amendment may be asserted either through a privacy right, which attaches to a person who has an actual an actual subjective socially recognized expectation of privacy in the place searched, or a possessory interest in the place searched. American Samoa Gov't v. Pearson, 2 A.S.R.3d 63 (Trial Div. 1998).

Neither a reasonable expectation of privacy, nor a possessory interest exists in a motel room where the person was found the lobby, nor in the premises of another where he did not regularly stay, and did not stay on the night at issue, and where the person subjectively knew he did not have permission to stay on the premises. American Samoa Gov't v. Pearson, 2 A.S.R.3d 63 (Trial Div. 1998).

Although a third party's rights may be compromised where he is commanded to surrender a person's gun, the rights of that person are not implicated. American Samoa Gov't v. Pearson, 2 A.S.R.3d 63 (Trial Div. 1998).

Individuals have a constitutional expectation of privacy in their "persons, houses, papers, and effects," and generally, law enforcement officers must obtain a warrant to search these areas or for these things. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 81 (Trial Div. 1998).

The intimate activity of one's home, not the protection of property rights, is the gauge of an expectation of privacy. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 87 (Trial Div. 1998).

Under Article I, § 5 of the Revised Constitution of American Samoa, which mirrors the Fourth Amendment of the United States Constitution, individuals are protected against unreasonable searches and seizures, and search or seizure warrants may not be issued without a showing of probable cause, and evidence obtained in violation of this section may not be admitted in any court. American Samoa Gov't v. Sefo, 2 A.S.R.3d 94 (Trial Div. 1998).

For Fourth Amendment search protections to apply, a person must have either a possessory interest or privacy right in the area searched. American Samoa Gov't v. Pearson, 2 A.S.R.3d 102 (Trial Div. 1998).

A Fourth Amendment right is a personal right which may not be vicariously asserted by another. American Samoa Gov't v. Pearson, 2 A.S.R.3d 102 (Trial Div. 1998).

Where a defendant has a subjective expectation of privacy in a room searched at another's residence, the onus is on the defendant to raise such issue at trial. American Samoa Gov't v. Pearson, 2 A.S.R.3d 102 (Trial Div. 1998).

As a houseguest, a person has a reasonable expectation of privacy, but where the person is only an occasionally visitor, and does not spend the night with the host's knowledge, he is not considered a houseguest; an overnight guest is one who is in the host's home with the explicit knowledge and permission of the host. American Samoa Gov't v. Pearson, 2 A.S.R.3d 102 (Trial Div. 1998).

The twelve factors set out in Minnesota v. Olson, 495 U.S. 91 (1990), are used in determining whether a person has standing as a houseguest. American Samoa Gov't v. Pearson, 2 A.S.R.3d 102 (Trial Div. 1998).

Where a defendant's father is a joint owner of a house, such is not dispositive of whether the defendant himself had a property interest in it or an expectation of privacy. American Samoa Gov't v. Pearson, 2 A.S.R.3d 102 (Trial Div. 1998).

The Fourth Amendment of the U.S. Constitution is identical in relevant content to Article I, Section 5 of the Revised Constitution of American Samoa, and cases interpreting the Fourth Amendment provide appropriate guidance in applying this provision of the territorial constitution. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

The Fourth Amendment does not require that every search be made pursuant to a warrant, but only prohibits unreasonable searches and seizures. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

Individuals possess a diminished expectation of privacy with respect to automobiles. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

Article 1, Section 5 of the Revised Constitution of American Samoa mirrors its federal counterpart in the Fourth Amendment under which the right of the people to be secure in their persons against unreasonable searches and seizures shall not be violated. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 94 (Trial Div. 1999).

Article I, Section 5 of the Revised Constitution of American Samoa being essentially identical in content regarding search and seizure to the Fourth Amendment of the United States Constitution, caselaw decided under the Fourth Amendment provides guidance in determining whether a warrantless search is unreasonable, and a search can be valid for multiple

reasons. American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

A person is entitled to Fourth Amendment protection in a place when he or she has a reasonable expectation of privacy. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

In determining whether person has right against unreasonable search and seizure, reasonable-expectation-of-privacy standard is clearly restricted when person asserting expectation is incarcerated or in custody. American Samoa Gov't v. Galumalemaga, 5 A.S.R.3d 24 (Trial Div. 2001).

Inmate returning from work release has no reasonable expectation of privacy and, therefore, no right under Rev. Const. of Am. Samoa, Art. I, Sec. 5, regarding routine pat-down and shoe-search procedures, which only pose minimal degree of intrusion upon privacy. American Samoa Gov't v. Galumalemaga, 5 A.S.R.3d 24 (Trial Div. 2001).

§ 11(3) —Probable Cause for Search Warrants

Whether a confidential informant's tip supplies sufficient probable cause to issue a search warrant is to be tested by the totality of circumstances set forth in the affidavit. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Under the totality of circumstances test for probable cause, the informant's basis of knowledge and credibility are important but not determinative factors, and, despite deficiencies in those factors, a finding of probable cause may be supported where other corroborative information or indicia of reliability are set forth in the affidavit. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Court reviewing a prior determination of probable cause to issue a warrant must ask whether the affidavit, viewed as a whole, provided a substantial basis for the finding of probable cause and may not make a post hoc, de novo determination. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Affidavit that was based on a confidential informant's tip, without direct information about how the informant obtained his knowledge, about the informant's credibility, or about independent corroborative efforts of the police, and which contained no other indicia of reliability or corroborative information, was conclusory and did not support a finding of probable cause. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

Search and seizure clause of territorial constitution requires an independent finding of probable cause by a neutral and detached magistrate. Rev'd Const. Am. Samoa art. I, § 5. In re Siaumau, 12 A.S.R.2d 11.

In making an independent judicial finding of probable cause for a search, the judge may not rely merely on the prosecutor's decision to file a complaint. Rev'd Const. Am. Samoa art. I, § 5. In re Siaumau, 12 A.S.R.2d 11.

Judge may independently find adequate basis for probable cause in a criminal complaint which not only contains directly incriminating information but also identifies the source of such information. Rev'd Const. Am. Samoa art. I, § 5. In re Siaumau, 12 A.S.R.2d 11.

Factual allegations given their common sense meaning may be sufficient to constitute probable cause for certain crimes. Rev'd Const. Am. Samoa art. I, § 5. In re Siaumau, 12 A.S.R.2d 11.

Criminal complaint containing factual allegations of complainant officer and sources upon which the officer based such allegations, including personal investigation with interviews of identified victim, eyewitness, and treating physician, was sufficient to sustain independent judicial finding of probable cause. Rev'd Const. Am. Samoa art. I, § 5. In re Siaumau, 12 A.S.R.2d 11.

Task of judge to whom officer had applied for a search warrant was to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, there was a fair probability that contraband or evidence of a crime would be found. American Samoa Gov't v. Lam Yuen (Mem.), 13 A.S.R.2d 49.

Duty of court in reviewing the decision of the judge who issued search warrant is not to try the question anew but simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. American Samoa Gov't v. Lam Yuen (Mem.), 13 A.S.R.2d 49.

Extrinsic evidence tending to corroborate information provided by an informant might be important to bolster a relatively weak showing on either of the two principal factors considered by issuing magistrates in such cases --- the credibility of the informant and the basis of the informant's knowledge --- but is not necessary where neither of these factors needs bolstering. American Samoa Gov't v. Lam Yuen (Mem.), 13 A.S.R.2d 49.

Judge was justified in finding probable cause to believe marijuana was present on premises, even without extrinsic corroborating evidence, where the police officer's affidavit stated persuasively and with particularity the grounds for the officer's belief that the informant was reliable and had a reliable basis for knowing whereof he spoke: that the officer had personally known the informant for over a year; that the informant had previously provided information which had proved reliable and trustworthy; that information provided by this informant had in fact been instrumental in securing more than one criminal conviction; and that the information

provided to the officer was that the informant had not only been told about the existence and location of the substance by the defendant himself, but had also seen it personally and actually obtained samples. American Samoa Gov't v. Lam Yuen (Mem.), 13 A.S.R.2d 49.

Test by police officer of samples provided by informant, which showed the substance to be marijuana, tended to corroborate only part of the informant's story, and not the part tying the marijuana to the location in question; but if the officer had tried to corroborate that part of the story before applying for a warrant, defendant might well have been justified in complaining of a warrantless search. American Samoa Gov't v. Lam Yuen (Mem.), 13 A.S.R.2d 49.

Court may consider the training, experience, and collective knowledge of the police officers seizing property in plain view when assessing whether probable cause existed to believe that such property was incriminating. American Samoa Gov't v. Loia, 16 A.S.R.2d 1.

Rolled butt's twisted ends are significant in assessing probable cause that the butts contained marijuana, since ends are usually twisted to preserve the contents for future use, a precaution more likely used with illegal and difficult to obtain substances like marijuana than with readily accessible substances like tobacco. American Samoa Gov't v. Loia, 16 A.S.R.2d 1.

Fact that currency as well as rolled butts with twisted ends were visible in auto ashtray indicated that the ashtray was used to store items, not dispose of them, a use more probable for scarce substances like marijuana than common substances like tobacco. American Samoa Gov't v. Loia, 16 A.S.R.2d 1.

When both a search warrant and its supporting affidavit are overbroad as to what items may be seized, the warrant is deficient even if construed in reference to the affidavit. American Samoa Gov't v. Whitney, 20 A.S.R.2d 12.

Descriptions in a warrant must be specific enough to enable the person conducting the search to reasonably identify the things authorized to be seized. American Samoa Gov't v. Whitney, 20 A.S.R.2d 12.

Warrants reciting generic categories and criminal statutes, without more, do not usually give enough guidance as to what items may be seized - although a warrant's reference to a particular statute may, in certain circumstances not present here, satisfy the Fourth Amendment. American Samoa Gov't v. Whitney, 20 A.S.R.2d 12.

When the only limitation contained in a warrant was that the items seized be somehow connected to listed activities and statutes, the warrant was far too broad. American Samoa Gov't v. Whitney, 20 A.S.R.2d 12.

Warrants lacking in particularity are particularly troubling when the items to be seized have presumptive First Amendment protection. American Samoa Gov't v. Whitney, 20 A.S.R.2d 12.

In deciding whether to issue a search warrant based on a confidential informant's information, a magistrate makes a practical, common-sense decision as to whether all the circumstances set forth in the supporting affidavit provide a substantial basis that probable cause exists. American Samoa Gov't v. Leoso, 25 A.S.R.2d 103.

A finding of probable cause is to be given great deference on review, because of the strong constitutional preference that searches be authorized by warrants. American Samoa Gov't v. Leoso, 25 A.S.R.2d 103.

In determining whether probable cause exists, for purposes of issuing a search warrant, a totality of circumstances test is used. A confidential informant's veracity and his basis of knowledge are weighed as two elements in the totality of circumstances analysis, but not as two independent tests which must be separately satisfied. A deficiency in one of these two elements may be compensated for by a strong showing as to the other, or by some other indicia of reliability. American Samoa Gov't v. Leoso, 25 A.S.R.2d 103.

An otherwise insufficient statement by an informant can support the issuance of a search warrant if the police have corroborating evidence. Corroborating evidence is unnecessary if the informant's credibility and basis for knowledge are sufficient. American Samoa Gov't v. Leoso, 25 A.S.R.2d 103.

In determining whether information is too stale to establish probable cause supporting the issuance of a search warrant, the court considers the nature of the criminal activity, the length of the activity, and the nature of the property to be seized. American Samoa Gov't v. Leoso, 25 A.S.R.2d 103.

If some portions of an affidavit contain material inadmissible to serve as a basis for the issuance of a search warrant, this fact does not invalidate the warrant if in addition the affidavit contains other essential allegations sufficient to establish probable cause. American Samoa v. Stephens, 29 A.S.R.2d 6.

Generic categories of items to be seized will generally not limit a search sufficiently to satisfy the Constitution, American Samoa Government v. Whitney, 20 A.S.R.2d 14-15 (Trial Div. 1992), but it is permissible to use general categories when circumstances make a more specific description of instrumentalities an impossibility. American Samoa v. Stephens, 29 A.S.R.2d 6.

When a warrant is generalized to support broader exploration than required to seize the supportable objects of the search, it

violates the "particularity" requirement of Article I § 5. American Samoa v. Stephens, 29 A.S.R.2d 6.

An evidentiary hearing to review probable cause for a search warrant is only mandated where a defendant alleges deliberate falsehood or reckless disregard for the truth, and can support those allegations with an offer of proof. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

Probable cause for a warrant may be founded upon hearsay and information received from informants. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

A judge may issue a warrant without requiring informants to be produced, as long as there is a substantial basis for crediting the hearsay. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

Only affiant may be subject to impeachment at such evidentiary hearing determining existence of probable cause for warrant. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

Criminal defendant's assertions that warrant relied on "general and vague" statements of confidential informant, and that confidential informant may be unreliable, or may not exist were insufficient to require evidentiary hearing reviewing propriety of warrant. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

As long as the information put forth by an informant is believed to be true by the warrant's affiant, every fact recited in the warrant need not be correct or complete. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

Substantial basis existed for crediting hearsay of confidential informant where affiant investigated informant's criminal history, verified the informant's credibility with another police officer, and utilized his own knowledge to corroborate veracity of informant's statements. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

Challenge to propriety of warrant must be more than conclusory and be supported by more than a mere desire to cross-examine affiant. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

The law enforcement privilege entitles the American Samoa Government to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

A trial court must balance the public interest in protecting the flow of information against the individual's right to prepare his defense. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

The crime charged, the possible defenses, and the possible significance of the informer's testimony are among factors that the court should consider in determining whether disclosure of a confidential informant's identity is warranted. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

Disclosure of confidential informant's identity was not appropriate where defendant was charged with cultivating and possessing marijuana on his land, officers had already located and seized the marijuana, and where examination of informant would not be relevant and helpful to defendant's case. American Samoa Gov't v . Samana, 1 A.S.R.3d 178 (Trial Div. 1997).

Under Article 1, Sec. 5 of the Revised Constitution of American Samoa, a judge is not required to learn the identity of a confidential informant upon whose information a warrant is issued. American Samoa Gov't v. Fa'atulu, 1 A.S.R.3d 184 (Trial Div. 1997).

The Government is privileged to conceal the identity of an informant and the trial court is not required to conduct an in camera examination of the informant where the defendant makes no showing that an in camera examination of the informant by the court would develop information "relevant and helpful" to a particular legal theory advanced by the defendant. American Samoa Gov't v. Fa'atulu, 1 A.S.R.3d 184 (Trial Div. 1997).

An evidentiary hearing to review probable cause for a search warrant is only mandated where a defendant alleges deliberate falsehood or reckless disregard for the truth, and can support those allegations with an offer of proof. American Samoa Gov't v. Samana, 2 A.S.R.3d 58 (Trial Div. 1998).

Where defendant sought an in camera hearing to test the reliability of the government's confidential informant, he was required to make a substantial preliminary showing that (1) the affiant deliberately or recklessly included a false statement in the affidavit submitted in support of the search warrant, and (2) the fallacious statement was material to the issuing judge's finding of probable cause. American Samoa Gov't v. Samana, 2 A.S.R.3d 58 (Trial Div. 1998).

The presumption of the validity of an affidavit supporting a search warrant cannot be overcome by a self-serving statement purporting to refute the affidavit. American Samoa Gov't v. Samana, 2 A.S.R.3d 58 (Trial Div. 1998).

When considering whether probable cause exists based on information provided by a confidential informant, the issuing judge should consider the basis for informant's alleged knowledge and whether the information and the informant are reliable. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

A defendant may challenge statements made in an affidavit supporting a warrant, but must meet three conditions in order to obtain a Franks hearing: (1) he must allege that specific statements in the affidavit were made with reckless disregard for the truth, and must provide reliable, sworn statements of supporting witnesses; (2) he may challenge the statement of the affiant only, not of the informant; (3) he must show that the remaining information in the warrant, apart from the information the defendant alleges to be false, would not support a finding of probable cause. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

Whether an informant, cited in application for a warrant, has an adequate basis for his knowledge should be addressed in a direct challenge to the probable cause finding. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

Where a defendant makes a showing that identification of the government's confidential informant may be relevant and helpful to a possible defense at trial, a district court abuses its discretion if it fails to hold an in camera hearing on disclosure. American Samoa Gov't v. Samana, 3 A.S.R.3d 27 (App. Div. 1999).

§ 11(4) —Execution of Search Warrants

The general rule governing the execution of search warrants is that only items named in the warrant may be seized. Am. Samoa Gov't v. Suani, 29 A.S.R. 2d 38.

When there is an ambiguity on the face of a search warrant, the court may look to the circumstances surrounding the issuance of the warrant to discover its meaning. Am. Samoa Gov't v. Suani, 29 A.S.R. 2d 38.

A warrant that anticipated a search for marijuana plants at least three feet tall, whether growing or harvested, provided authority to search only those containers and other spaces, which are large enough to conceal such plants. Am. Samoa Gov't v. Suani, 29 A.S.R. 2d 38.

§ 11(5) —Knock & Announce Rule

RESERVED

§ 11(6) —Warrantless Searches

Pervasively regulated businesses that have long been subjected to close inspection and supervision, such as barbershops, may in proper circumstances be subjected to warrantless search. Am. Sam. Const. art. I § 5. Ferstle v. American Samoa Gov't, 7 A.S.R.2d 26.

A warrantless search incident to valid arrest may include: (1) the person of the arrestee; and (2) the area within the arrestee's immediate control. The area within an arrestee's immediate control is the area where the arrested person might reach for either a weapon or evidentiary items. In addition to a comprehensive search of a defendant and the area within his immediate control, officers are authorized, upon reasonable suspicion, to make a "quick and limited" search or "protective sweep" of areas where a potential assailant may be hiding. American Samoa Gov't v. Seiuli, 29 A.S.R.2d 26.

The test of the validity of a warrantless search is whether the search was reasonable under all the circumstances. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

§ 11(7) —Terry Stops

A warrantless search is unless an exception exists to justify it, and a "Terry stop and frisk" is such an exception. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 94 (Trial Div. 1999).

A Terry frisk must be limited to what is necessary for the discovery of weapons which might be used to harm the officer or others. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 94 (Trial Div. 1999).

A Terry frisk is justified if it is reasonably related to the circumstances, and the search of a waist pouch is reasonable where the officer has reason to believe it contains a gun and ammunition. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 94 (Trial Div. 1999).

A Terry frisk must be justified at its inception, and the officer must be rightfully in the presence of the party frisked, and that is so when the party places himself in the officer's presence. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 94 (Trial Div. 1999).

A Terry frisk is justified if the officer reasonably suspects that the party may be armed and dangerous; this standard is quite low (a good deal lower than probable cause) and considerable deference is afforded law enforcement authorities in this determination. It is reasonable for an officer to suspect that a person is armed if he sees what he believes to be the bulge of a gun in a waist pouch. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 94 (Trial Div. 1999).

It is reasonable for an officer to suspect that a person may be dangerous when the person is displeased at having poker machines seized, and persistently follows the team carrying out inspections for other illegal machines. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 94 (Trial Div. 1999).

A frisk is proper where an obvious bulge of a handgun provides probable cause to arrest and search on suspicion that the person is carrying a concealed firearm in violation of A.S.C.A. § 46.4203 (a)(1). American Samoa Gov't v. Faumuina, 3 A.S.R.3d 94 (Trial Div. 1999).

A "Terry stop and frisk" is an exception to the requirement that police possess a warrant in order to conduct a search. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 99 (Trial Div. 1999).

A "frisk" is a measure used by police to determine whether a person is carrying a weapon and to neutralize the threat of physical harm. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 99 (Trial Div. 1999).

A frisk must be limited in scope to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 99 (Trial Div. 1999).

A frisk is justified if it meets two requirements: (1) it must be reasonably related in scope to the circumstances; and (2) it must be justified at its inception. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 99 (Trial Div. 1999).

In order for a frisk to be justified at it inception, the law enforcement officer must be rightfully in the presence of the party frisked and must suspect that the party may be armed and dangerous. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 99 (Trial Div. 1999).

Considerable deference is afforded law enforcement authorities in their assessment of whether a suspect may be armed and dangerous. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 99 (Trial Div. 1999).

Police officers are authorized to stop an individual, or a vehicle, when they have a reasonable, articulable suspicion that the person has been, is, or is about to be engaged in criminal activity. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

A police officer may order the driver of a car to step out of it, even without a suspicion of criminal activity, if the vehicle has been legitimately stopped. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

A trial judge's determination that reasonable suspicion existed sufficient to justify a stop is reviewed de novo. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

Police officers may conduct a temporary investigative stop of an individual, or his/her vehicle, if the stop is based upon reasonable suspicion. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

§ 11(8) —Vehicle & Inventory Searches

A motorist stopped by a traffic officer may be detained briefly by that Officer, upon a reasonable belief that the driver was under the influence, until a qualified officer may be summoned by radio to administer field sobriety tests. American Samoa Gov't v. Berry, 25 A.S.R.2d 149.

Under A.S.C.A. § 22.0803 an officer at the scene of an accident must conduct a personal investigation, and upon reasonable and grounds to believe a misdemeanor traffic offense, (or infraction), has occurred, issue a traffic citation. American Samoa Gov't v. Berry, 25 A.S.R.2d 149.

A.S.C.A. § 22.0803 authorizes an investigating officer to view the accident scene and follow any driver involved therein who is receiving medical treatment and, if reasonable grounds exist, to issue that driver a traffic citation. American Samoa Gov't v. Berry, 25 A.S.R.2d 149.

Only a valid arrest for D.U.I. invokes the implied consent to chemical testing under A.S.C.A. § 22.0601 et. seq. American Samoa Gov't v. Berry, 25 A.S.R.2d 149.

A.S.C.A.§ 22.0803 does not apply to felonies. American Samoa Gov't v. Berry, 25 A.S.R.2d 149.

It is beyond dispute that a stop of a motor vehicle at a check point or roadblock is a seizure within the meaning of the 4th Amendment. The precise issue for the Court to decide in such cases is whether or not the seizure is unreasonable, and therefore, prohibited. American Samoa Gov't v. Mata`u, 25 A.S.R.2d 152.

D.U.I. roadblocks advance a legitimate government interest with minimal intrusions upon the rights of the motoring public. American Samoa Gov't v. Mata`u, 25 A.S.R.2d 152.

The U.S. Supreme Court did not expressly require identical procedures as those set forth in Michigan State Police v. Sitz to insure the constitutionality of a D.U.I. roadblock. Local procedures which were substantially similar were sufficient. American Samoa Gov't v. Mata`u, 25 A.S.R.2d 152.

Judicial review proceeds from the determination of whether the seizure was reasonable, considering, and balancing the government's compelling interest in protecting the motoring public from alcohol related traffic accidents, with the individual's constitutional right to be free from unreasonable seizures. American Samoa Gov't v. Mata`u, 25 A.S.R.2d 152.

It is beyond dispute that a stop of a motor vehicle at a check point or roadblock is a seizure within the meaning of the 4th Amendment. The precise issue for the Court to decide in such cases is whether or not the seizure is unreasonable, and therefore, prohibited. American Samoa Gov't v. Mata`u, 25 A.S.R.2d 152.

A stop of a motor vehicle at a check point or roadblock is a seizure within the meaning of the 4th Amendment. American Samoa Gov't v. Mata`u, 29 A.S.R.2d 4.

For a valid arrest of a driver involved in an accident under A.S.C.A. § 22.0803, an officer at the scene of an accident must conduct a personal investigation, and, upon reasonable grounds to believe a misdemeanor traffic offense (or infraction) has occurred, issue a traffic citation. American Samoa Gov't v. Berry, 29 A.S.R.2d 1.

A.S.C.A. § 22.0803 authorizes an investigating officer to view an accident scene and follow any driver involved therein who is receiving medical treatment and, if reasonable grounds exist to believe a misdemeanor traffic offense (or infraction) has occurred, to issue that driver a traffic citation. American Samoa Gov't v. Berry, 29 A.S.R.2d 1.

A D.U.I. roadblock, which is brief, with low intensity questioning, safe and uniformly conducted is a reasonable seizure, advancing a legitimate government interest with minimal intrusion upon the rights of the motoring public. American Samoa Gov't v. Mata`u, 29 A.S.R.2d 4.

Judicial review of whether a D.U.I. roadblock satisfies the 4th Amendment proceeds from the determination of whether the seizure was reasonable, considering and balancing the government's compelling interest in protecting the motoring public from alcohol related traffic accidents, with the individual's constitutional right to be free from unreasonable seizures. American Samoa Gov't v. Mata`u, 29 A.S.R.2d 4.

A traffic stop and Field Sobriety Tests is not an arrest and, therefore, Miranda warnings are not required, regardless of whether the suspect has a right to refuse the tests. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

Field Sobriety Tests are physical evidence, not testimonial evidence, and do not violate the privilege against self-incrimination. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

Individuals possess a diminished expectation of privacy with respect to automobiles. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

An inventory search is an exception to the warrant requirement. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

In determining whether an inventory search is proper, the court views the particular circumstances of the case and weighs the governmental interests advanced against the privacy interests invaded. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

Inventory search was proper where police bore responsibility for defendant's personal property in vehicle, where possession of vehicle had been obtained by defendant without owner's permission, where vehicle would soon be returned to person with adverse interests to individual and where search performed pursuant to standard, established procedures. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

The discovery of a rifle in a pickup truck provides probable cause to search the rest of the vehicle under the warrantless search "automobile exception." There being no exigent circumstances requirement, the lesser expectancy of privacy in vehicle allows search at the time of seizure or at any time thereafter. American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

An inventory search of an impounded vehicle reasonably conducted in good faith under standard procedures of the Department of Public Safety is a valid search. American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

A police officer may order the driver of a car to step out of it, even without a suspicion of criminal activity, if the vehicle has been legitimately stopped. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

Under the "automobile exception" to the general requirement of a search warrant, police may search a vehicle without a warrant if they have probable cause to believe that it contains contraband or fruits, instrumentalities, or evidence of a crime. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

If the police have probable cause to search a vehicle, they may search the entire vehicle and all containers within the vehicle that might contain the object for which they are searching. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

Where officers noticed a juvenile drinking an alcoholic beverage in the back of a moving pickup truck with an open beer container and a half-empty six pack next to her, confirmed the driver's knowledge of such event and his own drinking, they possessed probable cause for a search of the truck's cab for evidence of the crimes of driving under the influence of alcohol and consuming alcohol in a public place. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

Police officers may conduct a temporary investigative stop of an individual, or his/her vehicle, if the stop is based upon reasonable suspicion. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

Reasonable suspicion is based on an objective standard that looks to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the stop. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

Where officer's stop was based solely on tip from reliable

informant that suspect had recently been engaged in a criminal activity, such information was sufficient to warrant a brief investigatory traffic stop. Fuimaono v. Am. Samoa Gov't, 6 A.S.R.3d 67 (App. Div. 2002).

§ 11(9) —Border & Customs Searches

The provisions of the Revised Constitution of American Samoa as relates to searches and seizures by the government are exactly the same as the rights guaranteed by the Fourth Amendment to the U.S. Constitution; and the Supreme Court of the United States has made it clear that a "border search" may be subject to a significantly less demanding standard than required for searches within the interior. American Samoa Gov't v. Vagavao, 3 A.S.R.3d 72 (Trial Div. 1999).

The law regarding a border pat down search is unsettled, but at most it requires only the articulation of some facts which would lead a reasonable and objective customs officer to believe a search is necessary. American Samoa Gov't v. Vagavao, 3 A.S.R.3d 72 (Trial Div. 1999).

Observations made by a trained customs officer which, in sum, indicate that a pat down search was not conducted arbitrarily, include that the defendant deviated from his typical travel patterns, that his baggy clothing could enable concealment of contraband, and that he initially refused to comply fully with the request that he lift his shirt for visual inspection of his waistband. American Samoa Gov't v. Vagavao, 3 A.S.R.3d 72 (Trial Div. 1999).

As with border pat down searches, the requirements for a border strip search vary from circuit to circuit, but require a heightened level of suspicion because of the increased intrusiveness of this type of search. American Samoa Gov't v. Vagavao, 3 A.S.R.3d 72 (Trial Div. 1999).

Coupled with observations which support a border pat down search, the discovery during the pat down of unusual bulges, and the defendant's plaintive "please" would lead a rational person and a trained customs officer to reasonably conclude that a person was likely to be smuggling contraband into American Samoa. American Samoa Gov't v. Vagavao, 3 A.S.R.3d 72 (Trial Div. 1999).

Except as required to determine whether a minimum threshold level of suspicion is met, the court will not as a general rule attempt to substitute its own judgment for that of trained, experienced customs officers. American Samoa Gov't v. Vagavao, 3 A.S.R.3d 72 (Trial Div. 1999).

Border searches are subject to a significantly less demanding standard than that required for searches within the interior of the country. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

A.S.C.A. § 27.1002(a), the statutory provision that authorizes border searches by American Samoa customs officials, is constitutional under Article I, Section 5 of the Revised Constitution of American Samoa and the Fourth Amendment to the U.S Constitution. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

Foreign national had no privacy interest with respect to waist pouch, worn in plain view on the outside of his clothing, at border crossing. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

The routine search of an article of luggage at a border crossing which requires no pat-down or other bodily incursion, does not invoke constitutional protections. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

§ 11(10) —Consensual Searches

Family members of senior matai may not grant police permission to enter certain communal land in order to conduct a search. Am. Samoa Gov't v. Esera, 1 A.S.R.2d 90 (App. Div. 1983).

Consent obviates the need for a search warrant. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

Anyone who has a reasonable expectation of privacy in the place being searched may consent to a warrantless search. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

Determination of consent to enter is judged by an objective standard. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

The test for determining whether consent to search has been given is whether the facts available to the officer at the moment of entry warrant a man of reasonable causation in the belief that the consenting party had authority over the premises. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

The scope of a consent search is determined by how a reasonable person would have understood the conversation between the officer and the person when consent was given. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

An officer may conduct a search after receiving consent to conduct the search from a person with authority to give permission. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

A party with part ownership and full access to a home has authority to consent to a search by police. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

Where police obtained voluntary and intelligent consent of appellant's wife, a person with apparent rights to use or occupy the property equal to those of the appellant, appellant had no grounds to contest the warrantless search of his home. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

§ 11(11)—Search Incident to Arrest

When a valid arrest is made, officers may make a full search of both the suspect and the area within his immediate control for weapons and evidence, and where police have probable cause to arrest a suspect, a search may precede a formal arrest. American Samoa Gov't v. Sefo, 2 A.S.R.3d 94 (Trial Div. 1998).

A search incident to a lawful arrest is an exception to the requirement of a search warrant. American Samoa Gov't v. Ve`ae`a, 2 A.S.R.3d 109 (Trial Div. 1998).

When a person is arrested, "immediate control area" searches are subject to case-by-case analysis of factors as to the risk to officers or evidence. American Samoa Gov't v. Kaplan, 3 A.S.R.3d 86 (Trial Div. 1999).

A person in handcuffs is effectively limited as to the surrounding area over which he has "control," and a search of such area is generally unwarranted; the fact of handcuffing is persuasive but does not alone cause such search to be illegal. American Samoa Gov't v. Kaplan, 3 A.S.R.3d 86 (Trial Div. 1999).

Where an arrestee is handcuffed, the suspected crime is nonviolent in nature, the evidence of that crime is not easily destructible by a handcuffed arrestee, the arrestee was not surprised in the act of committing a crime, he is alone in a small shack and shows no sign of resistance, and two able officers are present, the degree of risk does not justify a warrantless search of the premises. American Samoa Gov't v. Kaplan, 3 A.S.R.3d 86 (Trial Div. 1999).

A protective search is permissible after a suspect is handcuffed. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 94 (Trial Div. 1999).

Where police conducted second patdown of accused, subsequent to being arrested and handcuffed, such search was reasonable as a protective search. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 99 (Trial Div. 1999).

§ 11(12)—Plain View Doctrine

Under the "plain-view" doctrine, property may be seized without a warrant when: (1) the police officer's initial intrusion or presence in an area is lawful; (2) his discovery of incriminating evidence is inadvertent; and (3) the incriminating nature of the property seized is immediately apparent. American Samoa Gov't v. Loia, 16 A.S.R.2d 1.

Incriminating nature of property seized is immediately apparent when an officer has probable cause to believe that the property found in plain view is incriminating; certain knowledge of its incriminating nature is not required. American Samoa Gov't v. Loia, 16 A.S.R.2d 1.

Court may consider the training, experience, and collective knowledge of the police officers seizing property in plain view when assessing whether probable cause existed to believe that such property was incriminating. American Samoa Gov't v. Loia, 16 A.S.R.2d 1.

Warrantless seizure of marijuana "roaches" from auto ashtray was justified under the "plain view" doctrine, where officers first followed auto because it was speeding without tail lights, looked inside it with a flashlight to find the key in order to move it for reasons of safety, and while looking for the key saw currency and rolled and twisted cigarette butts in the auto ashtray. American Samoa Gov't v. Loia, 16 A.S.R.2d 1.

The plain view doctrine is a recognized exception to the requirement of a search warrant in American Samoa, and permits a warrantless seizure of private property when three conditions are satisfied: (1) the police officer's presence in the area is lawful; (2) the discovery of the evidence is inadvertent; and (3) the incriminating nature of the evidence is immediately apparent. American Samoa Government v. Loia, 16 A.S.R.2d 1, 3 (Trial Div. 1990). American Samoa Gov't v. Seiuli, 29 A.S.R.2d 26.

Police officers would not be justified in seizing objects not listed in the warrant if they came into the plain view of the officer only after deliberate rummaging and after all items listed in the warrant had already been seized. American Samoa Gov't v. Seiuli, 29 A.S.R.2d 26.

The "plain view" doctrine is a recognized exception to the requirement of a warrant in American Samoa, and permits a warrantless seizure of private property when three conditions are satisfied: (1) the police officer's presence in the area must be lawful; (2) the discovery of the evidence must be inadvertent; and (3) the incriminating nature of the evidence must be immediately apparent. American Samoa Gov't v. Loia, 16 A.S.R.2d 1, 3 (Trial Div. 1990). Am. Samoa Gov't v. Suani, 29 A.S.R. 2d 38.

The plain view doctrine does not authorize search and seizure of items contained within objects like attache cases, file cabinets, and luggage that are themselves in plain view. A plain view seizure is limited to items that are clearly incriminating and that are inadvertently encountered in the course of a justifiable intrusion. Am. Samoa Gov't v. Suani, 29 A.S.R.2d 38.

The contents of a container may not be discovered under the plain view exception unless it is "immediately apparent" that the container probably holds incriminating evidence (such as a weapon case might), or is of itself somewhat incriminating. Am. Samoa Gov't v. Suani, 29 A.S.R. 2d 38.

Under the "plain view" exception the Exclusionary Rule, a warrantless seizure of private property may nevertheless be permitted when three requirements have been met: (1) the police officer must lawfully make an "initial intrusion" or otherwise properly be in a position from which he can view a particular area; (2) the officer must discover incriminating evidence inadvertently; and (3) it must be "immediately apparent" to the police that the items they observe may be evidence of a crime, contraband, or otherwise subject to seizure. American Samoa Gov't v. Tuaolo, 3 A.S.R.3d 78 (Trial Div. 1999)..

If a search continues after all the items identified on a search warrant have been found, then further search activity may constitute an unlawful intrusion and render the plain view exception inapplicable. American Samoa Gov't v. Tuaolo, 3 A.S.R.3d 78 (Trial Div. 1999)..

In determining whether the incriminating nature of the evidence was immediately apparent to the officer discovering it, the Court examines whether the police officer reasonably believed that the item might be contraband, stolen property or useful as evidence of a crime. American Samoa Gov't v. Tuaolo, 3 A.S.R.3d 78 (Trial Div. 1999).

The test for evidence found in "plain view" does not demand any showing that the officer's belief, in the incriminating nature of the item, be correct or more likely true than false. American Samoa Gov't v. Tuaolo, 3 A.S.R.3d 78 (Trial Div. 1999).

Where an officer is legitimately within a vehicle being impounded incident to arrest, and inadvertently comes across an incriminating object by feeling it, the "plain feel" variation of the "plain view" doctrine applies. American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

Police may make a warrantless seizure under the "plain view" exception when they: (1) are lawfully in a position to observe the item seized; (2) discover the item in plain view; and (3) immediately recognize the incriminating character of the item. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

§ 11(13)—Open Fields Doctrine & Curtilage

The special protection accorded by the Fourth Amendment against unreasonable searches is not extended to open fields. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 81 (Trial Div. 1998).

The curtilage of the home is considered part of the home for Fourth Amendment purposes. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 81 (Trial Div. 1998).

Four useful factors in determining whether the area in question is part of the curtilage of the home are: (1) the proximity of the area to the home, (2) whether the area is included within an enclosure surrounding the home, (3) the nature of the uses to which the area is put, and (4) the steps taken by the resident to protect the area from observation by people passing by. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 81 (Trial Div. 1998).

The Fourth Amendment does not protect the merely subjective expectation of privacy, but only expectations that society is prepared to recognize as reasonable. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 81 (Trial Div. 1998).

An area need not be "open" or a "field" to fall under the "open field" exception to the Fourth Amendment. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 81 (Trial Div. 1998).

There is no societal interest in protecting the privacy of cultivation of crops that occur in open fields. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 81 (Trial Div. 1998).

Where clearing, located on side of mountain, could not be seen from the defendant's home, was not enclosed, was used only for crop cultivation, and where no steps had been taken to protect it from observation, said clearing would not be considered part of the "curtilage" of the defendant's home. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 81 (Trial Div. 1998).

Open fields do not give rise to an expectation of privacy, do not constitute "curtilage" and are not afforded the special protections of Article I, § 5 of the Revised Constitution of American Samoa. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 87 (Trial Div. 1998).

With regard to the Dunn four factor test for determining whether land is part of the "curtilage" of one's home, no singular factor is controlling. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 87 (Trial Div. 1998).

The fact an area is held as communal land is not determinative with regard to its characterization as "curtilage" or "open fields." American Samoa Gov't v. Tauoa, 2 A.S.R.3d 87 (Trial Div. 1998).

§ 11(14)—Application of Exclusionary Rule

Provision in American Samoa constitution that requires exclusion of evidence does not entitle Defendant to litigate Fourth Amendment claim before magistrate as well as trial court. Am. Samo Gov't v. Foma'i, 1 A.S.R.2d 61 (Trial Div. 1982).

Evidence obtained from an illegal search and seizure is inadmissible, not only in criminal proceedings but also in probation revocation proceedings. Rev'd Const. Am. Samoa art. I § 5. American Samoa Gov't v. Peni Samana, 8 A.S.R.2d 1.

The government was not estopped from arguing that a warrantless search and seizure was valid for purposes of a second possession charge where the second charge stemmed from marijuana found on defendant while booking him on an arrest warrant for a first possession charge, the warrant for the first charge was based on marijuana found during the warrantless search and seizure, and the warrantless search and seizure was held unlawful by the lower court in dismissing the first possessions charge stemming from the search; held, since the High Court was considering the second charge the legality of the warrantless search for that purpose was an issue properly before the court. American Samoa Gov't v. Loia, 15 A.S.R.2d 126.

Exclusionary rule developed as a prophylactic measure against police excessiveness. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

Court need not decide whether an arrest was valid when the statement and photos sought to be suppressed were taken earlier, since there was no causal relationship between the arrest and the evidence sought to be suppressed. American Samoa Gov't v. Afamasaga, 17 A.S.R.2d 145.

Where defendant voluntarily accompanied officers to police station where he was identified by complainant, photographed, given a Miranda warning before making a written statement, and then arrested without a warrant, motion to suppress the photos and statement as fruits of an unlawful seizure was denied since the evidence showed defendant was not in a custodial situation when the photos and statement were taken. American Samoa Government v. Afamasaga, 17 A.S.R.2d 145.

If the police are able to identify witnesses through independent investigation, the fact that the witnesses were also identified by illegally-seized evidence will not bar their testimony. American Samoa Gov't v. Whitney, 20 A.S.R.2d 43.

If there is insufficient proof to show that a witness would have been discovered without using illegally-seized evidence, that witness's testimony will be excluded. American Samoa Gov't v. Whitney, 20 A.S.R.2d 43.

Although the time differential and intervening circumstances may sever the relationship between an illegal arrest and a confession, the culpability of the police does not abrogate the application of the territorial constitution's exclusionary rule. Rev. Const. Am. Samoa Art. I, § 5. American Samoa Gov't v. Sefo, 21 A.S.R.2d 32.

The good faith exception to the exclusionary rule, created by the Supreme Court in U.S. v. Leon, 468 U.S. 897 (1984), does not apply in the territory to the codification of the exclusionary rule in Art. I, Section 5 of the Revised Constitution of American Samoa. American Samoa v. Stephens, 29 A.S.R.2d 6.

The threshold question for suppressing all evidence obtained in a search is whether or not the behavior of the officers is so unconscionable as to rise to the level of a due process violation. Due process is violated only where there is flagrant disregard for the limitations of the search warrant, transforming the particularized warrant into a general search. American Samoa Gov’t v. Seiuli, 29 A.S.R.2d 6.

Generally, the exclusionary rule does not require the suppression of evidence within the scope of a warrant simply because other items outside the scope of the warrant were unlawfully taken as well. The threshold question for suppressing all evidence obtained in a search is whether or not the behavior of the police officers is so unconscionable as to rise to the level of a due process violation. Am. Samoa Gov’t v. Suani, 29 A.S.R. 2d 38.

In order to quash a warrant, the court must determine that the magistrate or judge in issuing the warrant was misled by information in the affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth. American Samoa Gov’t v. Samana, 30 A.S.R.2d 37.

The fact that an affidavit contains a falsity is not enough to negate the probable cause underlying a warrant unless the affiant knew of or recklessly disregarded the falsity. American Samoa Gov’t v. Samana, 30 A.S.R.2d 37.

The court may hold an in camera hearing with a confidential informant to aid in determining whether an affiant made a false statement knowingly or recklessly when the defendant does not have enough evidence to quash a warrant but has presented evidence in that direction. American Samoa Gov’t v. Samana, 30 A.S.R.2d 37.

A defendant can challenge a facially valid warrant by showing that (1) the affidavit contains information that the affiant knew was false or would have known was false but for his reckless disregard for the truth; and that (2) absent the false information, the affidavit would not support a showing of probable cause to issue the warrant. American Samoa Gov’t v. Samana, 30 A.S.R.2d 98.

Once the defendant makes a preliminary showing that a warrant is invalid, the court must hold a hearing at the defendant's request. American Samoa Gov’t v. Samana, 30 A.S.R.2d 98.

If the court concludes that a magistrate that issued a warrant was misled by information in an affidavit that was intentionally or recklessly false, then the evidence gained under the warrant must be suppressed. American Samoa Gov't v. Samana, 30 A.S.R.2d 98.

When an officer discovers that an affidavit supporting a warrant contains substantially false matter after a warrant is issued but before the warrant is executed, the correct remedy is suppression when the officer reasonably should have known that the falsity casts doubt on the probable cause presented by the affidavit but does nothing about it. American Samoa Gov't v. Samana, 30 A.S.R.2d 98.

Unlike the Fourth Amendment protection under the U.S. Constitution, whereby the exclusionary rule exists to deter police misconduct rather than existing as a personal constitutional right of the party aggrieved, the exclusionary rule may very well be a personal constitutional right in this jurisdiction under the American Samoa Constitution. U.S. Const. Amend IV, Am. Sam. Const. art I § 5. American Samoa Gov't v. Samana, 30 A.S.R.2d 98.

When material information tending to seriously undermine the probable cause upon which a warrant was issued is received by the officer before the warrant is executed, the officer must provide this new information to the judge and have the warrant modified or have a new warrant issued. If he does not, and if the new information eliminates the basis for probable cause supporting the warrant, the warrant must be quashed and all evidence obtained under it suppressed. American Samoa Gov't v. Samana, 30 A.S.R.2d 98.

For a warrant to be valid, an officer must objectively and reasonably believe that the judge's determination of probable cause was correct. American Samoa Gov't v. Samana, 30 A.S.R.2d 98.

When an officer proceeds to execute a warrant that the officer discovers is based on erroneous information and the new information substantially undermines the judge's determination of probable cause, the evidence seized must be suppressed. American Samoa Gov't v. Samana, 30 A.S.R.2d 98.

The test in a Franks inquiry is two-pronged: (1) did the officer knowingly or recklessly disregard the truth; and (2) absent the false information, does the affidavit lack probable cause for the issuing of the warrant? If the answer to either of these inquiries is negative, then the warrant remains valid and the evidence will not be suppressed. American Samoa Gov't v. Samana, 30 A.S.R.2d 98.

Had police violated another individual's constitutional rights in conducting warrantless search, such violation would not justify exclusion of the seized evidence against the named defendant. American Samoa Gov't v. Dunham, 1 A.S.R.3d 176 (Trial Div. 1997).

Article 1, Section 5 of the Revised Constitution of American Samoa requires that a search warrant particularly describe the persons or things to be seized. Items seized in violation of Article 1, Section 5 shall not be admitted in any court. American Samoa Gov't v. Tuaolo, 3 A.S.R.3d 78 (Trial Div. 1999).

The "inadvertent discovery" requirement of the Exclusionary Rule means that an officer may not rely on the plain-view doctrine only as a pretext, knowing in advance the location of certain evidence and intending to seize it. American Samoa Gov't v. Tuaolo, 3 A.S.R.3d 78 (Trial Div. 1999).

Under the rule of exclusion, items seized illegally may be suppressed upon a timely motion; evidence obtained in violation of Constitutional protections shall not be admitted in any court. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 94 (Trial Div. 1999).

Under the Exclusionary Rule, items seized illegally may be suppressed upon a timely motion. American Samoa Gov't v. Faumuina, 3 A.S.R.3d 99 (Trial Div. 1999).

The exclusionary rule in American Samoa requires that the Court prohibit introduction of that evidence at a criminal trial which is obtained in violation of Article I, Sections 5 and 6 of the Revised Constitution of American Samoa. American Samoa Gov't v. Kava, 4 A.S.R.3d 240 (Trial Div. 2000).

The Exclusionary rule is explicitly established in the Revised Constitution of American Samoa. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

§ 11(15)—Arrests

A warrantless arrest is improper if the government does not present evidence on which a court may judge "reasonableness." Rev. Const. Am. Samoa Art. I, § 5. American Samoa Gov't v. Sefo, 21 A.S.R.2d 32.

Generally, an arrest, whether with or without a warrant, must be supported by probable cause. Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. § 46.0805(3). American Samoa Gov't v. Luki, 21 A.S.R.2d 82.

A confession will be suppressed if the government fails to meet its burden of showing that probable cause for a warrantless arrest existed when it was made. Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. § 46.0805(3). American Samoa Gov't v. Luki, 21 A.S.R.2d 82.

A defendant was not illegally taken into custody without a warrant when he voluntarily agreed to a police officer's

request to go to the station for questioning. American Samoa Gov't v. Luki, 21 A.S.R.2d 84.

Reflecting the "ancient common-law rule" that an officer may make a warrantless arrest if reasonable grounds of a felony's commission exist, even if it occurred outside of his presence, a warrantless arrest is not invalid merely because a warrant could have been obtained but was not. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5. American Samoa Gov't v. Gotoloai, 23 A.S.R.2d 65.

Arrests and searches are treated differently because "unreasonable search and arrest" provisions are concerned with restricting the use of general search warrants, not with prohibiting warrantless felony arrests; as such, warrantless arrests are permissible if supported by probable cause. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. §§ 46.0801 et seq. American Samoa Gov't v. Gotoloai, 23 A.S.R.2d 65.

Reflecting the common-law rules, the exceptions to American Samoa's arrest-warrant requirement include arrests of felony suspects near a crime scene shortly after a crime's commission, arrests for misdemeanors and felonies committed in an officer's presence, and arrests based on "reasonable grounds" that a felony or breach of the peace has been committed. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. §§ 46.0801 et seq. American Samoa Gov't v. Gotoloai, 23 A.S.R.2d 65.

The meaning of statutory provisions generally requiring an arrest warrant must be ascertained in light of the purpose of promoting efficient law enforcement, while protecting individual rights, and of the traditional and almost universal practice of warrantless arrests. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. §§ 46.0801 et seq. American Samoa Gov't v. Gotoloai, 23 A.S.R.2d 65.

A person who was pursued for a traffic offense by a police officer, apprehended, identified, and taken into custody by another officer, taken to the Police Station, and subsequently administered field sobriety tests and then arrested for D.U.I. could not have been legally arrested at the Police Station. American Samoa Gov't v. Berry, 25 A.S.R.2d 149.

Officers may upon reasonable grounds, arrest persons found near the scene of a felony within a short time after its commission. American Samoa Gov't v. Berry, 25 A.S.R.2d 149.

T.C.R.Cr.P. 5(a) and A.S.C.A. § 46.0807(b) serve different purposes, and are not inconsistent. Rule 5(a) is meant to apply when a person is arrested and it is contemplated that he will be charged with a crime. Section 46.0807(b), on the other hand, contemplates the situation where a person is arrested and needs to be held for some period of time for his own safety or to protect the public safety, but will not be charged with a crime. American Samoa Gov't v. Lolesio, 30 A.S.R.2d 24.

A warrantless arrest of a suspect is reasonable where the suspect is found near the scene of a felonious crime, where there are reasonable grounds to believe that the suspect committed the crime, and where the arrest occurs within a short period of time after the crime has occurred. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

A child may be taken into temporary custody by a law enforcement officer without order of the court when there are reasonable grounds to believe that he or she has committed an act which would be a felony or misdemeanor if committed by an adult. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

The term "reasonable grounds," in the context of an arrest, is substantially the same as "probable cause." American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

Probable cause for a warrantless arrest must exist at the time the arrest is made, and the government has the burden of showing that such probable cause existed. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

"Reasonable grounds" existed to detain juvenile suspect where officers knew that the victim's body had been found that afternoon on beach, where they also knew that bruising on the victim's neck indicated possible strangling in ocean, where suspect had been seen in area and at time that victim last seen alive, where suspect was reported to be acting nervously, and where suspect fled in response to request for information. American Samoa Gov't v. Pino, 1 A.S.R.3d 186 (Trial Div. 1997).

Where officers came upon marijuana-growing operation and suspect spontaneously admitted to owning the growing marijuana, said officers had reasonable grounds to believe suspect had committed a felony and were justified under either A.S.C.A. § 46.0805(1) or § 46.0805(3) in conducting a warrantless arrest thereafter. American Samoa Gov't v. Tauoa, 2 A.S.R.3d 81 (Trial Div. 1998).

Under A.S.C.A. § 46.0805, an arrest made without a warrant is authorized when a felony is committed in an officer's presence, or if the person arrested is found near the scene of a felony, is reasonably suspected of committing it, and the arrest comes shortly after the crime. American Samoa Gov't v. Sefo, 2 A.S.R.3d 94 (Trial Div. 1998).

Probable cause is more than bare suspicion and less than absolute certainty, and the existence of probable cause is determined from the totality of the circumstances; it can arise from witnessing the apparent purchase of drugs. American Samoa Gov't v. Sefo, 2 A.S.R.3d 94 (Trial Div. 1998).

An arrest warrant must be issued by a neutral and detached magistrate. American Samoa Gov't v. Moe, 3 A.S.R.3d 106 (Trial Div. 1999).

A magistrate impermissibly lacks neutrality where he or she is involved in law enforcement activities, has a pecuniary interest in the outcome of his decision, or has 'wholly abandoned' his judicial role. American Samoa Gov't v. Moe, 3 A.S.R.3d 106 (Trial Div. 1999).

Justice's action in alerting Attorney General to possible violation of statutory rape law by forwarding marriage waiver form to A.G.'s attention for such action as he "may deem appropriate" did not constitute law enforcement nor did it advocate prosecution, and justice was not prohibited from later reviewing and granting application for warrant of arrest of individual named in waiver form. American Samoa Gov't v. Moe, 3 A.S.R.3d 106 (Trial Div. 1999).

Judges are the only officials authorized to issue arrest warrants in American Samoa. American Samoa Gov't v. Moe, 3 A.S.R.3d 106 (Trial Div. 1999).

A police officer is authorized to make a warrantless arrest of a person who commits a misdemeanor in his presence, or to prevent a future breach of the peace; and the defendant was properly arrested under the valid public peace disturbance statute. American Samoa Gov't v. Agasiva, 3 A.S.R.3d 110 (Trial Div. 1999).

A defendant's confession will be suppressed if it was obtained after police effectuated an illegal arrest, unless the causal connection between the arrest and the confession had become so attenuated that the latter shall not be deemed tainted by the former. Am. Samoa Gov't v. Ropati, 7 A.S.R.3d 69 (Trial Div. 2003).

Though police questioning takes place at a police station, that fact alone does not convert an otherwise volitional act into an arrest. Am. Samoa Gov't v. Ropati, 7 A.S.R.3d 69 (Trial Div. 2003).

Independent evidence that someone committed an alleged crime is the traditional minimal means of corroboration permitting admission of a defendant's incriminating statements. Am. Samoa Gov't v. Ropati, 7 A.S.R.3d 69 (Trial Div. 2003).

§ 11(16) —Detention of Foreign Nationals

Aliens may not be arrested without warrants unless the circumstances are extraordinary. Tumui v. Fa'alevao, 2 A.S.R.2d 33 (Trial Div. 1983).

Article 36(1)(b) of the Vienna Convention requires that foreign nationals arrested or otherwise detained be informed that they have right to notify the consular post of their country that they have been detained and that such communication be made without delay. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

There may exist remedies where the consular notification requirement of the Vienna Convention has been violated, but exclusion of evidence is not one of them. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

Violation of the Vienna Convention consular notification requirement does not require suppression of subsequently-obtained evidence in a criminal proceeding against a foreign national. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

§ 12 Counsel

SEE LEGAL PROFESSION

§ 12(1) —General Provisions

Counsel who believes requested appeal of criminal conviction to be frivolous must so advise the court, request permission to withdraw, and file a brief identifying any points in the record that could conceivably support an appeal. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

While "practice of law" is a general term, it is sufficiently definite that its employment in a criminal statute satisfies the demands of due process. A.S.C.A. § 31.0104. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

"Practice of law" includes legal representation of another in court or in settlement negotiations with opposing attorneys. A.S.C.A. § 31.0104. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

§ 12(2) —Right to Counsel

An indigent defendant's constitutional right to assistance of counsel includes the right to necessary investigative assistance. Am. Samoa Gov't v. Tuvale, 2 A.S.R.2d 92 (Trial Div. 1986).

An indigent defendant who wishes to have an expert appointed or test conducted at public expense may move the court for such an order and, in accordance with certain procedures, may move and be heard *ex parte* if notice to the Attorney General would inhibit his defense. Am. Samoa Gov't v. Tuvale, 2 A.S.R.2d 92 (Trial Div. 1986).

An indigent defendant who wishes to have an expert appointed or test conducted at public expense may move the court for such an order and, in accordance with certain procedures, may move and be heard *ex parte* if notice to the Attorney General would inhibit his defense. Am. Samoa Gov't v. Tuvale, 2 A.S.R.2d 92 (Trial Div. 1986).

It is the responsibility of the executive branch to pay for those experts or tests ordered by the court for indigent defendants. Am. Samoa Gov't v. Tuvale, 2 A.S.R.2d 92 (Trial Div. 1986).

Counsel should be appointed by the court without cost to a criminal defendant only when he is genuinely unable to pay for his own lawyer. American Samoa Gov't v. Fesagaiga, 4 A.S.R.2d 29.

For the purpose of determining whether a criminal defendant is unable to pay for his own lawyer, the court should consider all funds available to the defendant from all sources, not just the income from his employment. American Samoa Gov't v. Fesagaiga, 4 A.S.R.2d 29.

That criminal defendant's case would almost certainly have been better conducted by a lawyer does not free the defendant from the consequences of his choice to represent himself; he is not entitled first to insist on his right to defend himself and then to insist that his conviction must be reversed because his defense was less than competent. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

Constitutional right to assistance of counsel in traffic cases does not attach unless defendant is sentenced to serve time in jail. American Samoa Gov't v. Malae, 10 A.S.R.2d 99.

Defendant is free to represent himself at any stage of criminal proceedings, including competency hearings. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

Defendant's right to assistance of counsel was not violated where he chose to represent himself and on appeal presented no evidence that such choice was involuntary or that he was unaware of attendant risks. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

Trial judge has wide discretion in deciding whether to appoint an interpreter and need not accept defendant's assertion that he needs one as dispositive, but must balance defendant's right to confrontation and effective assistance against the public's interest in the economical administration of criminal law. Kim v. American Samoa Gov't, 17 A.S.R.2d 193.

As officers of the court, members of the bar may be appointed, without compensation if necessary, as counsel to insure that indigent criminal defendants receive legal representation. Rev. Const. Am. Samoa Art. I, § 6; A.S.C.A. §§ 46.0502(2), 46.1001. American Samoa Gov't v. Wilson, 23 A.S.R.2d 159.

Severe economic hardship is a factor which the court may appropriately consider in deciding whether to permit an attorney to withdraw as counsel. American Samoa Gov't v. Wilson, 23 A.S.R.2d 159.

§ 12(3)—Effective Assistance of Counsel

An indigent defendant's constitutional right to assistance of counsel includes the right to necessary investigative assistance. Am. Samoa Gov't v. Tuvale, 2 A.S.R.2d 92 (Trial Div. 1986).

Territorial statute permitting jurors who can read, speak, and understand Samoan but not English does not violate defendant's constitutional right to effective assistance of counsel. 46 A.S.C.A. § 46.1504. American Samoa Gov't v. Agasiva, 4 A.S.R.2d 110.

Right to effective assistance of counsel applies in American Samoa. Am. Samoa Rev. Const. art I, § 6; A.S.C.A. §§ 46.0502, 46.1001. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Right to effective assistance of counsel entitles a criminal defendant not to errorless representation, but to meaningful adversarial testing of prosecution's case. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Counsel can meet constitutional standard for effective assistance by advising client to plead guilty if that advice falls within the range of competent representation under the circumstances. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

In order to overcome strong presumption of effectiveness and meet burden of proof, defendant attacking effectiveness of counsel must show specific unreasonable errors and a reasonable likelihood that absence of those errors would have changed the result of the case. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Defense counsel's extensive pre-trial discovery, including interviewing witnesses, amassing and reviewing documents, and conferring with defendant, was well above constitutional standard of effective representation. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Counsel's alleged failure to apprise court of facts tending to show defendant's innocence did not amount to constitutionally ineffective representation when defendant failed to show how those facts could have changed the result at trial, and when defendant himself related those facts to the court at his sentencing. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Habeas corpus petitioner's testimony that his attorney failed to advise him of the possibility and meaning of consecutive sentences was overcome by attorney's contradictory testimony, since attorney's credibility remained intact but petitioner's credibility was undermined by his pattern of serious but unsupported allegations. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Evidence of full, adequate representation at sentencing hearing, combined with absence of any indication that resulting sentence was inappropriate, defeated habeas corpus

petitioner's argument that his counsel's failure to move for post-trial reduction of sentence amounted to ineffective representation. Suisala v. Moaali'itele, 6 A.S.R.2d 15.

Counsel's failure to file a requested appeal of a criminal conviction violates defendant's right to effective assistance of counsel, justifies habeas corpus relief without a showing by defendant of prejudice or doubtfulness of guilt, and entitles defendant to an out-of-time appeal. U.S. Const. Amend. VI. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

Counsel's failure to assert defense of intoxication could not prejudice defendant's right to effective assistance of counsel when proof of intoxication would not have legally negated the required criminal intent. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

Defendant charged with traffic infraction who was represented by counsel in traffic case and had appeared in court with his counsel, who later chose to appear without counsel to plead guilty to the infraction, could not object to introduction of guilty plea as evidence in collateral prosecution for driving with suspended license on ground that he had been denied effective assistance of counsel. American Samoa Gov't v. Malae, 10 A.S.R.2d 99.

In order to establish ineffective assistance of counsel, the claimant must prove both that defense counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that his defense was prejudiced by counsel's substandard performance. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

The test for prejudice requires a showing that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

The standard of proof for establishing ineffective assistance of counsel is viewed against a strong presumption of effectiveness. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

Matters of trial strategy are not challengeable on appeal. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

The decision of whether to move for a mistrial rather than continuing with the empaneled jury is purely strategic, and therefore not challengeable on appeal. Man v. American Samoa Gov't, 29 A.S.R.2d 66.

The representation of more than one accused by the same attorney is not per se violative of the Sixth Amendment's constitutional guarantee of effective assistance of counsel. American Samoa Gov't v. Amani, 2 A.S.R.3d 71 (Trial Div. 1998).

No bright-line rules exist with respect to situations involving conflicts of interest in a criminal case; the court must look at the particular facts to determine whether a Sixth Amendment violation is present. American Samoa Gov't v. Amani, 2 A.S.R.3d 71 (Trial Div. 1998).

The Sixth Amendment does not guarantee an accused the right to perfect representation, but merely adequate and fair representation. American Samoa Gov't v. Amani, 2 A.S.R.3d 71 (Trial Div. 1998).

In order to prove that a Sixth Amendment violation exists, the defendant must show both that: (1) counsel's performance was deficient, having made errors so serious that counsel was not truly functioning as "counsel"; and (2) the deficient performance prejudiced the defendant's defense. American Samoa Gov't v. Amani, 2 A.S.R.3d 71 (Trial Div. 1998).

The United States Supreme Court defines the standard for judging attorney performance as that of reasonably effective assistance considering all the circumstances. American Samoa Gov't v. Amani, 2 A.S.R.3d 71 (Trial Div. 1998).

A potential conflict of interest does not rise to the level of a constitutional violation; an actual present conflict of interest must exist to trigger judicial review. American Samoa Gov't v. Amani, 2 A.S.R.3d 71 (Trial Div. 1998).

Where Deputy Public Defender was closely related to co-defendant and client-defendant asserted co-defendant, not he, was the culpable party, zealous representation of client would be directly averse to the interests of relative and therefore conflict of interest existed which foreclosed representation by Deputy Public Defender. American Samoa Gov't v. Amani, 2 A.S.R.3d 71 (Trial Div. 1998).

Where court directed Public Defender's Office to assign a separate, single attorney for each defendant, but to assign them in such fashion as the office preferred, conflict of interest which was subsequently created was an artificial one and the result of office mismanagement. American Samoa Gov't v. Amani, 2 A.S.R.3d 71 (Trial Div. 1998).

Assignment of attorneys to criminal defendants within the Public Defender's Office, when imprudent and resulting in an "artificial" conflict of interest can be cause for sanctions. American Samoa Gov't v. Amani, 2 A.S.R.3d 71 (Trial Div. 1998).

Defense counsel's failure to request a "no inference" instruction is not outside the wide range of professionally competent assistance which is constitutionally required, nor does such failure demonstrate a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different; competent counsel could specifically choose not to request such instruction because it can be perceived as highlighting in the jurors'

minds the defendant's failure to testify. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

The burden is on an accused to show both that his counsel acted incompetently and that without such incompetence, the case would likely have resulted in a different outcome. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

Criminal defense attorneys are presumed to be effective. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

An attorney's legal advice is unconstitutionally deficient if it fails to meet the standard of "a reasonably competent attorney" in a criminal case. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

Advising a client to plead guilty can meet the standard for effective assistance of counsel if that advice falls within the range of competent representation under the circumstances. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

The number and length of meetings between a defendant and his counsel do not alone determine whether counsel rendered adequate advice. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

A defendant cannot successfully claim coercion simply because he pled guilty after relying on counsel's recommendation. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

One meeting between a defendant and counsel may be sufficient to afford the defendant an adequate opportunity to understand a plea agreement. American Samoa Gov't v. Pearson, 4 A.S.R.3d 56 (Trial Div. 2000).

In order to demonstrate ineffective assistance of counsel, a criminal defendant must show specific unreasonable errors and a reasonable likelihood that the absence of such errors would have changed the result of the case. Isaia v. Am. Samoa Gov't, 6 A.S.R.3d 3 (App. Div. 2002).

The effective assistance of counsel requires a State or Territory to take steps to assure that the defendant has a fair opportunity to present his defense, and a court must assure that the basic tools of an adequate defense are provided to defendants who cannot afford to pay for them. American Samoa Gov't v. Sanerivi, 7 A.S.R.3d 114 (Trial Div. 2003).

Interviewing witnesses is an essential ingredient to an attorney effectively representing a defendant in a criminal case, and one basic tool of an adequate defense is funds to pay the necessary and essential expenses of interviewing the material witnesses. American Samoa Gov't v. Sanerivi, 7 A.S.R.3d 114 (Trial Div. 2003).

Before a court approves funding for services for an indigent, such a defendant generally must show why the requested services are necessary to an adequate defense, and what the defendant expects to find by using the services. American Samoa Gov't v. Sanerivi, 7 A.S.R.3d 114 (Trial Div. 2003).

A court's determination of what is necessary to an adequate defense should not be overly rigid, as long as a reasonable attorney would engage such services for a client having the independent financial means to pay for them. American Samoa Gov't v. Sanerivi, 7 A.S.R.3d 114 (Trial Div. 2003).

§ 12(4)—Prosecutorial Misconduct

The government acts improperly when it introduces evidence of defendant's pleas of nolo contendere in previous criminal proceedings. T.C.R.Ev. 410. American Samoa Gov't v. Solaita, 27 A.S.R.2d 9.

Where prosecutors have improperly introduced evidence of defendant's pleas of nolo contendere in previous criminal proceedings, court will not grant a mistrial, but will strike and disregard the evidence. American Samoa Gov't v. Solaita, 27 A.S.R.2d 9.

Where the trial court determines that government agents' misconduct during trial should not be lightly taken but did not materially or prejudicially compromise or otherwise damage the defense because the agents did not learn anything about the defense they would not have learned from the prosecution in discussing their testimony, and where the Defendant does not provide evidence that such determination is clearly erroneous, the court defers to the trial court's factual determination that the misconduct did not affect the agents' testimony. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

Prosecution's comment on a defendant's silence, which occurs after arrest and Miranda warnings, is not allowed. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

§ 13 Extradition

§ 13(1) —General Provisions

RESERVED

§ 13(2) —Extradition Proceedings

RESERVED

§ 13(3) —of Witnesses

Under the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, Haw. Rev. Stat. ch. 836 (1993) ("Uniform Act"), there are two requirements for the extradition of a witness: (1) the territory of which the request is made must have a reciprocal provision for "commanding persons within its borders to attend and testify in criminal prosecutions . . . in [Hawaii]"; and (2) the witness requested must be "material." However, a witness may not be extradited from American Samoa because it has not adopted the Uniform Act. It also has no analogous provision for extraditing material witnesses to other jurisdictions or for securing witnesses in foreign jurisdictions to testify here. In Re Proceedings to Compel Attendance of May Fitiausi, 29 A.S.R.2d 71.

§ 13(4) —Evidence

The admissibility of evidence in an extradition proceeding is determined by the applicable extradition treaty. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

ELECTIONS

§ 1 General Provisions
1(1) —Election Commissioner
2 Registration
2(1) —Generally
2(2) —Appeals
3 Issues – Candidates
3(1) —Nomination of Candidates
3(2) —Challenging of Candidates
3(3) —Certification of Winning Candidate
3(4) —Appeal to High Court
4 Voting Procedures
4(1) —General Provisions
4(2) —Illiterate & Disabled
5 Election Contests
5(1) —Tie Vote
5(2) —Contests for Cause – Generally
5(3) —Contests for Cause – Filing Complaint
6 Elections Offenses
7 Senate Elections
7(1) —Election Procedures
7(2) —Appeal to High Court

§ 1 General Provisions

§ 1(1) —Election Commissioner

Election Commissioner appointed by Governor has power to establish procedures and make rulings necessary for orderly conduct of election. Tuia v. Yandall, 4 A.S.R. 559.

Election Commissioner has power to issue hour for opening and closing of polls. Tuia v. Yandall, 4 A.S.R. 559.

Election Commissioner has power to authorize electors to vote without surrendering registration receipts if identified as legal voters. Tuia v. Yandall, 4 A.S.R. 559.

Election Commissioner may make ruling not invalidating vote where voter fails to sign role at time of voting. Tuia v. Yandall, 4 A.S.R. 559.

Election Commissioner does not have power to call new election on own motion or at request of Election Board which would nullify results of election held in accordance with law and constitution which sets specific date for election. Tuia v. Yandall, 4 A.S.R. 559.

§ 2 Registration

§ 2(1) —Generally

Under statute providing that a person "does not gain residency in a district without the present intention of establishing his permanent dwelling place within that district," voter who had moved from one district to another eight years earlier upon inheriting a house, but (1) whose family, church, and business were in the district of his former residence; (2) who had continued to serve matai title and participate actively in aumaga within district of former residence; (3) who had always voted in the former district and never in the district wherein his house was located; and (4) who in the two most recent elections had been a successful candidate for the legislature from the district of his former residence, had not established residency in the new district by mere physical presence. A.S.C.A. § 6.0212. Scanlan v. Reed, 9 A.S.R.2d 54.

A voter who is physically present in a new place of residence, but fails to gain legal residence in that district because he lacks the intention of establishing his permanent dwelling place there, retains his previous legal residence and may vote there. A.S.C.A. § 6.0212. Scanlan v. Reed, 9 A.S.R.2d 54.

One who votes in a foreign election, without having been naturalized as a citizen of a foreign state or taking an oath of allegiance to such a state, does not thereby lose his status as a United States citizen or national. 8 U.S.C. § 1481. Tuika v. Chief Election Officer, 9 A.S.R.2d 57.

One who votes in a foreign election thereby loses his legal residence in American Samoa. A.S.C.A. § 6.0212(g). Tuika v. Chief Election Officer, 9 A.S.R.2d 57.

One who loses his legal residence in American Samoa by voting in a foreign election, but who returns to American Samoa with the intention to remain permanently, thereby reacquires his legal residence in American Samoa. A.S.C.A. § 6.0212(a). Tuika v. Chief Election Officer, 9 A.S.R.2d 57.

Residency is one of the criteria that determine the right to vote in American Samoa, not vice versa; hence, the fact that a person is registered to vote here does not prove that he is a resident of the territory. In re Matai Title Niuatoa, 16 A.S.R.2d 25.

When determining an individual's residency for voting purposes, an individual's immediate choice of living arrangements does not overcome the individual's longstanding, permanent ties to a voting district. Mulitauaopele v. CEO, 27 A.S.R.2d 56.

Under Samoan law, the residency of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return. A.S.C.A. § 6.0212(a). Mulitauaopele v. CEO, 27 A.S.R.2d 56.

Under Samoan law, a person does not gain or lose residency by reason of his presence or absence while employed in the service of the United States. A.S.C.A. § 6.0212(e). Mulitauaopele v. CEO, 27 A.S.R.2d 56.

Under Samoan law, the situs of a person's primary matai obligations are a factor in determining district residency. However, matai obligations alone may not sustain a finding of district residency absent other evidence which, in connection with evidence of matai obligations, is sufficient to demonstrate intent to reside within a voting district. A.S.C.A. § 6.0212(f). Mulitauaopele v. CEO, 27 A.S.R.2d 56.

§ 2(2) —Appeals

Election Board acts as board of appeals on matters referred to it by Election Commissioner or aggrieved person. Tuia v. Yandall, 4 A.S.R. 559.

Statute empowering Election Board to hear appeals from Election Commissioner or aggrieved person is intended to take effect before election as in case where Election Commissioner refuses to certify person as candidate or refuses to give or sell candidate copy of rolls of voters. Tuia v. Yandall, 4 A.S.R. 559.

Election Board, in conducting investigation, acted in careless and irresponsible manner failing to call pertinent witnesses, which resulted in improper and inconclusive findings. Tuia v. Yandall, 4 A.S.R. 559.

Where statute provided for appeal to board of registration from a denial of voter registration by election officer, and for judicial review of an adverse decision of the board of registration, court would not issue writ of mandamus to election officer ordering him to register prospective voter who had not yet appealed to board of registration. A.S.C.A. §§ 6.0224, 6.0230. Siofele v. Shimasaki, 8 A.S.R.2d 81.

One who challenges the right of another person to be registered or to vote as a qualified elector must exhaust administrative remedies before submitting the matter to court. A.S.C.A. §§ 6.0230 et seq. Election Office v. Tuika, 9 A.S.R.2d 1.

Court would not exercise its power to render a declaratory judgment where the party seeking the judgment had not exhausted his administrative remedies. Election Office v. Tuika, 9 A.S.R.2d 1.

Court would not exercise its power to render a declaratory judgment where the only relief it could grant would require the court to assume a supervisory role over administrative processes. Election Office v. Tuika, 9 A.S.R.2d 1.

§ 3 Issues – Candidates

§ 3(1) —Nomination of Candidates

Territorial election statutes provide no right of appeal to board of registration from chief election officer's determination that a person is ineligible to run for elective office. A.S.C.A. §§ 4.0101 et seq., 6.0101 et seq. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Under statute providing that blank forms for petitions required of candidates for elective office should be distributed by election officer, and also providing that eligibility of candidates should be determined after they had filed the required petitions, election officer had no authority to withhold blank forms from a prospective candidate whom he did not did not believe to be eligible for election. A.S.C.A. §§ 6.0301(b),(d). Siofele v. Shimasaki, 8 A.S.R.2d 81.

Chief election officer did not act arbitrarily or capriciously in denying petitioner's eligibility for election where, although petitioner supplied all the information requested on candidacy forms, he refused reasonable requests by the chief election officer for further information relevant to his eligibility. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Court would not compel chief election officer to find the petitioner a bona fide resident where petitioner was not on the current voter registration lists, was not present in the territory during the period at issue, refused to supply additional information requested by the chief election officer, and was identified as a registered voter in another jurisdiction during the period at issue. Siofele v. Shimasaki, 9 A.S.R.2d 3.

To be eligible for election to the territorial legislature, one must have lived in the territory for a total of at least five years and have been a bona fide resident of the district from which he is elected for at least one year immediately preceding his election. Rev'd Const. Am. Samoa art. II § 3(c). Tuika v. Chief Election Officer, 9 A.S.R.2d 57.

Under A.S.C.A. § 6.0301(a) and (f), candidates for the office of Delegate to the United States House of Representatives must be nominated by petitions signed by at least 300 registered voters, and all candidates for the office of Delegate to the United States House of Representatives are entitled to a list of all qualified electors in the Territory within 10 days after the close of registration for the Territory, which is the 30th day prior to each election, and it is within the discretion of the Chief Election Officer to withhold the list of qualified electors until it is required to be provided by law. Coleman v. Fuimaono, 2 A.S.R.3d 44 (App. Div. 1998).

Although not provided with the most current list of qualified electors, and although not having the prior list which other candidates have, a candidate is not unduly prejudiced where it appears that the candidate could have taken reasonable action to ensure that the candidate's petition contained a sufficient number of signatures of qualified electors. Coleman v. Fuimaono, 2 A.S.R.3d 44 (App. Div. 1998).

Where a candidate asserts that her petition was subjected to a higher degree of scrutiny than were those of her competitors, she must demonstrate that the Chief Election Officer acted in an unlawful, arbitrary or capricious manner with respect to her petition. Coleman v. Fuimaono, 2 A.S.R.3d 44 (App. Div. 1998).

Where the Chief Election Officer (CEO) invited but then refused to consider the testimony of witnesses to verify their signatures on a candidate's petition, but where the candidate failed to take an opportunity to present such testimony directly to the Court, it will not be held that the CEO's action rose to the level of arbitrary and capricious behavior. Coleman v. Fuimaono, 2 A.S.R.3d 44 (App. Div. 1998).

§ 3(2) —Challenging of Candidates

A.S.C.A. § 6.0301(d), providing for the Chief Election Officer to determine candidate eligibility, does not provide for appeals from such determinations. Coleman v. Fuimaono, 2 A.S.R.3d 44 (App. Div. 1998).

§ 3(3) —Certification of Winning Candidate

Election Board certifies election of winning candidates if satisfied election has been conducted in accordance with law and established procedure of Election Commissioner. Tuia v. Yandall, 4 A.S.R. 559.

Election Board is not established to decide winner of election but to certify winning candidate submitted to it by Election Commissioner, which is ministerial function. (CAS 2.0510.) Tuia v. Yandall, 4 A.S.R. 559.

§ 3(4) —Appeal to High Court

Court could grant review by mandamus of chief election officer's determination that petitioner was ineligible to run for elective office, where statutory scheme was silent as to appeals procedure and circumstances appeared to render any alternative review procedures inadequate. T.C.R.C.P. Rules 87, 88. Siofele v. Shimasaki, 9 A.S.R.2d 3.

One month delay in seeking judicial review of denial of the right to run for elective office was unreasonable where (1) the election was to be held two weeks after petitioners first sought judicial relief and (2) one of the petitioners, although absent from the territory, could have secured counsel or instructed his co-petitioner to assert their rights. Siofele v. Shimasaki, 9 A.S.R.2d 3.

Action seeking removal of a candidate from the list of those eligible to run in an election, filed less than two business days prior to the election, would not be set for hearing prior to the election. Scanlan v. Reed, 9 A.S.R.2d 15.

Review of candidate eligibility determinations is appropriate in the Trial Division for the limited purposes of determining whether the decision was reached as a result of fraud, corruption, abuse of discretion or unauthorized action so as to constitute a denial of due process of law or as a result of a clear disregard of statutes or court determinations. Coleman v. Fuimaono, 2 A.S.R.3d 44 (App. Div. 1998).

The Appellate Division may construe an action as a petition for judicial review pursuant to the provisions of the Administrative Procedure Act, A.S.C.A. §§ 4.1001 et seq., under which a prospective candidate may petition directly with the Appellate Division for review of a determination of the Chief Election Officer as an official government agency decision. Coleman v. Fuimaono, 2 A.S.R.3d 44 (App. Div. 1998).

Under A.S.C.A. § 4.1044, the standard of review in the Appellate Division of a determination by the Chief Election Officer under these circumstances is similar to that employed by the Trial Division. Coleman v. Fuimaono, 2 A.S.R.3d 44 (App. Div. 1998).

§ 4 Voting Procedures

§ 4(1) —General Provisions

Statutory provision requiring that the polls shall be kept open no later than 6:00 p.m. invalidates all ballots marked after 6:00 p.m. on election day, unless that individual was in line at the polling station prior to 6:00 p.m. A.S.C.A. § 6.0701. Mau v. Fuimaono, 27 A.S.R.2d 44.

Under Samoan law, voters need only present identification upon request of a district official. A.S.C.A. § 6.0706. Mulitauaopele v. CEO, 27 A.S.R.2d 56.

The Legislature has not enacted any statute, and the Chief Election Officer has not promulgated any administrative rule, requiring voters to mark their ballots in any particular manner. Mulitauaopele v. CEO, 27 A.S.R.2d 56.

In the absence of prescribed marking standards, election officials cannot properly invalidate a ballot for peculiar markings when the voter's intention is unambiguously expressed. Mulitauaopele v. CEO, 27 A.S.R.2d 56.

A.S.C.A. § 6.1106(b) strictly prohibits the opening of the absentee ballot container before Election Day and administrative rules which allow discretion in this improperly contravene the statute. Reid v. Tuipine, 4 A.S.R.3d 9 (App Div. 2000).

A.S.C.A. § 6.0802 primarily requires that a central polling station be designated to count all ballots and, although this provision is violated when absentee ballots are counted at satellite stations, such actions of convenience, though improper, are not cause to void ballots where there is no evidence of tampering or fraud or laxity to call into question the validity or security of the actual ballots counted. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

Although electors are mandated to sign the poll book under A.S.C.A. § 6.0706, the failure of voters to sign the poll book does not render their votes illegal. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

Although the early closing of polling stations is improper, such does not render the election result uncertain where there is evidence that all of the registered voters have voted, and where there is no showing that the early closing affected the election result. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

When partisan poll watchers are not afforded the opportunity to physically examine the ballots, a public recount of such ballots should be undertaken. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

Under A.S.C.A. § 6.0402 a list of district election officials must be made, but it is not required to be published. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

Where election officials fail to follow the statutory procedure for handling challenges to the qualifications of electors, such non-compliance does render an election result uncertain when challenges are permitted, or when such challenges are viewed most favorably to the challenger and the election result is not rendered uncertain. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

§ 4(2) —Illiterate & Disabled Voters

Assisting individuals with physical handicaps in marking ballots does not invalidate the individual's vote. A.S.C.A. § 6.1101(b). Mau v. Fuimaono, 27 A.S.R.2d 44.

Statutory provision permitting individuals with physical handicaps to receive assistance in marking ballots does not place limitations on who may assist the disabled voter. A.S.C.A. § 6.1101(b). Mau v. Fuimaono, 27 A.S.R.2d 44.

§ 5 Election Contests

§ 5(1) —Tie Vote

Statutory provision stating that an election tie "shall be decided by lot" is a mandatory, rather than optional mechanism for breaking the tie. A.S.C.A. § 6.0901. In re the Election for Representative from District No. 3, 27 A.S.R.2d 28.

Statutory provision requiring election ties to be decided by lot does not invalidate any votes of the qualified electors, nor does it taint the requirement that representatives be elected by secret ballot, since the lot comes into play as a result of the balloting process. A.S.C.A. § 6.0901. In re the Election for Representative from District No. 3, 27 A.S.R.2d 28.

Statutory provision requiring election ties to be decided by lot is not inconsistent with the Revised Constitution of American Samoa. A.S.C.A. § 6.0901. In re the Election for Representative from District No. 3, 27 A.S.R.2d 28.

§ 5(2) —Contests for Cause – Generally

Court may invalidate an election based on provable fraud by candidates or electors that could cause a difference in the election result, as well as any other illegality which would make the election result uncertain. A.S.C.A. § 6.0902. Mau v. Fuimaono, 27 A.S.R.2d 44.

Fraud and other illegalities may invalidate an individual ballot, but not an entire election. Mau v. Fuimaono, 27 A.S.R.2d 44.

Under A.S.C.A. § 6.0903(c), which sets out the standard of

review for invalidating a general election, challengers must prove that the election result has been made uncertain due to mistake or fraud or the indeterminacy of the leading candidates' majority margin according to the valid votes cast; an election will be invalidated only if the number of ineligible ballots cast is equal to or greater than the winning margin. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

Where Petitioners are candidates for governor and lieutenant governor of American Samoa and challenge a critical number of excluded votes such that the alleged exclusion could very well cause a difference in the election result, the Petitioners have standing to assert such claim under A.S.C.A. § 6.0902. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

Although A.S.C.A. § 6.0902 intimates that the Appellate Division of the High Court may hear virtually any cause of action, and although the Court has broad powers to review any cause that could cause a difference in an election result, such is the case only insofar as the cause is treatable by reversing, correcting, or changing the decisions of district or election officials. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

Where Petitioners challenge the legality of Election Rules themselves, such challenge does not qualify the case under the subject matter jurisdiction provided for by A.S.C.A. § 6.0902 because the enactment of an administrative rule involves more than the mere decision of an election official for purposes of the statutes concerning election contests and review of administrative rules is outside the scope of the Court's review. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

The Court is allowed to void elections based on the uncertainty of valid votes cast—not on votes that might have been cast. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

A.S.C.A. § 6.0902 establishes two requirements for an election complaint: that it shall set forth any cause or causes that could cause a difference in the election result, and that it set forth any reasons for reversing, correcting, or changing the decisions of the district or election officials; all causes of action in an election contest must claim to make a difference in the election result, and must pertain to a decision of a district or election official. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

Although A.S.C.A. § 6.0233(a) requires that challenges contesting the qualifications of electors be decided as soon as possible, where challenges are brought the day before the election but not decided before election day, the challenger is not prejudiced since he may raise the challenges on the day of the election. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

Under A.S.C.A. § 6.0903(c), the Court may rule that the cumulative effect of any number of claims can change an election result even if any of the individual claims is incapable of doing so on its own, but the burden is to demonstrate specifically, clearly, and convincingly that the irregularities affected the vote. Reid v. Tuipine, 4 A.S.R.3d 9 (App. Div. 2000).

§ 5(3) —Contests for Cause – Filing Complaint

Under statute requiring election appeals to be filed by 4:30 p.m. on the seventh calendar day following the election, court had no jurisdiction over an appeal filed at 8:00 p.m. on the seventh day. A.S.C.A. § 6.0903(a). Tuika v. Chief Election Officer, 9 A.S.R.2d 57.

An election is to be invalidated only if it cannot be determined that a candidate polled a majority or plurality of the valid votes cast on Election Day. A.S.C.A. § 6.0903. Faga v. Malepeai, 23 A.S.R.2d 48.

§ 6 Election Offenses

Where an individual challenges vote after the election, individual must prove that the facts alleged in support of the complaint were not known to the individual, and could not with due diligence have been discovered, prior to the challenged elector casting his ballot. A.S.C.A. § 6.0223(d)(3). Mau v. Fuimaono, 27 A.S.R.2d 44.

To establish that a payment to a voter constituted election fraud so as to invalidate a voter's ballot, a challenger must show that the money or other consideration was given to induce the voter to cast a ballot for a particular person. A.S.C.A. § 6.1203. Mau v. Fuimaono, 27 A.S.R.2d 44.

§ 7 Senate Elections

§ 7(1) —Election Procedures

A.S. Const. Art. II, § 4 mandates that senators "be elected" by county councils, not appointed by any individual. Meredith v. Mola, 4 A.S.R. 773.

Constitution requires that senators be chosen by county council and court cannot submit two names to senate for election. A.S. Const. Art. II, § 4, Art. II, 22. Meredith v. Mola, 4 A.S.R. 773.

Court will appoint neutral official to supervise senatorial election if evidence shows this is only way to insure compliance with constitutional mandate that county council elect senator. A.S. Const. Art. II, § 4. Meredith v. Mola, 4 A.S.R. 773.

County chief may not submit names of two senatorial candidates to senate for election by that body. A.S. Const. Art. II, § 4. Meredith v. Mola, 4 A.S.R. 773.

Court will not prescribe specific procedure by which County Council must choose Senator in accord with Samoan custom

and tradition. Rev. Const. Am. Samoa, Art. II, Sec. 4. Faiivae v. Mola, 4 A.S.R. 834.

County Chief has mere ministerial duty to certify senatorial choice of County Council and may not otherwise interfere in selection process. Faiivae v. Mola, 4 A.S.R. 834.

Provision of territorial constitution that the legislature shall judge elections of its members presumes that an election has been held, and therefore does not define the factual question whether the required election ever occurred give rise to as a political question preventing judicial intervention. Rev. Const. Am. Samoa art. II § 22. Mauga v. Lutu, 10 A.S.R.2d 115.

Provision of territorial constitution that county council elect senators to represent the county does not permit election of senators by village councils of certain villages within the county, or by a single member of the county council, or by the senate itself; these bodies may recommend or endorse a particular candidate, but the final decision must rest with the county council itself. Rev. Const. Am. Samoa art. II § 4. Mauga v. Lutu, 10 A.S.R.2d 115.

Provision of territorial constitution that county council elect senators in accordance with Samoan custom means that the council is to use the traditional Samoan manner of decision making as it existed at the time the provision was adopted. Rev. Const. Am. Samoa art. II § 4. Mauga v. Lutu, 10 A.S.R.2d 115.

Provision of territorial constitution that county council elect senators in accordance with Samoan custom does not include power to delegate the decision completely to a subdivision of the county, since this would allow a new custom, habit, or practice to repeal explicit and unambiguous constitutional provisions. Rev. Const. Am. Samoa art. II § 4. Mauga v. Lutu, 10 A.S.R.2d 115.

Cumulative effect of two territorial constitutional provisions, one requiring election of senators by county councils and the other providing that each senator shall hold office for four years, is to require that an election be held once every four years by the county council as it is then constituted; since the membership of the county council changes over time, no one particular council can be permitted to lock senatorial selection into the future by selecting any number of senators to serve during subsequent terms. Rev. Const. Am. Samoa art. II §§ 4, 6. Mauga v. Lutu, 10 A.S.R.2d 115.

Though Article II, Section 22 of the Revised Constitution grants the Senate exclusive authority to determine the results of an election, the court has jurisdiction to determine whether an election occurred according to constitutional requirements. Thus, the court examines the narrow questions of (1) whether an election of senators was held "by the county councils of the counties they are to represent," and (2) "in accordance with Samoan custom." Eseroma v. Faresa, 31 A.S.R.2d 169.

For anyone from the Island of Ta'u to have a rightful claim to a Senate seat, the individual must be able to show that the Fitiuta, Faleasao and Ta'u County Councils--the three county councils of the counties the individual is to represent--had an opportunity to participate meaningfully in the election process. Eseroma v. Faresa, 31 A.S.R.2d 169.

Permissible methods of electing Senators include, but are not limited to "voice vote, written ballot, computation of number of speakers for each candidate, and consensual agreement." Meredith v. Mola, 4 A.S.R. 773, 781 (Trial Div. 1973). Impermissible methods of electing Senators include, but are not limited to appointment of the Senator by one powerful matai, and delegation of the decision to a subdivision of the deliberative body constitutionally assigned the responsibility of electing senators. Mauga v. Lutu, 10 A.S.R.2d 115, 120 (Trial Div. 1989). Eseroma v. Faresa, 31 A.S.R.2d 169.

Any lawful claim of right to a Senate seat from Sua County must stem from a final decision of the entire Sua County Council. Muliauaopele v. Mata`utia, 31 A.S.R.2d 175.

The requirement of Article II, § 4 of the Revised Constitution of American Samoa that senate elections must be "in accordance with Samoan custom" does not mean the counties must follow a particular Samoan custom of the county but, rather, indicates the Revised Constitution permits variation among the counties in the manner in which they conduct their Senate election meetings. Eseroma v. Feresa, 1 A.S.R.3d 78 (Trial Div. 1997).

The constitutional command that elections be "in accordance with Samoan custom" merely requires extensive sharing of ideas among county council members with regards to potential candidates, and a forging of a collective will as to who shall serve in the Senate. Eseroma v. Feresa, 1 A.S.R.3d 78 (Trial Div. 1997).

Just as an election is not tainted by consideration of extra nominees, the participation of non-council members is not a fatal flaw under Article II, § 4 of the Revised Constitution. Eseroma v. Feresa, 1 A.S.R.3d 78 (Trial Div. 1997).

§ 7(2) —Appeals to High Court

Court will not lay down a rule prescribing the exact method or custom a county council must use to elect a senator in accordance with Samoan custom, especially as custom may vary in different counties. Rev. Const. Am. Samoa art. II § 4. Mauga v. Lutu, 10 A.S.R.2d 115.

Defendant was entitled to summary judgment on plaintiff's claim that she had been duly elected to the senate about four years before the commencement of the term for which she claimed to have been elected. Rev. Const. Am. Samoa art. II §§ 4, 6. Mauga v. Lutu, 10 A.S.R.2d 115.

Under the Revised Constitution of American Samoa, the High Court does not have jurisdiction to resolve disputes concerning the outcome of a Senate election conducted according to the law, nor does the Court possess the authority to determine which of many candidates is the most qualified to represent a county in the Senate. art. II, § 22. However, the court's jurisdiction does extend to review the question of whether a county council followed proper election procedure when electing its Senator. Muliauaopele v. Mata`utia, 31 A.S.R.2d 175.

EMPLOYMENT LAW

§ 1 General Provisions
2 Hiring And Firing
2(1) — "At Will" Employment
2(2) —Just Cause Termination
2(3) —Wrongful Termination
3 Independent Contractors
4 Government Employees
5 National Labor Relations Board
6 Wages
7 Workmen's Compensation
8 Fair Labor Standards Act
8(1) —Generally
8(2) —Right of Action
8(3) —Applicability of the FLSA
8(4) —"Opting In" Under the FLSA
8(5) —Rights Provided
8(5)(a) —Generally
8(5)(b) —Rate of Pay
8(5)(c) —Relating to Involvement in Suit
8(6) —Remedies
9 Remedies

§ 1 General Provisions

The proper procedure to contest a Personnel Advisory Board decision affecting a person's vested interest is to seek review at the trial, not the appellate level, of the High Court. Banks v. Am. Samoa Gov't, 2 A.S.R.2d 88 (App. Div. 1985).

If the decision of the Personnel Advisory Board resolving a dispute within the executive branch regarding selection of a person for a government position violates a person's civil, common law, or statutory rights, that person may proceed against ASG in the Trial Division of the High Court of the Equal Opportunity Employment Commission. Banks v. Am. Samoa Gov't, 2 A.S.R.2d 88 (App. Div. 1985).

The court will consider the intent of the parties, business custom and usage, the nature of the employment, the situation of the parties, and the circumstances of the case to determine the understanding of the parties with respect to employment duration. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 45 (Trial Div. 1997).

Dismissal of government employment action without prejudice proper where dispute had not undergone three-part administrative procedure. Tauia v. American Samoa Gov't, 1 A.S.R.3d 64 (Trial Div. 1997).

Under three-part administrative procedure, government employee submits written grievance to supervisor, Director of Manpower Resources conducts an informal hearing and issues a "final decision," after which employee may appeal to Personnel Advisory Board. Tauia v. American Samoa Gov't, 1 A.S.R.3d 64 (Trial Div. 1997).

A servant is only bound to obey reasonable orders of the employer. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Although an employer is not obligated to immediately terminate an employee once a decision to terminate has been made, the employer must act in good faith and notify the employee of this decision in reasonable and timely manner. Tuika v. American Samoa Dev. Corp., 3 A.S.R.3d 155 (Trial Div. 1999).

Where a notice of suspension informs an employee that the suspension is indefinite, the employee should affirmatively inquire as to her employment status after a reasonable period. Tuika v. American Samoa Dev. Corp., 3 A.S.R.3d 155 (Trial Div. 1999).

In the employment context, an attack on the honesty or competence of an employee endangers his position, and is actionable per se. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

To determine whether an employment relationship exists between two parties the court must look beyond the terms of the contract. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

In determining whether an employment relationship exists, the traditional common-law rule focuses the inquiry on the alleged employer's degree of control over the alleged employee. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 2 Hiring and Firing

§ 2(1) —"At Will" Employment

A government employee with no contractual or statutory right to continued employment may be fired for any reason or even "for no reason whatever" without a denial of due process; only exception is that employee cannot be terminated for a reason that itself violates some constitutional right, such as free speech or equal protection of the laws. U.S. Const. amdt. 14. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

If the parties to an employment contract have neither fixed a definite term of employment nor created any contractual obstacle to the right of discretionary discharge, then the contract is for employment at will and the employer may discharge the employee without incurring liability. Palelei v. Star Kist Samoa, Inc., 5 A.S.R.2d 162.

The "at will" employment rule is a rule of contractual interpretation rather than a substantive right of employers; it means simply that without evidence of negotiation or agreement on duration or terms of employment, courts will assume the parties intended the contract to be terminable at will by either party. Palelei v. Star Kist Samoa, Inc., 5 A.S.R.2d 162.

An employer's policy manual can give rise to contractual rights and obligations if the contents of the manual and the circumstances of its distribution suggest that it was designed to give the impression that such rights and obligations existed and thereby to elicit particular conduct on the part of employees. Palelei v. Star Kist Samoa, Inc., 5 A.S.R.2d 162.

Employee handbook that strongly advised employees not to join a labor union, described a system of "progressive discipline" prior to termination, and required the employee to sign a statement that he has read the manual and understands its provisions, gave rise to contractual rights and obligations with regard to discipline and termination of employment. Palelei v. Star Kist Samoa, Inc., 5 A.S.R.2d 162.

Under the common law, if the parties to an employment contract have neither fixed a definite term of employment nor created any contractual obstacle to the right of discretionary discharge, then the contract is for employment at will and the employer may without liability discharge the employee for any reason. Palelei v. Star Kist Samoa, Inc., 5 A.S.R.2d 162, 165 (Trial Div. 1987). Paaga v. Development Bank of Am. Samoa, 31 A.S.R.2d 152.

To defeat a party's motion for summary judgment that an employment relationship was at-will, an opposing party must present evidence in her pleadings and supporting affidavits that, if proven at trial, would support her claim that her employment contract contained an implied or actual provision protecting her from arbitrary termination. Paaga v. Development Bank of Am. Samoa, 31 A.S.R.2d 152.

In American Samoa, if the parties to an employment contract have neither fixed a definite term of employment nor created any contractual obstacle to the employer's discretionary right to discharge the employee, then the contract is for employment at will, and the employer may discharge the employee without incurring liability. The parties' understanding with respect to employment duration is the key to determining whether the contract contains a just cause termination provision. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 45 (Trial Div. 1997).

Where a discharged employee presents sufficient facts which, if proven at trial, could persuade a reasonable factfinder to find that he had a just cause termination clause in his employment contract, that his employer wrongfully terminated his employment without just cause, and that the employment was terminated in violation of the requirements of procedural and substantive due process the employer's motion for summary judgment will be denied by the court. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 45 (Trial Div. 1997).

Employment is presumed to be at-will. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

The presumption that employment is at-will can be rebutted by evidence of the intent of the parties, business custom and usage, the nature of the employment, the situation of the parties, and the circumstances of the case. From such evidence, a court may infer that a particular employment contract contained a just cause clause. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Where defendant's oral representations, the parties' respective intentions, the business custom and usage, the nature of the employment, the situation of the parties, and the circumstances of the case all supported conclusion that

plaintiff's employment would be terminated only for just cause, "at-will presumption" effectively rebutted. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

In American Samoa, employment is presumed to be at will, and the employee can be fired without just or good cause, unless there exists an express or implied contractual provision restricting the employer's rights to terminate the employee. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

The implied covenant of good faith and fair dealing is a contract law doctrine which cannot be used to impose a just cause requirement on an employment relationship as a matter of law; a terminated employee cannot use that covenant to transform a terminable-at-will contract into a terminable-only-for-cause employment contract by construing a discharge without cause as a breach of the covenant. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

In an at-will employment relationship, an employer can reduce an employee's salary provided that he gives the employee notice of the reduction and the employee continues employment. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

A contract of employment or to perform services for an indefinite period is terminable at will by either party, without liability for breach of contract or wrongful discharge. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

Employment manuals and handbooks may create contractual rights between the employee and her employer. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

§ 2(2) —Just Cause Termination

Where employee approached Board of Trustee member in violation of employer's express order, but evidence indicated such discussion was not an attempt to subvert supervisor's authority or to undermine morale at employer's business, but was merely a desperate request for advice from a friend during a period of tremendous stress, such insubordination was not "just cause" for employee's termination. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Where employee's contract provided for continued employment absent sufficient cause, employee was entitled to due process before he could be terminated. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Where an employer wrongfully terminates an employee, but in the process of litigation brought by the employee learns about wrongdoing that would lead to a legitimate discharge of the employee, the employer is not required to ignore such information, but courts must review the factual permutations and the equitable considerations on a case-by-case basis in order to determine what relief is appropriate. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Where employer was unaware of an illegal monetary gift received by wrongfully terminated employee, it was proper to allow employer to terminate employee effective upon date that impropriety discovered. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

Where employee wrongfully terminated but, in the process of litigation, employer later discovers cause for termination, plaintiff's damages limited to back pay from date of wrongful termination to date of employer's discovery. Faumuina v. American Samoa Gov't Emp. Ret. Fund, 1 A.S.R.3d 112 (Trial Div. 1997).

In American Samoa, employment is presumed to be at will, and the employee can be fired without just or good cause, unless there exists an express or implied contractual provision restricting the employer's rights to terminate the employee. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

A public employer's oral promises of job security may provide a basis for including a just cause requirement in an employment relationship that is otherwise at-will, but the employer must possess the statutory authority to modify the contract in order to imply the requirement. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

Under A.S.C.A. § 7.0203, employees of the Legislature of American Samoa are excluded from career service status, and thus are denied the protection afforded by the just cause requirement set out for the termination of career service employees in A.S.C.A. § 7.0801. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

Where a plaintiff does not allege that he reasonably relied to his detriment on an employer's statements concerning just cause, promissory estoppel cannot be a basis for a wrongful termination claim; and while 18 years of employment could assist in establishing a course of conduct, that alone is not sufficient to imply a just cause for termination requirement. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

§ 2(3) —Wrongful Termination

Employer's failure to use progressive discipline sanctions provided in policy manual before terminating plaintiff was not wrongful when plaintiff had apparently committed acts

explicitly listed in the manual as justifying immediate dismissal. Palelei v. Star Kist Samoa, Inc., 5 A.S.R.2d 162.

The employee has the burden of proving the existence of a contract and all the facts essential to a wrongful termination cause of action, and to establish a breach of employment contract claim based upon violation of personnel rules, the employee must prove that a personnel manual actually became part of an employment contract and that the terms of the manual were breached. Tuika v. American Samoa Dev. Corp., 3 A.S.R.3d 155 (Trial Div. 1999).

Considerations relevant to weighing the provisions of an employee handbook or manual in a wrongful termination claim and whether contractual rights result from them include their language, whether they contain a detailed progressive discipline scheme, a list of transgressions that would result in dismissal, a requirement that the employee sign the handbook or manual, a setting out of mutual commitments, which, in sum, would justify an employee's expectations. Tuika v. American Samoa Dev. Corp., 3 A.S.R.3d 155 (Trial Div. 1999).

Relevant to a wrongful termination claim are any representations made by the employer, and the course of dealing between the employer and employee. Tuika v. American Samoa Dev. Corp., 3 A.S.R.3d 155 (Trial Div. 1999).

A statement in a manual that certain violations subject employees to "disciplinary action up to and including immediate discharge for cause" does not, by itself, lead to contractual rights. Tuika v. American Samoa Dev. Corp., 3 A.S.R.3d 155 (Trial Div. 1999).

Where a manual provides for certain internal, managerial termination procedures which the employee's supervisors must follow for terminating personnel, and such procedures do not require the employers to provide the employees with notice of termination or allow for a hearing of any kind, those procedures do not support a claim that the employment was one of just cause. Tuika v. American Samoa Dev. Corp., 3 A.S.R.3d 155 (Trial Div. 1999).

Where a handbook contains only random sentences specifying causes which result in immediate termination, does not provide for any discipline scheme or signatures by the employee, or contain any other relevant guidelines to support a finding that a just-cause employment relationship had been formed, the employee was an at-will employee whose employment could be terminated for any reason or even no reason, regardless of the merits of the grounds assigned as the basis of this result. Tuika v. American Samoa Dev. Corp., 3 A.S.R.3d 155 (Trial Div. 1999).

Although an employee was not afforded any opportunity to pursue the employer's customarily established post-termination grievance procedure, without express terms conveyed to an employee, an employer is not legally bound to treat each employee in the same fashion based upon past policies and practices, especially where causes for termination listed in a handbook resulting in immediate dismissal do not require post-termination grievance procedures. Tuika v. American Samoa Dev. Corp., 3 A.S.R.3d 155 (Trial Div. 1999).

Where a complaint alleges no facts upon which to sustain wrongful termination actions against defendants, the defendants are improperly named in the complaint and the action as against them is dismissed. Tiumalu v. Tenari, 3 A.S.R.3d 195 (Trial Div. 1999).

The proper remedy for wrongful termination is damages at law, not an injunction in equity. Tiumalu v. Tenari, 3 A.S.R.3d 195 (Trial Div. 1999).

Monetary injuries resulting from loss of salaries are precisely the type of injuries that damages may adequately cure as a remedy at law, and therefore injunctive relief is precluded. Tiumalu v. Tenari, 3 A.S.R.3d 195 (Trial Div. 1999).

Both local and federal law are recognized sources of valid public policy in wrongful discharge claims. Nga v. Daewoosa Samoa, Ltd., 7 A.S.R.3d 171 (Trial Div. 2003).

American Samoa's administrative rules, having the force and effect of law, protect pregnancy-related illness. Nga v. Daewoosa Samoa, Ltd., 7 A.S.R.3d 171 (Trial Div. 2003).

Government employees are entitled to use sick leave for "incapacitation related to pregnancy and confinement." Nga v. Daewoosa Samoa, Ltd., 7 A.S.R.3d 171 (Trial Div. 2003).

Pregnancy-related disability is also excepted from the strict requirement that absent proof of illness, sick leave may only be granted for up to three days. If the due date of birth is medically certified, maternity leave is liberally allowed for up to six weeks prior and six weeks subsequent to birth. Nga v. Daewoosa Samoa, Ltd., 7 A.S.R.3d 171 (Trial Div. 2003).

The administrative rules, when applied in American Samoa's cultural context which promotes the *aiga* or family well-being, clearly demonstrate a territorial public policy in favor of protecting the working mother-to-be against discrimination based on pregnancy. Nga v. Daewoosa Samoa, Ltd., 7 A.S.R.3d 171 (Trial Div. 2003).

The administrative rules of American Samoa are consistent with the trend in federal law towards a clear public policy against employment discrimination based on pregnancy by explicitly protecting pregnancy classifications at work as sex-based discrimination, and guaranteeing equal employment opportunity of pregnant workers. Nga v. Daewoosa Samoa, Ltd., 7 A.S.R.3d 171 (Trial Div. 2003).

American Samoa has formulated a public policy against pregnancy discrimination in the workplace based upon Title VII and the Territory's regulatory scheme. Nga v. Daewoosa Samoa, Ltd., 7 A.S.R.3d 171 (Trial Div. 2003).

Court will not dismiss wrongful discharge claim where it does not have access to the employment handbook, which may limit the employer's right to discharge employees. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

§ 3 Independent Contractors

SEE AGENCY AND PRINCIPAL § 3(3) – BETWEEN PRINCIPAL AND INDEPENDENT CONTRACTOR

Explicit contract language designating a party as an independent contractor is prima facie evidence of such status. Mulitauaopele v. Board of Trustees of ASG Employees Retirement Fund, 30 A.S.R.2d 107.

The primary question in determining whether a party is an independent contractor is who has control over the work. Mulitauaopele v. Board of Trustees of ASG Employees Retirement Fund, 30 A.S.R.2d 107.

A secondary factor to be considered in determining whether someone is an independent contractor is the method of payment by the employer. The fact that a person is paid a lump-sum amount for work undertaken, as compared to being compensated on an hourly basis, tends to show an independent contractor relationship. Mulitauaopele v. Board of Trustees of ASG Employees Retirement Fund, 30 A.S.R.2d 107.

The fact that an employer does not deduct taxes from earnings is evidence of an independent contractor relationship. Mulitauaopele v. Board of Trustees of ASG Employees Retirement Fund, 30 A.S.R.2d 107.

As a general rule, the employer of an independent contractor is not liable for harm resulting from that contractor's acts or omissions. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

§ 4 Government Employees

The personnel advisory board's decision that one of two conflicting processes for selecting a person for a government position was the correct one is an executive decision not reviewable under the Administrative Procedures Act. Banks v. Am. Samoa Gov't, 2 A.S.R.2d 88 (App. Div. 1985).

The mere aspiration for a particular position does not create in a person seeking that position a vested interest subject to protection under the Administrative Procedure Act. Banks v. Am. Samoa Gov't, 2 A.S.R.2d 88 (App. Div. 1985).

Eligibility to claim retirement credit does not extend eligibility to those who could have resumed employment within the two-year period but for the availability of a promised government job. The statutory language is clear that eligibility is limited to those who resume employment within two years. A.S.C.A § 7.1430(f). Mulitauaopele v. Board of Trustees of ASG Employees Retirement Fund, 30 A.S.R.2d 107.

Under A.S.C.A. § 7.0201, career service statutes serve the enacted public purpose of establishing a personnel administration system to provide equitable treatment of employees of the ASG through a merit system regulated by a comprehensive scheme of statutes and rules. Kruse v. Personnel Advisory Bd., 2 A.S.R.3d 3 (App. Div. 1998).

Under A.S.A.C. § 4.0403(b), compensation of classified career service employees of the ASG who are not teachers or laborers, is governed under the broad principle of "equal pay for substantially equal work." Kruse v. Personnel Advisory Bd., 2 A.S.R.3d 3 (App. Div. 1998).

Under A.S.A.C. § 4.0409(a), it is contemplated that a "salary step increment" will be given annually within grade increases from one step to the next step after an employee receives a satisfactory performance evaluation. Kruse v. Personnel Advisory Bd., 2 A.S.R.3d 3 (App. Div. 1998).

Under A.S.A.C. § 4.0296, a "pay adjustment" refers to a change in the rate of compensation due to revision of the salary schedules of ASG or for reasons not covered elsewhere. Kruse v. Personnel Advisory Bd., 2 A.S.R.3d 3 (App. Div. 1998).

Under A.S.A.C. § 4.02111, a "promotion"' is a change of an employee from a position in one class to a position in a class having a higher salary range. Kruse v. Personnel Advisory Bd., 2 A.S.R.3d 3 (App. Div. 1998).

Under A.S.A.C. § 4.0401-.0414 and A.S.A.C. § 2.010l-.0110, a "reclassification" is the changing of any position from one class to another class whenever warranted by significant change in position duties and responsibilities or class definition, or to correct an error. Kruse v. Personnel Advisory Bd., 2 A.S.R.3d 3 (App. Div. 1998).

Because no administrative rules have been duly adopted establishing fair procedures for implementing a "pay adjustment" process, ad hoc salary increases that result in disparate compensation rates for career service employees of similar grade and seniority in comparable positions violates the principle of equal pay for substantially equal work. Kruse v. Personnel Advisory Bd., 2 A.S.R.3d 3 (App. Div. 1998).

Where the Department of Human Resources did not follow legally established procedures to either promote or change petitioner's classification, but rather followed no procedures and simply awarded a six step raise in the same grade, the

increase in annual salary was not valid. Kruse v. Personnel Advisory Bd., 2 A.S.R.3d 3 (App. Div. 1998).

The definition of "pay adjustment" precludes its application to a personnel request for promotion or change in classification. Kruse v. Personnel Advisory Bd., 2 A.S.R.3d 3 (App. Div. 1998).

It is the duty of public officers to refrain from outside activities, which interfere with the proper discharge of their duties. Congregational Church in American Samoa v. Tagaloa, 3 A.S.R.3d 198 (Land & Titles Div. 1999).

Within reasonable limits, subject to the limitation that it may not abridge any man's constitutional rights, the legislature has power to ascertain and declare what activities are inconsistent with the proper performance of public duties. Congregational Church in American Samoa v. Tagaloa, 3 A.S.R.3d 198 (Land & Titles Div. 1999).

Although the Public Defender is required to devote full time to the performance of his duties, and prohibited in engaging in the private practice of law, he or she may engage in pro bono and public service when such activities: (1) do not present a conflict of interest of any kind; and (2) do not interfere with official government duties. Congregational Church in American Samoa v. Tagaloa, 3 A.S.R.3d 198 (Land & Titles Div. 1999).

The Legislature of American Samoa, under the principle of separation of powers, has wide discretion in implementing its internal procedures as to employment and termination of employment. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

Although a public employee may possess a property right in continued employment which the state may not take without affording the employee due process, he must have a legitimate claim of entitlement to it, and an express or implied guarantee of continued employment is essential to the creation of such property interest in employment. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

A public employee possesses a liberty interest in his reputation which cannot be taken in conjunction with termination without affording the employee due process; but to trigger due process protections, the charges attending dismissal must be false, publicized, provide the employee no chance to clear his name, and be so stigmatizing that he cannot secure new employment. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

To exercise it powers under Article II, § 22, the Senate must make its judgment before the individual or Senator is sworn-in, and the Senate can consider only the qualifications enumerated in Article II, § 3. Fa`amausili v. Am. Samoa Gov't, 6 A.S.R.3d 259 (Trial Div. 2002).

Once a Senator has been sworn in, his subsequent removal is an expulsion, and the Senate's power to act is governed by Article II, § 11, and all the protections it affords. Fa`amausili v. Am. Samoa Gov't, 6 A.S.R.3d 259 (Trial Div. 2002).

A Senator can only be expelled for cause, either because he has become disqualified to serve or has committed an offense against the Senate. Fa`amausili v. Am. Samoa Gov't, 6 A.S.R.3d 259 (Trial Div. 2002).

§ 5 National Labor Relations Board

Assertion of jurisdiction by the National Labor Relations Board over complaints charging unfair labor practices by employers in American Samoa precludes territorial court from exercising jurisdiction over such complaints. 29 U.S.C. § 164(c). Su'a v. Star Kist Samoa, Inc., 4 A.S.R.2d 135.

The distance between American Samoa and the NLRB regional office in San Francisco, and consequent expense and inconvenience of bringing complaints there, were not "interests so deeply rooted in local feeling and responsibility" that territorial court could exercise jurisdiction over complaints that would otherwise be within the exclusive jurisdiction of the National Labor Relations Board. Su'a v. Star Kist Samoa, Inc., 4 A.S.R.2d 135.

Assertion of jurisdiction by the National Labor Relations Board over alleged unfair labor practices preempts territorial court jurisdiction over such claims. 29 U.S.C. § 164(c). Su`a v. Star-Kist Samoa, Inc., 7 A.S.R.2d 58.

While interests "deeply rooted in local feeling and responsibility" may give rise to exceptions to preemption of territorial court jurisdiction by the National Labor Relations Board, the expense and inconvenience to a local resident who must file a complaint at the National Labor Relations Board offices in San Francisco does not constitute such an interest. Su`a v. Star-Kist Samoa, Inc., 7 A.S.R.2d 58.

Termination of employment due to union activity is perhaps the most obvious example of conduct which is federally preempted by the National Labor Relations Act and over which territorial court has no jurisdiction. Su`a v. Star-Kist Samoa, Inc., 7 A.S.R.2d 58.

§ 6 Wages

Territorial minimum wage statute, including provision for punitive damages for wilful failure to pay territorial minimum wage, does not apply to employees covered by provisions of federal minimum wage law. A.S.C.A. §§ 32.0320, 32.0340. Moea`i v. Reid, 9 A.S.R.2d 48.

Punitive damages provision of territorial minimum wage statute, for willful failure to pay the minimum wage, is limited

to a claim based on the difference between the employee's hourly wage and the minimum wage; this provision does not apply to an action for breach of contract where, although the employee has not been paid, his contractual wage was higher than the statutory minimum. A.S.C.A. §§ 32.0320, 32.0340. Moea`i v. Reid, 9 A.S.R.2d 48.

Statutory provision for punitive damages for wilful failure to pay overtime wage rates is applicable whether or not the ordinary wage rate is determined by contract. A.S.C.A. §§ 32.0323, 32.0340. Moea`i v. Reid, 9 A.S.R.2d 48.

Employer's failure to pay overtime wage rate was not wilful where employer (1) admitted liability for overtime payments; (2) disputed, not without merit, the number of overtime hours claimed by employee; and (3) offered uncontradicted testimony that nonpayment of other amounts was due to inability to pay. A.S.C.A. §§ 32.0320, 32.0340. Moea`i v. Reid, 9 A.S.R.2d 48.

The terms of a seaman's contract were adjudicated as being those contained in his payroll form when the contract reflected the parties' negotiations by telephone and when the claimed parol variation would be essentially gratuitous on the captain's part. Zuguin v. M/V Captain M.J. Souza, 23 A.S.R.2d 7.

When a seaman had worked to prepare a vessel for an upcoming voyage before leaving the vessel, he was entitled to compensation on a quantum meruit basis. Zuguin v. M/V Captain M.J. Souza, 23 A.S.R.2d 7.

§ 7 Workmen's Compensation

SEE WORKMEN'S COMPENSATION

§ 8 Fair Labor Standards Act

§ 8(1) —Generally

RESERVED

§ 8(2) —Right of Action

Under the Fair Labor Standards Act, employees are provided with a civil right of action against any employer who violates certain provisions of the act. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Under the Fair Labor Standards Act, the Secretary of Labor is authorized to sue on behalf of aggrieved employees for injunctive or equitable relief. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Once the Secretary of Labor files a complaint under section 217 the Fair Labor Standards Act, the Secretary's suit takes precedence over any employee's private suit brought under the act. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

The preclusive effect of a Fair Labor Standards Act suit filed by the Secretary of Labor is limited to those suits filed under § 217 of the FLSA or which are filed in a federal district court. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 8(3) —Applicability of the FLSA

The term "employ" in the FLSA should be interpreted expansively and the term "employer" covers some parties who might not qualify as such under a strict application of traditional agency law principles. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records are factors which provide guidance for courts in determining whether a party constitutes an "employer" under the Fair Labor Standards Act, yet they are neither exclusive nor conclusive factors. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Foreign, government-related entities constituted "employers" within the meaning of the Fair Labor Standards Act where such parties had the power to hire and fire workers; were instrumental in screening and selecting the workers; possessed authority to threaten workers and their families with penalties; utilized supervisors to control workers' everyday work-place situation; helped determine the workers' rate of pay, method of payment, and hours of work; and maintained employment records. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 8(4) —"Opting In" under the FLSA

Section 216(b) of the Fair Labor Standards Act requires employees similarly situated with named plaintiffs to provide the court with affirmative notice of their intentions to be part of the lawsuit. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

In order to "opt in" to a Fair Labor Standards Act lawsuit, need only filing a written consent with the court where the suit is pending. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 8(5) —Rights Provided

§ 8(5)(a)—Generally

The Fair Labor Standards Act provides minimum substantive rights to employees which may not be waived by agreement.

Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 8(5)(b)—Rate of Pay

Section 206(a) of the Fair Labor Standards Act prescribes that no employee employed in American Samoa may be paid less than American Samoa's established minimum wage. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

In order to calculate the hourly rate paid under the Fair Labor Standards Act, the court multiplies the monthly salary by 12 to obtain the total pay for the year and divides by 52 to obtain the pay per week, and again by 40 to determine the hourly rate. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Overtime must be paid at the rate of one and one-half times the employee's regular rate of pay. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Any agreed-upon deduction from overtime pay that effectively diminishes such pay below the statutory requirement is invalid. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 8(5)(c)—Relating to Involvement in Suit

Under the Fair Labor Standards Act, it is unlawful for an employer to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under the act, or has testified or is about to testify in any such proceeding. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 8(6) —Remedies under the FLSA

Remedies under the Fair Labor Standards Act include, but are not limited to, back-wages, attorneys' fees, costs, and liquidated damages. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Liquidated damages of an amount equal to unpaid minimum and overtime wages are recoverable against an employer, unless there is evidence that an employer acted in good faith and attempted to comply with Fair Labor Standards Act requirements. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

An employer's knowledge that an employee might be covered by the Fair Labor Standards Act, and failure to further inquire into the status of that employee is sufficient to establish the employer's lack of good faith. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Where employment contracts were illegal under the Fair Labor Standards Act, court possessed the ability to modify the illegal terms to make them conform to the law. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

The court may modify an illegal contract term without invalidating the entire contract. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Contract requirement that workers pay sums of money up front was determined to be an illegal ploy to defraud workers and their families of money, and to obligate workers to term of their employment contracts and said contract term was properly stricken—thereby obligating employer to repay said amounts. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 9 Remedies

Where live-in workers, who were promised room and board as part of their employment contracts, were given substandard meals and accommodations, including a total lack of fresh fruits or vegetables, such workers were not required to pay for room or board and were instead entitled to compensation for being subjected to such poor living conditions. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Where court determined that company illegally retained workers' passports, and registration cards, without any legal right, and as a means of limiting the workers' egress and ingress from the compound, such conduct warranted an independent assessment of damages. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Where workers were required to pay a substantial initial fee as part of their employment such clause of employment contract was held to be unconscionable. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

ENVIRONMENTAL LAW

§ 1 General Provisions
2 Standing & Jurisdictional Requirements
3 Coasts & Waters
3(1) —General Provisions
3(2) —Water Quality
3(3) —Coastal Rules & Regulations

§ 1 General Provisions

SEE TORTS

§ 2 Standing & Jurisdictional Requirements

To establish standing to enforce environmental laws, (1) a party must show that he has suffered an injury-in-fact, and (2) the alleged injury must arguably be within the statute's zone of interests. Le Vaomatua v. American Samoa Government, 23 A.S.R.2d 11.

For purposes of standing, aesthetic and environmental harm can constitute injury-in-fact. Le Vaomatua v. American Samoa Government, 23 A.S.R.2d 11.

§ 3 Coasts & Waters

§ 3(1) —General Provisions

Samoan Code prohibits pollution of sources of public water. (CAS 865.) Faamuli v. Leiato, 3 A.S.R. 308.

§ 3(2) —Water Quality

Samoan Code prohibits pollution of sources of public water. (CAS 865.) Faamuli v. Leiato, 3 A.S.R. 308.

Consent decrees (pertaining to the American Samoa Environmental Quality Act, A.S.C.A. §§ 24.0101 et seq., and the Water Quality Standards, A.S.A.C. § 24.0201 et seq.) are binding only on the parties thereto and do not define or restrict the rights of the United States or of any private party, either with respect to the right to bring any action or to the merits of such action. American Samoa Government v. StarKist Samoa, Inc., 16 A.S.R.2d 27.

§ 3(2) —Coastal Rules & Regulations

Existing coastal management rules and regulations were not nullified by the Development Planning Office's failure to formally promulgate new, statutorily-required rules for administering the American Samoa Coastal Management Program. A.S.C.A. § 24.0506(a)-(b); A.S.A.C. §§ 26.0201 et seq. Le Vaomatua v. American Samoa Government, 23 A.S.R.2d 11.

EVIDENCE

§ 1 General Provisions
2 Judicial Notice
3 Presumptions
3(1) —General Civil Actions
3(2) —Land & Titles Division
3(3) —Matai
3(4) —Criminal Cases
3(5) —Extradition Proceedings
4 Relevance
4(1) —General Definition
4(2) —Admissibility
4(3) —Exclusion of Relevant Evidence
4(4) —Inadmissible Character Evidence
4(5) —Methods of Proving Character
4(6) —Habit; Routine Practice
4(7) —Subsequent Remedial Measures
4(8) —Compromise and Offers to Compromise
4(9) —Payment of Expenses
4(10) —Pleas, Plea Discussions
4(11) —Liability Insurance
4(12) —Victim Behavior in Rape Cases
5 Privileges
5(1) —Generally
5(2) —Marital Communications
5(3) —Lawyer-Client Communications
5(4) —Physician-Patient Relationship
5(5) —Governmental Secrets
6 Witnesses
6(1) —General Rule of Competency
6(2) —Credibility and Impeachment
6(3) —Form of Direct Examination
6(4) —Cross Examination
6(5) —Written Document to Refresh Memory
6(6) —Prior Statements of Witnesses
6(7) —Exclusion of Witnesses
6(8) —Witness Fees
7 Opinions and Expert Testimony
7(1) —Generally
7(2) —Opinions by Lay Witnesses
7(3) —Expert Testimony
7(4) —Bases of Expert Testimony
8 Hearsay
8(1) —General Rule

8(2) —Exceptions When Declarant Available
8(2)(a) —General Provisions
8(2)(b) —Present Sense Impression
8(2)(c) —Excited Utterance
8(2)(d) —Then Existing Condition
8(2)(e) —Statements for Medical Purposes
8(2)(f) —Past Recollection Recorded
8(2)(g) —Records of Regularly Conducted Activity
8(2)(h) —Public Records & Reports
8(2)(i) —Vital Statistic Records
8(2)(j) —Religious Organization Records
8(2)(k) —Marriage & Baptismal Certificates
8(2)(l) —Family Records
8(2)(m) —Records Affecting an Interest in Property
8(2)(n) —Ancient Documents
8(2)(o) —Market Reports & Compilations
8(2)(p) —Learned Treatises
8(2)(q) —Reputation of Family History
8(2)(r) —Reputation of Boundaries
8(2)(s) —Reputation of Character
8(2)(t) —Judgment of Prior Conviction
8(2)(u) —Judgment as to History
8(3) —Exceptions When Declarant Unavailable
8(3)(a) —General Provisions
8(3)(b) —Former Testimony
8(3)(c) —Dying Declaration
8(3)(d) —Statement Against Interest
8(3)(e) —Statement of Personal, Family History
8(4) —Hearsay Within Hearsay
9 Authentication and Identification
9(1) —General Rule
9(2) —Self-Authentication
10 Contents of Writings, Recordings & Photographs
10(1) —Generally
10(2) — Best Evidence Rule
10(3) — Duplicates
10(4) —Other Evidence of Lost, Unobtainable, or Other Documents
10(5) —Public Records
10(6) —Summaries
10(7) —Admission of Party

§ 1 General Provisions

The propriety of the admission of certain evidence is a matter for consideration by the Trial Court and cannot be first considered on appeal. Dwyer v. McDonald, 1 A.S.R. 652.

Objections to the propriety of admission of evidence or reputation must be specific or will be overruled. Dwyer v. McDonald, 1 A.S.R. 652.

Whether or not to view damaged vehicle or highway where collision occurred is in discretion of trial judge, and failure to do so is not error. Faatamala v. Haleck, 4 A.S.R. 888.

According to Rules of Procedure, unless timely and sufficient objection is made to introduction of inadmissible evidence, question of admission will not be considered on appeal. (Rule 7C.) Ross v. Scanlan, 4 A.S.R. 913.

Court will not relax provisions requiring objections to admission of evidence at time of trial in order to raise objections on appeal, where appellant has not been prejudiced by evidence admitted. Ross v. Scanlan, 4 A.S.R. 913.

Viewing of disputed land is matter for trial court's discretion, and court is not in error in failing to view when view was never requested by appellant. Willis v. Government, 4 A.S.R. 926.

On appeal, a party should not make an objection to evidence after it has already been admitted without objection at the trial level. Solomona v. Governor of American Samoa, 18 A.S.R.2d 14.

T.C.R.E. 106's "Rule of Completeness" is violated only when the redaction of the statement effectively distorts the meaning of the statement or excludes information substantially exculpatory of the nontestifying defendant. Pua'a v. American Samoa Gov't, 3 A.S.R.3d 39 (App. Div. 1999).

The Supremacy Clause of the U.S. Constitution sometimes requires that courts exclude evidence where such is explicitly commanded by a treaty or an executive agreement. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

Violation of the Vienna Convention consular notification requirement does not require suppression of subsequently-obtained evidence in a criminal proceeding against a foreign national. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

To prevail in a civil action, a party must make the required showing by a preponderance of the evidence. TCW Special Credits v. F/V Cassandra Z, 7 A.S.R.3d 3 (App. Div. 2003).

§ 2 Judicial Notice

Court takes judicial notice of fact that when members of Samoan family took possession of bush land it was on behalf of matai as owner of communal family property. Soliai v. Levu, 2 A.S.R. 440.

Courts take judicial notice of matters of common knowledge of every person of ordinary understanding and intelligence, such as fact that Samoans cleared bush land and occupied it, claiming it on behalf of their families. Toomata v. Vea, 2 A.S.R. 564.

Court will take judicial notice of its own records. Siaosi v. Asoau, 3 A.S.R. 293.

Judicial notice may be taken of facts of local history which are of general knowledge. Lualemana v. Brown, 3 A.S.R. 348.

Finding of fact of Trial Court will be set aside upon appeal if contradicted by decisions in previous High Court cases which Trial Court failed to take judicial notice of. Leasiolagi v. Faumui, 3 A.S.R. 509.

Court takes judicial notice of Samoan customs as matters of general knowledge. Betham v. Faumuina, 3 A.S.R. 537.

Court will take judicial notice of records in another proceeding, particularly where issues and parties are interrelated. Scanlan v. Steffany, 3 A.S.R. 583.

Appellate court may take judicial notice of any matter which trial court may, including records of interrelated proceeding. Scanlan v. Steffany, 3 A.S.R. 583.

Court takes judicial notice of customs of American Samoa which are of common knowledge, Seui v. Mata'afa, 4 A.S.R. 333.

Courts may take judicial notice of their own records for all purposes. Fanene v. Fanene, 4 A.S.R. 603.

Court will take judicial notice of matters of common knowledge. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Trial court may take judicial notice of War Damage Claim record in order to determine testimony of witness was false. Lualemana v. Magalei, 4 A.S.R. 849.

Court takes judicial notice of informality of Samoa thereby facilitating communication between public defender and accused. Fanene v. Government, 4 A.S.R. 957.

Appellate court could take judicial notice that appellee had recently assumed the office of district governor. Mose v. Tufele, 12 A.S.R.2d 31.

Judicial notice may be taken of facts generally known within the territorial jurisdiction of the court. T.C.R.Ev. Rule 201(b)(1). Reine v. Fiame, 23 A.S.R.2d 36.

The court may take judicial notice of the generally known fact that in the Territory of American Samoa, Hurricane Val was stronger and more destructive than Hurricane Ofa in the harbor area where Pago Plaza is located. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 60.

Trial court's taking judicial notice of comparable hurricane wind strength data was of little consequence as these statistics did not relate to any material, disputed fact. Meredith & Associates v. Blue Pacific Management Corp., 1 A.S.R.3d 4 (App. Div. 1997).

Judicial notice may be taken of the court's records in the criminal cases involving the same incident as the civil case, and those records may be sufficient to support a default where defendants fail to appear at the civil trial. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

Under T.C.R.Ev. 201(d), a court shall take judicial notice of an adjudicative fact if requested by a party and supplied with the necessary information; an adjudicative fact is one not subject to reasonable dispute. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

§ 3 Presumptions

§ 3(1) —General Civil Actions

In civil case, all that is necessary for proof of allegations is preponderance of evidence. American Samoa v. Salanoa, 1 A.S.R. 487.

Where equal amount of evidence has been given by both parties, Court will determine which evidence preponderates by determining which is more reasonable. Maluia v. Tafetee, 1 A.S.R. 537.

Civil cases are decided upon weight of evidence and while evidence on neither side may be strong, the side with the strongest evidence wins. Asuega v. Lauti, 1 A.S.R. 549.

Civil cases are decided by weight of evidence, however slight that may be. Satele v. Maiavatele, 1 A.S.R. 563.

When evidence is equally balanced, party in whose favor presumption of law works will prevail. Leatutufu v. Iuli, 2 A.S.R. 328.

In civil case, mere preponderance of proof is all that is necessary to establish point in issue. Toomata v. Vea, 2 A.S.R. 564.

Practice, well established, such as Samoans clearing and claiming family lands before advent of United States Government, is presumed to have been followed in individual cases, and is accepted as sufficient proof of fact in question where primary evidence of such fact is lacking. Toomata v. Vea, 2 A.S.R. 564.

In civil cases, mere preponderance of proof is all that is necessary to establish point in issue. Fruean v. Mageo, 2 A.S.R. 591.

"Preponderance" standard means that if the parties' contradictory versions of the facts have equal evidentiary support and the plaintiff cannot establish superior credibility, the defendant must prevail. Lafaele v. Continental Insurance Co., 4 A.S.R.2d 131.

All other things being equal, positive testimony is entitled to more weight than negative testimony. Tagoai v. Tuiafono, 4 A.S.R. 252.

A public officer is presumed to act for purposes of promoting the public good and protecting the public interest. This presumption of regularity of official acts is rebuttable. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 938.

§ 3(2) —Land & Titles Division

SEE PROPERTY § 8(2) – LAND & TITLES DIVISION

A presumption of ownership arises from possession of land. Amituanai v. Tuli, 2 A.S.R. 315.

Samoan custom that occupation and claim of ownership of land is on behalf of family establishes presumption to that effect in absence of contrary evidence. Soliai v. Levu, 2 A.S.R. 440.

§ 3(3) —Matai

SEE MATAI TITLE DISPUTES

SEE SAMOAN CUSTOM § 8 – MATAI

Where witness testifies that possessor of land received permission from “matai” to use family lands, and testimony is only contradicted by denial, court generally finds that positive testimony to a thing within peculiar knowledge of witness prevails over negative testimony. Levu v. Maluia, 1 A.S.R. 197.

“Matai” is presumed to possess all powers usually possessed by virtue of such status until the contrary is shown by positive evidence. Tupua v. Aumavae, 1 A.S.R. 231.

In matai title cases, no evidence may be admitted attacking the validity of previously held titles as all previous holders of matai titles are assumed to have held their names legally. Teutusi v. Faga, 1 A.S.R. 543.

§ 3(4) —Criminal Cases

RESERVED

§ 3(5) —Extradition Proceedings

The admissibility of evidence in an extradition proceeding is determined by the applicable extradition treaty. American Samoa Gov't v. Enoka, 5 A.S.R.3d 81 (Trial Div. 2001).

§4 Relevance

§4(1) —General Definition

Co-plaintiff is not prejudiced where other parties stipulate as to issue of fact where he had opportunity to present his own contrary evidence, which was disbelieved by court. Taufaasau v. Manuma, 4 A.S.R. 947.

In deciding whether questions asked a witness by members of a legislative committee were relevant to the committee's charter, a court should impose no stricter standard than it would impose on itself in a similar case. Senate Select Investigating Committee v. Horning, 3 A.S.R.2d 14.

Questions about the disposal of government property were relevant to an inquiry into the causes of a government budget deficit. Sialega v. Taito (Mem.), 3 A.S.R.2d 40.

Normally, the relevance of a witness' testimony is decided by the trial judge after the witness has been sworn and objections have been made. American Samoa Government v. Talamoni, 27 A.S.R.2d 123.

§4(2) —Admissibility

An administrative law judge's order or opinion which has been vacated is inadmissible as evidence in a subsequent judicial proceeding. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 108.

§4(3) —Exclusion of Relevant Evidence

T.C.R.Ev. 403 mandates exclusion of evidence when its probative value is substantially outweighed by its unfair prejudicial effect. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

§4(4) —Inadmissible Character Evidence

If evidence of past crimes speaks more to defendant's proclivity to commit crimes in general, rather than his participation in the crime at hand, it has a high probability of instigating the jury to convict because defendant "is a bad person" - an unallowable inference. American Samoa Government v. Bernard, 26 A.S.R.2d 110.

The fact that this defendant is in the "general class" of those prone to commit such crimes, does not go to the modus operandi/identity of this particular defendant. Such evidence tends only to mark him as one of an undesirable, unremarkable sub-class, a distinction that would have a prejudicial effect and tend to mislead the jury. American Samoa Government v. Bernard, 26 A.S.R.2d 110.

In determining whether to admit prior crimes, wrongs or acts, length of time between the prior crimes and acts and the incident at hand is another factor to be considered. American Samoa Government v. Bernard, 26 A.S.R.2d 110.

§4(5) —Methods of Proving Character

RESERVED

§4(6) —Habit; Routine Practice

Drug courier profile evidence is a somewhat informal compilation of characteristics believed to be typical of persons unlawfully carrying narcotics. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

Drug courier profile evidence is not always improper, and the court does not abuse its discretion in allowing such evidence to rebut a defendant's claim that he or she does not fit the typical drug courier profile, or to establish a modus operandi in complex cases. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

§4(7) —Subsequent Remedial Measures

RESERVED

§4(8) —Compromise & Offers to Compromise

T.C.R.Ev. 408, which excludes "evidence of conduct or statements made in compromise negotiations," can exclude evidence of negotiations before legal action is contemplated. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

T.C.R.Ev. 408 excludes evidence of compromise only when offered "to prove liability or invalidity of the claim or its amount." It does not require exclusion when the evidence is offered for another purpose. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

Where plaintiff alleged that defendant had made misrepresentations and failed to negotiate in good faith, evidence regarding conduct of negotiations would not be inadmissible under Evidence Rule 408, nor would such evidence be immaterial or subject to being stricken under T.C.R.C.P. 12(f). McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 3 (Trial Div. 2000).

§4(9) —Payment of Expenses

RESERVED

§4(10) —Pleas, Plea Discussions

The government acts improperly when it introduces evidence of defendant's pleas of nolo contendere in previous criminal proceedings. T.C.R.Ev. 410. American Samoa Government v. Solaita, 27 A.S.R.2d 9.

A plea of nolo contendere is recognized as having no effect beyond the action in which it is entered and no evidentiary value as an admission of guilt. American Samoa Government v. Solaita, 27 A.S.R.2d 9.

Where prosecutors have improperly introduced evidence of defendant's pleas of nolo contendere in previous criminal proceedings, court will not grant a mistrial, but will strike and disregard the evidence. American Samoa Government v. Solaita, 27 A.S.R.2d 9.

§4(11) —Liability Insurance

RESERVED

§4(12) —Victim Behavior in Rape Cases

RESERVED

§5 Privileges

§5(1) —Generally

RESERVED

§5(2) —Marital Communications

Unless provided by statute or constitutional provision, privileges in American Samoa are governed by the principles of common law. The spousal immunity privilege protects one spouse from testifying against the other concerning conduct or other facts of which he or she has personal knowledge and shields private communications between husband and wife. American Samoa Gov't v. Togiailua, 3 A.S.R.3d 78 (1999).

The spousal immunity privilege does not apply in cases where a crime has been committed by one spouse against another spouse or against a child of the family. American Samoa Gov't v. Togiailua, 3 A.S.R.3d 78 (1999).

§5(3) —Lawyer-Client Communications

RESERVED

§5(4) —Physician-Patient Relationship

§5(5) —Governmental Secrets

RESERVED

§6 Witnesses

§6(1) —General Rule of Competency

In American Samoa, witness may testify with respect to transaction with dead person even though witness is interested party, but court may look with skepticism upon such testimony. Sei v. Aumavae, 2 A.S.R. 396.

There is no dead man's statute rendering witness incompetent to testify as to transaction with deceased person; consequently court will admit into evidence such testimony. Tuileata v. Talivaa, 3 A.S.R. 201.

Only in extraordinary circumstances will a court compel the testimony of the chief executive of the jurisdiction in which the court sits. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Most information available from chief executive of state or territory can be just as easily obtained from lesser officials. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Party may compel testimony from chief executive of state or territory only if it seems absolutely necessary to make out his case and the party can convince the court that there is some chance the testimony will enable him to prevail. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Before being allowed to compel testimony of territorial Governor regarding alleged scheme to dispose of government property for less than its actual value, party must produce other evidence of Governor's personal involvement in such scheme. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Where incumbent Governor was actively involved in affairs of a corporation before he became Governor and is the only available witness with detailed knowledge of events material to litigation involving the corporation, a party may compel his testimony. Fa'atiliga v. Lutali (Mem.), 3 A.S.R.2d 124.

Persons who are likely to be called as witnesses should be notified as far in advance of trial as possible. Judicial Memorandum, 4 A.S.R.2d 176.

Generally speaking, every person is considered competent to be a witness. Am. Samoa Gov't v. Vaai, 6 A.S.R.3d 221 (Trial Div. 2002).

Any given witness is presumed competent to testify. However, the presumption is a rebuttable one. Am. Samoa Gov't v. Vaai, 6 A.S.R.3d 221 (Trial Div. 2002).

The court must determine the competency of witnesses, and such decision will not be disturbed unless it is clear the judge abused his or her discretion. Am. Samoa Gov't v. Vaai, 6 A.S.R.3d 221 (Trial Div. 2002).

In determining whether a child is competent to testify, there is no precise cut-off age. Instead, the court determines whether the child has: (1) an understanding of the obligation to speak the truth on the witness stand; (2) the mental capacity at the time of the occurrence concerning which he is to testify to receive an accurate impression of it; (3) a memory sufficient to retain an independent recollection of the occurrence; (4) the capacity to express in words his memory of the occurrence; and (5) the capacity to understand simple questions about it. Am. Samoa Gov't v. Vaai, 6 A.S.R.3d 221 (Trial Div. 2002).

To find child competent to testify, court must evaluate child's voir dire examination to find that, based on child's demeanor and answers as whole, child understood obligation to testify truthfully and had mental capacity to accurately perceive events at issue when they occurred, to recollect those events at time of trial, and to understand and answer questions about those events. Am. Samoa Gov't v. Agasiva, 6 A.S.R.3d 251 (Trial Div. 2002).

§6(2) —Credibility and Impeachment

Fact that witness conspired with plaintiff and others to do wrong to defendant with reference to subject of suit makes witness unworthy of credit. Sapela v. Mageo, 1 A.S.R. 143.

Where witnesses in land dispute are related to one of parties, their testimony must be based on such facts as will convince court that their testimony is good evidence and not biased opinion. Mailo v. Fuamaila, 1 A.S.R. 449.

Court may call disinterested parties as its own witnesses in matai title cases to testify as to existence of alleged title holder. Moelupe v. Savali, 1 A.S.R. 517.

Where witness for petitioners states charge attempted to be proved by petitioners is untrue, letters which allegedly contradict testimony will not be admitted into evidence since they impeach petitioner's own witness. Mauga Family v. Mauga, 2 A.S.R. 213.

Court will apply doctrine of "falsus in uno, falsus in omnibus" in weighing credibility of witness. Leano v. Leti, 2 A.S.R. 524.

A witness who was drinking at time of incident in question has less credibility than if he had not been drinking. Pan American Prints v. Mosegi, 3 A.S.R. 528.

Court discounts testimony of witness who is confused, unsubstantiated and irrelevant. Mageo v. Fuga, 4 A.S.R. 426.

Testimony of witness who makes false statement on material issue must be disregarded in entirety unless otherwise corroborated. Lualemana v. Magalei, 4 A.S.R. 849.

Witness whom makes contradictory statements as witness and files petition permeated with fraud lacks credibility. Tuliau v. Sunia, 4 A.S.R. 858.

That part of a witness's testimony is false may show that other parts of his testimony are also false. Samoa v. Gibbens, 3 A.S.R.2d 121.

Police officer's uncontroverted testimony that speed limit sign had been posted because the road was near a school did not bind the court to find that the posted limit applied only during school hours. American Samoa Government v. Sale Uo, 4 A.S.R.2d 14.

Testimony of litigant that at seventeen years of age he had personally entered into a boundary agreement with neighboring landowner, although at the time in question his father had been living and working on the land in question, was not credible. Falefia v. Sipili, 7 A.S.R.2d 1.

Although testimony and exhibits in earlier cases can be presumed to be as self-serving as those in the case being decided, they are sometimes helpful in providing historical context, prior consistent or inconsistent statements, and evidence offered by a party who had no reason to lie about the point the evidence tends to establish in the later case. Moea`i v. Te`o, 8 A.S.R.2d 85.

Court must choose among sharply conflicting statements of witnesses by reference to factors such as internal coherence and consistency, strength or weakness of motives to lie, conflict or consistency with other relatively objective sources of evidence, and court's own estimate of witnesses' demeanor and of inherent plausibility of testimony. Moea`i v. Te`o, 8 A.S.R.2d 85.

Trial court did not commit error in using the transcript from a prior preliminary injunction hearing to make factual determinations, despite appellant's claim that he introduced the transcript for impeachment purposes. Estate of Sotoa v. Te`o, 8 A.S.R.2d 165.

Testimony of parties who have shown a willingness to perjure themselves by entering into "immigration marriage," with respect to unverifiable event such as whether subsequent sexual relations occurred, is not "clear, convincing, and satisfactory" evidence. Pritchard v. Purcell, 11 A.S.R.2d 16.

Untruthful testimony by petitioner in proceeding for termination of parental rights cast into doubt her testimony concerning her inability to give the natural parents actual notice of the proceeding and their earlier willingness to let their child be raised by her. In re A Minor Child, 11 A.S.R.2d 107.

Case in which an appellate court upheld a trial court's assessment of damages on the basis of testimony by a single

interested witness does not support the proposition that a trial court is bound to believe the "best available evidence" when this consists solely of the testimony of a witness whom the court has reason to believe is not telling the truth. R.P. Porter International, Inc., v. Pacific International Engineering, Inc. (Mem.), 12 A.S.R.2d 48.

Where there is no good reason to doubt an eyewitness account the court will not speculate otherwise. Estate of Tuilesu v. Asifoa, 20 A.S.R.2d 60.

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.

The trier of fact may properly approach self-serving testimony with caution, but there is no requirement that it be disbelieved. The day has long past when interest parties were disqualified as witnesses. Reine v. Taotoai, 25 A.S.R.2d 136.

It is for the trial court to resolve conflicts in the evidence, and to judge the credibility of the witnesses. The Appellate Division will not overturn the trial court's resolution of conflicting evidence, when substantial evidence supports its ruling. Reine v. Taotoai, 25 A.S.R.2d 136.

It is the exclusive function of the jury to determine the credibility of witnesses, resolve evidentiary conflicts and draw reasonable inferences from proven facts. American Samoa Government v. Tauala, 25 A.S.R.2d 179.

A prosecutor may use pre-arrest silence to impeach a defendant's testimony. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

Credibility of witnesses is uniquely a matter for determination by the trier of fact. Williams v. Am. Samoa Gov't, 6 A.S.R.3d 35 (App. Div. 2002).

Credibility of witnesses is uniquely the prerogative of the trial court. Timu v. McMoore, 6 A.S.R.3d 41 (App. Div. 2002).

Inconsistencies in a child's testimony do not speak to the child's competency but, instead, go to her credibility. Am. Samoa Gov't v. Vaai, 6 A.S.R.3d 221 (Trial Div. 2002).

Matters of credibility are within the exclusive function of the jury. Am. Samoa Gov't v. Vaai, 6 A.S.R.3d 221 (Trial Div. 2002).

§6(3) —Form of Direct Examination

RESERVED

§6(4) —Cross Examination

Regarding cross-examination of witnesses, term "natural justice and convenience" embraces due process of law, but procedures adopted to accommodate complex litigation which do not prejudice the opportunity of any party to be fully and effectively heard and do not offend due process. Te'o v. Fanene, 1 A.S.R.2d 3 (App. Div. 1980).

§6(5) —Written Document to Refresh Memory

RESERVED

§6(6) —Prior Statements of Witnesses

RESERVED

§6(7) —Exclusion of Witnesses

RESERVED

§6(8) —Witness Fees

Parties may not normally collect fees as witnesses, even where they are also witnesses for other parties. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Expert witness fees, interpreter fees, and deposition costs are generally limited by statute, and taxation of costs in excess of these amounts are outside a court's discretion unless expressly authorized by statute. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

§ 7 Opinions and Expert Testimony

§7(1) —Generally

It is not necessary to attend mechanical school in order to testify as to damage to car involved in motor vehicle collision. Faatamala v. Haleck, 4 A.S.R. 888.

An indigent defendant's constitutional right to assistance of counsel includes the right to necessary investigative assistance. Am. Samoa Gov't v. Tuvale, 2 A.S.R.2d 92 (Trial Div. 1986).

An indigent defendant who wishes to have an expert appointed or test conducted at public expense may move the court for such an order and, in accordance with certain procedures, may move and be heard *ex parte* if notice to the Attorney General would inhibit his defense. Am. Samoa Gov't v. Tuvale, 2 A.S.R.2d 92 (Trial Div. 1986).

It is the responsibility of the executive branch to pay for those experts or tests ordered by the court for indigent defendants. Am. Samoa Gov't v. Tuvale, 2 A.S.R.2d 92 (Trial Div. 1986).

Visit by one member of court to land that was the subject of litigation, and subsequent report of that judge to other judges, did not constitute impermissible "testimony" by the judge when both counsel had been present at the viewing of the land and no objection had been made. Vaimaona v. Paleafei, 3 A.S.R.2d 92.

When opinion of witness is admitted into evidence, court need not accept opinion as fact but must give it the weight to which the court believes it is entitled. American Samoa Government v. Sale Uo, 4 A.S.R.2d 14.

§7(2) —Opinions by Lay Witnesses

RESERVED

§7(3) —Expert Testimony

The testimony of the government's expert may, in some circumstances, include statements made to him by a criminal defendant during the compelled examination, although the witness may testify only about the alleged mental disease or defect and not about "guilt or innocence" (i.e., about whether the defendant would be guilty in the absence of any such disease or defect). A.S.C.A. § 46.1304. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

A criminal defendant who puts his mental capacity at issue may be compelled to submit to an examination by the government's expert, who may testify about his observations and conclusions. A.S.C.A. § 46.1304. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

Regarding a defense of diminished mental capacity, when a mental disease or defect is alleged to have resulted in a criminal defendant's "incapacity to intend" rather than in "insanity," the testimony of the government's expert must be limited to the question of such incapacity and may not be considered by the jury for any other purpose. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

Although a defense of diminished mental capacity is arguably comprehended within the "guilt" phase of a bifurcated trial, the interests in a fair trial and an orderly proceeding may be better served by reserving all evidence of mental disease or defect for the "insanity" phase because a jury is likely to view the evidence as being highly probative of issues other than the criminal defendant's mental state, and a limiting instruction would likely be ineffective. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99.

A trial court has broad discretion concerning the admissibility or exclusion of expert testimony. EW Truck and Equipment Co. v. Coulter, 20 A.S.R.2d 88.

A trial court has broad discretion concerning the admissibility or exclusion of expert testimony. Clifton v. Voyager, 31 A.S.R.2d 12.

An expert witness may use statements in a medical or other learned treatise when the treatise is established as a reliable authority by the testimony of the witness, by other expert testimony, or by judicial notice. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

Where treatise extensively described features of the medical condition at issue, was a widely-used resource in the relevant medical field, and its use in connection with testimony of Plaintiff's expert went without objection by defense, Court properly took judicial notice of such treatise. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

The issue of a preexisting condition is one of fact for which medical testimony is appropriate. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

The determination whether an expert witness has sufficient qualifications to testify is a matter within the trial court's discretion. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

A trial court's decision to admit expert opinion is reviewed for abuse of discretion. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

Determination of whether expert witness has sufficient qualifications to testify is matter within trial court's discretion, and reviewing court cannot reverse for abuse of discretion unless it has definite and firm conviction that court below committed clear error of judgment in conclusion reached upon weighing of relevant factors. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

Since T.C.R.Ev. 702 mirrors the language of Fed. R. Evid. 702, T.C.R.Ev. is likewise controlled by Daubert v. Merrell Dow Pharmaceutical, Inc., 509 U.S. 579 (1993). Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

Under Daubert test, trial judge is to decide whether evidence rests on reliable foundation and is relevant to task at hand. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

When assessing the reliability of any expert's testimony, the trial court may consider the Daubert factors to the extent relevant, which will depend upon the nature of the issue, the expert's particular expertise and the subject of his testimony. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

Trial judge's determination allowing expert testimony was not abuse of discretion under T.C.R.Ev. 702 and Daubert test where reliability of testimony had been established by witness's training, expertise and experience in narcotics

investigations. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

The trial judge is granted wide latitude in making a determination whether technique qualifies as scientific knowledge under Daubert. The inquiries to determine whether a technique qualifies as scientific knowledge under Daubert are whether the technique has been tested, whether it has been subject to peer review and publication, the known or potential rate of error, and its general acceptance. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

The Duquenois-Levine test has been used by law enforcement for many years, has been tested for reliability and has been the subject of scholarly review. While test is not free of error and its use has been matter of scholarly dispute, neither factor rises to level of being abuse of discretion for its acceptance by a trial judge. Faifaiese v. Am. Samoa Gov't, 6 A.S.R.3d 10 (App. Div. 2002).

Where officer-witness testified regarding his many years of experience in narcotics investigations, including over sixty narcotics cases, and his training in visual, microscopic and chemical identification of marijuana, such was sufficient to establish witness' expertise in illicit drug identification and testing, and the reliability of his testimony. Williams v. Am. Samoa Gov't, 6 A.S.R.3d 35 (App. Div. 2002).

To assist in its fact-finding mission, a trial court may rely upon scientific, technical, or other specialized knowledge in the form of an expert's opinion. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

Expert opinion testimony, in order to be properly admitted, must assist the trier of fact in understanding the evidence or determining a fact at issue. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

Expert testimony is admissible only if it is both relevant and reliable. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

The presiding judge's role in ensuring the reliability and relevancy of expert testimony extends to all expert testimony. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

Reliability of a specific scientific theory or technique may be determined by all or some of certain specific factors, including testing, peer review, error rates, and acceptance in the relevant scientific community. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

The Daubert test for reliability of a specific scientific theory or technique is flexible, and the list of specific factors neither necessarily nor exclusively applies to all experts or in every case. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

A trial court has broad discretion concerning the admissibility or exclusion of expert testimony, and its action will be sustained unless it is shown to be manifestly erroneous. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

T.C.R.Ev. 704 does not contain the prohibition against expert testimony in a criminal case as to whether a defendant had the mental state constituting an element of the offense charged, American Samoa's rules do not open the door to all expert testimony on the ultimate issue of a defendant's guilt. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

T.C.R.Ev. 704 allows expert testimony in the form of an opinion or inference only when it is otherwise admissible. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

T.C.R.Ev. 704 does not prohibit experts from testifying as to ultimate issues, but allowing an expert witness provide an opinion that the accused used a co-defendant's weaknesses when the expert could provide no proper foundation for his opinion was an error that was not harmless, and was improper and prejudicial evidence by the expert that the accused was, in fact, guilty. Mulitauaopele v. Am. Samoa Gov't, 7 A.S.R.3d 32 (App. Div. 2003).

§7(4) —Bases of Expert Testimony

The trial court did not commit manifest error when it refused to allow a proffered expert to testify in terms of a hypothetical, based upon test results of a person whose qualifications were never properly presented, particularly when the final decision could be a matter of life and death. EW Truck and Equipment Co. v. Coulter, 20 A.S.R.2d 88.

An expert witness may use statements in a medical or other learned treatise when the treatise is established as a reliable authority by the testimony of the witness, by other expert testimony, or by judicial notice. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

To meet the reliability requirement, an expert's opinion must be premised upon a technique which is scientifically valid. To be scientifically valid, a trial court must determine whether the technique has been tested, subjected to peer review and publication, has a known or potential rate of error, and, finally, has been generally accepted by recognized experts in the field. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

§8 Hearsay

SEE REAL PROPERTY § 4(7) – HEARSAY

§8(1) —General Rule

Title to land cannot be evidenced by hearsay or by reputation. Talo v. Tavi, 2 A.S.R. 63.

Original claim of title based on hearsay cannot be accepted by court. Tuiolosega v. Voa, 2 A.S.R. 138.

Where all prosecuting witnesses testified that they had heard that accused trespassed upon land of another, but none had personal knowledge of trespass, accused must be acquitted since such testimony is hearsay and inadmissible. American Samoa v. Simi, 2 A.S.R. 643.

Court cannot find defendant guilty on hearsay evidence of two witnesses who were informed by public health representative that violation had been committed. Government v. Nomura, 2 A.S.R. 658.

Most hearsay evidence is excluded by courts because of unreliability and lack of opportunity to cross examine. Fe'a v. Sisipeni, 4 A.S.R. 320.

Testimony of defendant and her mother that land was given to her father is hearsay. Fe'a v. Sisipeni, 4 A.S.R. 320.

Testimony of witness on clearing of land before his birth is hearsay. Tuia v. Savea, 4 A.S.R. 483.

Testimony of witness concerning planting of land before he arrived at village is hearsay. Tauese v. Maui, 4 A.S.R. 605.

Hearsay evidence is evidence of statement made by other than testifying witness and offered to prove truth of matter stated. Meredith v. Mola, 4 A.S.R. 773.

Statements by parties as to what percentage of automobile damaged in collision was salvageable were hearsay. Faatamala v. Haleck, 4 A.S.R. 888.

Hearsay admitted with no objection may be properly considered and given natural probative effect. Ross v. Scanlan, 4 A.S.R. 913.

Testimony of statement of deceased is not hearsay where testimony is not offered to prove truth of statement but as relevant to factual issue necessary to determination of case. Ross v. Scanlan, 4 A.S.R. 913.

Growing tendency is to relax hearsay rule and uphold exceptions to rule. Ross v. Scanlan, 4 A.S.R. 913.

Where judge is trier of fact, hearsay rule is considerably relaxed. Ross v. Scanlan, 4 A.S.R. 913.

Although largely hearsay, oral family history and tradition of occupancy and cultivation is necessary in a communal land-tenure system commonly lacking title documentation and so is admissible in evidence for establishing title to a parcel of land. Toilolo v. Poti, 23 A.S.R.2d 130.

While hearsay evidence of family histories and traditions is admissible in communal land disputes, such evidence must always be viewed with caution. Afemata v. Pasa, 25 A.S.R.2d 132.

Statement, made by defendant, that his uncle was taking a large risk in shipping the drugs through the mail was not offered to prove the truth of the matter asserted, but instead to show defendant's knowledge that he was picking up drugs. Therefore, it was not hearsay and it could be used against him at trial. American Samoa Gov't v. Ropati, 3 A.S.R.3d 104 (Trial Div. 1999).

Although statement, when viewed under a strictly literal truth of the matter asserted standard, did not constitute hearsay, its proffered use to implicate codefendant rendered it hearsay, and was properly considered such. American Samoa Gov't v. Ropati, 3 A.S.R.3d 104 (Trial Div. 1999).

When right to confrontation problems may be caused by hearsay statements of a codefendant to be used in joint trial, a court must consider remedial action, including severance. American Samoa Gov't v. Ropati, 3 A.S.R.3d 104 (Trial Div. 1999).

Where Appellant's self-serving statement was kept out of evidence as hearsay, he was properly prevented from arguing such evidence during closing argument. However, he nonetheless could argue the absence of any confession or admission. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

§8(2) —Exceptions when Declarant Available

§8(2)(a) —General Provisions

Neither a casual admission nor idle conversation constitute a declaration made in furtherance of a criminal conspiracy and therefore are not immune from the hearsay rule under such exception. American Samoa Gov't v. Ropati, 3 A.S.R.3d 104 (Trial Div. 1999).

Separate trials are essential when incriminating out-of-court statements of a codefendant, admissible against the declarant but not against codefendant, would be presented in evidence. American Samoa Gov't v. Ropati, 3 A.S.R.3d 104 (Trial Div. 1999).

§8(2)(b) —Present Sense Impression

RESERVED

§8(2)(c) — Excited Utterance

To apply the excited utterance exception to a hearsay statement, the trial court must make a preliminary factual determination that the declarant was so excited or distraught at the moment of the statement that he or she did not reflect or have opportunity to reflect on what was said. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

The trial court's ruling on an excited utterance exception will not be disturbed on appeal unless the facts on which it relied are not supported by a preponderance of the evidence. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

For a statement made at the scene of the crime to be admissible under the excited utterance exception, it must relate to a "startling event," be instinctive, and spontaneous, and not be deliberate or retrospective. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

Circumstances supported trial court's admission of appellant's wife's under the excited utterance exception where wife had frightened demeanor, had recently been involved in confrontation, and had made excited call to the police. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

Circumstances supported trial court's decision not to admit appellant's self-serving statement under the excited utterance exception where the statement came several minutes after he knew he was "in trouble", and where appellant's statement was not entirely "spontaneous" but, rather, in response to questioning. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

The speaker's mental state, not the nature of the statement, is the crucial factor in applying the excited utterance exception to the hearsay rule. Faletogo v. Am. Samoa Gov't, 6 A.S.R.3d 22 (App. Div. 2002).

§8(2)(d) — Then Existing Condition

RESERVED

§8(2)(e) — Statements for Medical Purposes

RESERVED

§8(2)(f) — Past Recollection Recorded

RESERVED

§8(2)(g) — Records of Regularly Conducted Activity

Under the hearsay-rule exception for records of regularly conducted activity, any writing made as a record of acts, events, conditions, opinions or diagnoses may be admitted as evidence of those matters if the writing: (a) was made at or near the time of the acts, events, conditions, opinions, or diagnoses recorded; (b) was made by, or from information transmitted by, a person with knowledge; (c) is kept in the course of a regularly conducted activity; and (d) was made as the regular practice of that activity. T.C.R.Ev. 803(6). Amerika Samoa Bank v. Groves, 24 A.S.R.2d 77.

§8(2)(h) — Public Records & Reports

Report of emergency medical technician was inadmissible as evidence where it had not been certified as public record in accordance with T.C.R.Ev. 902(4). Am. Samoa Gov't v. Agasiva, 6 A.S.R.3d 251 (Trial Div. 2002).

§8(2)(i) — Vital Statistic Records

RESERVED

§8(2)(j) — Religious Organization Records

RESERVED

§8(2)(k) — Marriage & Baptismal Certificates

RESERVED

§8(2)(l) — Family Records

RESERVED

§8(2)(m) — Records Affecting an Interest in Property

RESERVED

§8(2)(n) — Ancient Documents

RESERVED

§8(2)(o) — Market Reports & Compilations

RESERVED

§8(2)(p) — Learned Treatises

RESERVED

§8(2)(q) — Reputation of Family History

RESERVED

§8(2)(r) — Reputation of Boundaries

RESERVED

§8(2)(s) —Reputation of Character

RESERVED

§8(2)(t)—Judgment of Prior Conviction

RESERVED

§8(2)(u)—Judgment as to History

RESERVED

§8(3) —Exceptions when Declarant Unavailable

§8(3)(a)—General Provisions

"Necessity" is exception to hearsay rule where refusal to admit hearsay statement will cause facts brought out by statement to be lost because person is dead or unavailable, or because assertion is of nature that same person or other sources could not be expected to be obtained. Ross v. Scanlan, 4 A.S.R. 913.

Declarations of deceased person are admissible against heirs claiming under deceased person, if they could be admissible against deceased, if living. Ross v. Scanlan, 4 A.S.R. 913.

§8(3)(b)—Former Testimony

Statement in previous case acknowledging disputed debt will be viewed as admission and shall corroborate debt's existence. Samoa Sharkfin Trading Co. v. Ho Py Hong, 1 A.S.R.3d 143 (Trial Div. 1997).

§8(3)(c) —Dying Declaration

RESERVED

§8(3)(d)—Statement Againt Interest

RESERVED

§8(3)(e) —Statement of Personal, Family History

RESERVED

§8(4) —Hearsay Within Hearsay

RESERVED

§9 Authentication and Identification

§9(1) —General Rule

Notarization serves to assure the authenticity and validity of signatory's assent to a document, and there is a strong presumption that a notarized signature is valid. Mailo v. Soane, 4 A.S.R.2d 140.

Notarization of defendant's alleged signature on a deed, together with similarity of some characters in the signature to undisputed specimens of defendant's handwriting, was evidence that could not be overcome by defendant's assertion that the signature on the deed was forged. Mailo v. Soane, 4 A.S.R.2d 140.

Presumption of a document's validity was not overcome by evidence that a signature on the document was forged when the person whose signature was allegedly forged was available as a witness but not called by the party asserting the forgery. Satele v. Uiagalelei, 6 A.S.R.2d 143.

That territorial registrar's office had abandoned its former practice of using unsworn certificates rather than notarized affidavits as evidence of posting, and that the new practice was more desirable, did not render the former practice illegal. Meafua v. Taliu (Mem.), 13 A.S.R.2d 74.

Even if territorial registrar had expressed a legal opinion on whether procedure followed by former registrar would render a registration invalid, this would be a question of law on which the court must make its own judgment. Meafua v. Taliu (Mem.), 13 A.S.R.2d 74.

Objection to court's finding that the signature on a deed was not a forgery, where the objecting party had judicially admitted that he signed the deed, had had every opportunity to examine the document before trial, and had even appended it to his complaint as Exhibit A, but had testified for the first time at trial that he had not signed the document after all, was without merit. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

It is not necessary that evidence be accompanied by an affirmative stipulation with respect to its accuracy. Solomona v. Governor of American Samoa, 18 A.S.R.2d 14.

Handwriting comparison by the trier of fact is a recognized means of authenticating documents. 28 U.S.C. § 1731; T.C.R.Ev. 901(a), (b)(3). Amerika Samoa Bank v. Groves, 24 A.S.R.2d 77.

§9(2) —Self-Authentication

RESERVED

§ 10 Contents of Writings, Recordings & Photographs

§10(1) —Generally

Even if references in defendants' letter and statement to medical records were insufficient foundation to consider

medical records as evidence, each of these sources is evidence of contents of medical record. Langkilde v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 198 (Trial Div. 2002).

§10(2) —Best Evidence Rule

Recordation of a genuine copy of a deed is permitted under certain circumstances, as being similar to the evidentiary admission of a copy of an instrument as an exception to the best evidence rule. R.O.E. 1002, 1003, 1004(1). Vaimaona v. Tuitasi, 22 A.S.R.2d 1.

As the rules of evidence aim at obtaining the best available evidence when the contents of a document are intimately related to governing issues, photocopied duplicates are accurate and so are substantially given the status of originals. T.C.R.Ev. 1003. Amerika Samoa Bank v. Groves, 24 A.S.R.2d 77.

§10(3) —Duplicates

Although duplicates are generally admissible in lieu of originals, genuinely contested authenticity requires production of the original document; however, mere assertions do not create a genuine question as to authenticity. T.C.R.Ev. 1003. Amerika Samoa Bank v. Groves, 24 A.S.R.2d 77.

As the rules of evidence aim at obtaining the best available evidence when the contents of a document are intimately related to governing issues, photocopied duplicates are accurate and so are substantially given the status of originals. T.C.R.Ev. 1003. Amerika Samoa Bank v. Groves, 24 A.S.R.2d 77.

§10(4) —Other Evidence of Lost, Unobtainable, or Other Documents

In resolving dispute over ownership of land, court will consider evidence of who was using land in absence of written record of title. Satele v. Afoa, 1 A.S.R. 424.

Where no written record exists revealing ownership of land, the best evidence of such ownership is that which shows who has been using land for the past 20 years under claim of right and without objection by other parties. Satele v. Afoa, 1 A.S.R. 467.

Document containing family history was admissible into evidence because it was over thirty years old, thus establishing its authenticity by age and because it was corroborated by unimpeached eye witness. Malaeola v. Nu'u, 2 A.S.R. 549.

Extrinsic evidence of a document's contents may be presented upon a showing of the practical inability to obtain the document itself. T.C.R.Ev. 1004. Amerika Samoa Bank v. Groves, 24 A.S.R.2d 77.

§10(5) —Public Records

SEE AMERICAN SAMOA GOVERNMENT § 7 – PUBLIC RECORDS

§10(6) —Summaries

RESERVED

§10(7) —Admission of Party

FAMILY LAW

§ 1 Marriage
1(1) —Validity
1(2) —Annulment
2 Divorce
2(1) —Grounds
2(2) —Property Distribution
2(3) —Child Custody
2(3)(a) —General Provisions
2(3)(b) —Jurisdiction
2(3)(c) —Considerations in Awarding Custody
2(3)(d) —Sources of Information
2(4) —Child Support
2(5) —Service of Process
2(6) —Residency Requirement
3 Children & Minors
3(1) —General Provisions
3(2) —Involuntary Relinquishment of Parental Rights - Termination
3(2)(a) —General Provisions
3(2)(b) —Protections for Parents
3(2)(c) —Best Interests of the Child
3(3) —Voluntary Relinquishment of Parental Rights – Adoption
3(3)(a) —General Provisions
3(3)(b) —Samoan Custom Adoptions
3(3)(c) —Protections for Parents
3(3)(d) —Best Interests of the Child
3(3)(e) —Legal Status After Adoption
3(4) —Guardianships
3(5) —Rights in Court
4 Legitimacy & Inheritance
5 Family Purpose Doctrine
6 Records

§ 1 Marriage

§ 1(1) —Validity

Marriage contracted with the sole purpose of changing the immigration status of one of the parties was nevertheless a valid marriage, regardless of whether there was subsequent cohabitation or sexual relations. Pritchard v. Purcell, 11 A.S.R.2d 16.

Marriage conducted with the purpose of deceiving immigration officials may change the parties' marital status even if it does not change their immigration status. Pritchard v. Purcell, 11 A.S.R.2d 16.

Even if petitioner could prove her marriage void under applicable foreign law, action for annulment would be subject to equitable defenses and limitations applicable to annulment actions in the forum. Pritchard v. Purcell, 11 A.S.R.2d 16.

Where one party to a marriage was the victim of fraud or duress, or was without capacity to marry, subsequent voluntary cohabitation or sexual relations is evidence of ratification. Pritchard v. Purcell, 11 A.S.R.2d 16.

Refusal by one party to engage in sexual relations or to live with the other party might be evidence of a secret pre-marital intention which, if unknown to the other party, might be a

fraudulent inducement to marry. Pritchard v. Purcell, 11 A.S.R.2d 16.

A marriage contracted between two people who mutually agree not to cohabit or to engage in sexual relations, or even in the mutual knowledge that one party is unable to engage in such relations, is not on that account invalid. Pritchard v. Purcell, 11 A.S.R.2d 16.

Testimony of parties who have shown a willingness to perjure themselves by entering into "immigration marriage," with respect to unverifiable event such as whether subsequent sexual relations occurred, is not "clear, convincing, and satisfactory" evidence. Pritchard v. Purcell, 11 A.S.R.2d 16.

Provided that parties to a marriage ceremony understood the ceremony, and that neither was a victim of force or fraud, their vows and affidavits should be given the legal significance they knew society meant them to have. Pritchard v. Purcell, 11 A.S.R.2d 16.

One who attacks the validity of a marriage assumes the task of overcoming one of the strongest presumptions of the law. Watson v. Watson, 11 A.S.R.2d 30.

The law presumes, absent evidence to the contrary, that an earlier marriage was dissolved by death or divorce before a later one was contracted. Watson v. Watson, 11 A.S.R.2d 30.

Presumption that the first of two marriages was ended by death or divorce is rebuttable by testimony of both parties to the first marriage, or by a showing that (1) the absent party has been seen or heard of after the date of the second marriage; (2) the other party never filed for divorce and never was served with divorce papers prior to the second marriage; and (3) a search of the records of every jurisdiction in which either party to the former marriage has lived yields no record of any divorce. Watson v. Watson, 11 A.S.R.2d 30.

Marriage by a person who was already married was "void ab initio" and could not be ratified by cohabitation with the later spouse, but subsequent dissolution of the earlier marriage by divorce removed any impediment to the later marriage; a rule against ratification of the later marriage is therefore conceptually unnecessary. Watson v. Watson, 11 A.S.R.2d 30.

Rule against ratification of formerly bigamous marriages by cohabitation after the dissolution of the earlier marriage is probably counterproductive as a rule of policy, since it often punishes the innocent and rewards the guilty. Watson v. Watson, 11 A.S.R.2d 30.

Rule that would allow ratification of formerly bigamous marriages, although not of presently bigamous ones, would not be inconsistent with society's refusal to countenance bigamy or to encourage its continuation. Watson v. Watson, 11 A.S.R.2d 30.

Lack of a good-faith belief in the validity of a marriage, in a jurisdiction such as American Samoa that does not recognize common-law marriages, precludes finding a putative marriage for inheritance purposes. Estate of Fuimaono, 21 A.S.R.2d 121.

The question of the existence of a marriage is one of fact. Estate of Fuimaono, 25 A.S.R.2d 110.

Cohabitation and reputation as husband and wife are not only relevant for purposes of common-law marriage; they constitute evidence that a marriage ceremony in fact took place. Estate of Fuimaono, 25 A.S.R.2d 110.

The presumption arising from a long and consistent pattern of marriage-type behavior bears weight of its own. Estate of Fuimaono, 25 A.S.R.2d 110.

In American Samoa, for a man and a woman to enter into a valid marriage contract, a marriage ceremony must be performed by a duly authorized person. A.S.C.A. § 42.0101(e). Aumavae v. Aumavae, 27 A.S.R.2d 164.

Common-law marriages, if valid according to the law of the state in which they were initiated, will be recognized in other jurisdictions, even where such marriages cannot be lawfully formed. Aumavae v. Aumavae, 27 A.S.R.2d 164.

An unmarried couple who spend a short period of time in a jurisdiction without taking up permanent residence or attempting to become husband and wife in the state does not give rise to a common-law marriage. Aumavae v. Aumavae, 27 A.S.R.2d 164.

§ 1(2) —Annulment

Marriages should only be annulled upon strict proof of invalidity. Pritchard v. Purcell, 11 A.S.R.2d 16.

Statute providing that court "may" annul illegally contracted marriages follows the general rule that annulment is an equitable remedy which may be barred by equitable defenses including estoppel, laches, or the doctrine of unclean hands. A.S.C.A. § 42.0203. Pritchard v. Purcell, 11 A.S.R.2d 16.

Where petitioner in annulment action did not wish to present any evidence other than a copy of divorce judgment obtained by respondent against another spouse five years after her marriage to petitioner, territorial statute required court to inquire about the circumstances of the marriage whose annulment was sought. A.S.C.A. § 42.0205. Watson v. Watson, 11 A.S.R.2d 30.

Evidence in annulment action to the effect that respondent secured a final divorce from her prior spouse several years after her marriage to petitioner did not establish that an interlocutory decree had not been granted before the marriage to petitioner, or that the prior spouse had not obtained an earlier divorce from respondent in another proceeding, or even that the prior spouse was still alive when respondent married petitioner. Watson v. Watson, 11 A.S.R.2d 30.

Equitable doctrines of clean hands and estoppel will not bar annulment of bigamous marriage where party seeking annulment is apparently motivated by remorse for his offense against society's moral and legal code, but these doctrines do bar an action by a party who has merely tired of his bargain and seeks annulment as a substitute for divorce. Watson v. Watson, 11 A.S.R.2d 30.

Equitable considerations in favor of granting annulment of bigamously contracted marriage despite estoppel and clean hands doctrine, including the argument that by denying annulment the court would countenance the continued perpetration of crime and that annulment might help to clarify the rights of innocent third parties, do not appear in a case where the prior marriage has been dissolved. Watson v. Watson, 11 A.S.R.2d 30.

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. Watson v. Watson, 11 A.S.R.2d 30.

The standard rule precludes annulment based on pregnancy misrepresentations when the parties engage in sexual intercourse prior to marriage. Taianamu v. Tainamu, 27 A.S.R.2d 71.

A marriage may be dissolved by divorce or annulment only on the grounds set forth by statute in A.S.C.A. §§ 42.0202 and 42.0203. A.S.C.A. §§ 42.0202, 42.0203. Taianamu v. Tainamu, 27 A.S.R.2d 71.

§ 2 Divorce

§ 2(1) —Grounds

A statute specifying "habitual cruelty or ill usage" as a ground for divorce is not satisfied by proof of irreconcilable differences between husband and wife. A.S.C.A. § 42.0202. Chun v. Chun, 3 A.S.R.2d 23.

"Habitual cruelty or ill usage" in divorce statute includes such things as physical violence, threats, and gratuitous harassment. A.S.C.A. § 42.0204. Chun v. Chun, 3 A.S.R.2d 23.

The agreement by a spouse against whom divorce is sought not to contest the divorce does not relieve a court of its statutory duty to examine all witnesses and to dismiss the action if the petitioner has failed to prove the charge. A.S.C.A. § 42.0205-06. Chun v. Chun, 3 A.S.R.2d 23.

"Habitual cruelty or ill usage" in divorce statute does not encompass mere disagreement between the spouses, not even disagreement on matters about which the spouses have strong feelings and beliefs. A.S.C.A. § 42.0202. Lea'e v. Lea'e, 3 A.S.R.2d 51.

A divorce for habitual cruelty or ill usage may be granted in the absence of physical violence, but only when the record reflects a pattern of conduct that is so shameful or bizarre as to be unbearable, and in which it is reasonably clear who is the wrongdoer and who is the victim. A.S.C.A. § 42.0202. Lea'e v. Lea'e, 3 A.S.R.2d 51.

Husband's admission that he sometimes beat his wife required the court to dismiss his action for divorce where territorial statute requires dismissal if the plaintiff is shown guilty of one of the grounds for divorce. A.S.C.A. 42.0206(a)(5). Lea'e v. Lea'e, 3 A.S.R.2d 51.

Party's untrue statements that his wife had been delinquent in pursuing a divorce action pending in Hawaii constituted "misrepresentation" justifying relief from territorial court decision to lift stay of local divorce proceeding that had been expressly conditioned on diligent pursuit of the Hawaii action. T.C.R.C.P. Rule 60(b). Wray v. Wray, 5 A.S.R.2d 34.

Ability to litigate contested issues incident to divorce, such as custody, child care, and property division, was relevant to decision whether to vacate divorce decree even though there had been no final order with respect to those issues. T.C.R.C.P. Rule 60(b). Wray v. Wray, 5 A.S.R.2d 34.

Respondent in a divorce action asserted a meritorious defense, notwithstanding her own suit for a "no-fault" divorce in another jurisdiction, where her pleadings denied that she had committed any of the acts alleged by petitioner and required by territorial law as grounds for divorce. T.C.R.C.P. Rule 60(b). Wray v. Wray, 5 A.S.R.2d 34.

Territorial statute clearly prohibits court from granting divorce absent proof of "fault-based" statutory criteria, even in case where respondent had stipulated to default judgment and waived the right to contest the divorce action. A.S.C.A. §§ 42.0202, 42.0205-06. West v. West, 5 A.S.R.2d 88.

Party seeking divorce must prove entitlement under statutory criteria even when respondent does not answer or appeal. A.S.C.A. 42.0205, T.C.R.C.P. Rule 50(e). Fiu v. Fiu, 5 A.S.R.2d 146.

Proof of his wife's adulterous activities entitled petitioner to divorce decree when wife's counter-allegations of adultery were not proven by credible evidence. Fiu v. Fiu, 5 A.S.R.2d 146.

Spouse who did not tell her spouse about a pending criminal prosecution against her, denied it when he asked her about it, and perpetuated the lie to the evident despondency of the other spouse, was guilty of "ill usage" within meaning of divorce statute. A.S.C.A. § 42.0202(2). Suluvale v. Suluvale, 10 A.S.R.2d 28.

"Habitual cruelty or ill usage" as ground for divorce is not equivalent to "irreconcilable differences," "incompatibility," or other "no fault" grounds for divorce, but requires a finding of fault. A.S.C.A. § 42.0202(2). Suluvale v. Suluvale, 10 A.S.R.2d 28.

Under circumstances of condonation the court is required to dismiss a petition for judicial separation. A.S.C.A. § 46.0206(6). Sa'aga v. Sa'aga, 20 A.S.R.2d 18.

When condonation of a spouse's misconduct exists, earlier misconduct cannot be grounds for divorce, but if the wrongdoer continues or revives his or her misconduct, condonation may be vitiated. A.S.C.A. § 42.0207. Sesepasara v. Sesepasara, 21 A.S.R.2d 71.

In determining condonation of spousal misconduct, which bars divorce, the key elements are genuine forgiveness of the misconduct and intent to start afresh, though passage of time and renewed sexual intercourse constitute significant evidence. Sesepasara v. Sesepasara, 21 A.S.R.2d 71.

Acts of marital misconduct committed after separation may afford grounds for divorce. Stevens v. Stevens, 21 A.S.R.2d 76.

Habitual cruelty or ill usage involves such things as physical violence, threats, and gratuitous harassment, or other conduct so shameful and bizarre as to be unbearable. Taianamu v. Tainamu, 27 A.S.R.2d 71.

"Irreconcilable differences" will establish neither habitual cruelty nor ill usage. Taianamu v. Tainamu, 27 A.S.R.2d 71.

The defense of recrimination is no longer available. Lacambra v. Lacambra, 28 A.S.R.2d 114.

§ 2(2) —Property Distribution

Congressional response to *McCarty* case allows each jurisdiction to resolve issue of divisibility of military pension in divorce action in a manner consistent with local law. Presumption favoring equivalent distribution of marital assets in American Samoa pertains as well to military pension earned during the marriage. Fala v. Fala, 1 A.S.R.2d 113 (Trial Div. 1983).

Court would allow assets of corporation to be garnished to satisfy judgment owed by ex-husband to ex-wife under divorce decree, where (1) business had been jointly owned and managed by husband and wife, (2) husband had formed a corporation in which he and another person owned all the shares and had secured wife's agreement to transfer the business to the corporation a few months before husband filed for divorce, (3) evidence suggested that corporation now owned assets formerly belonging to husband and wife, and (4) the amount garnished was less than the amount of payments long overdue on a property settlement which had been ordered by the court to compensate wife for her interest in the business now owned by the corporation. Dellumo v. Dellumo, 4 A.S.R.2d 48.

Spousal support is awarded for reasons of public policy and is not freely alienable by private contract. Parisi v. Parisi, 10 A.S.R.2d 106.

Court may modify a foreign alimony judgment, at least with respect to those portions of the judgment that have already come due, notwithstanding the entitlement of the foreign judgment to full faith and credit. Godinet v. Godinet (Mem.), 11 A.S.R.2d 156.

A collateral claim on behalf of carpenters who had built the marital home should not be entertained in the context of a divorce proceeding, especially where the pleadings did not alert anyone to anticipate the claim and therefore did not provide respondent with adequate notice and a meaningful opportunity to be heard. Ah Ching v. Ah Ching, 13 A.S.R.2d 34.

Dismissal of petitioner's claim against respondent in divorce action on behalf of carpenters who had built the marital home was without prejudice either to any claims which the petitioner might have to indemnification or to any claims which the carpenters themselves might have. Ah Ching v. Ah Ching, 13 A.S.R.2d 34.

Petitioner's claim to reimbursement of proceeds from sale of his separate property, which had been spent partly to feed carpenters who were constructing the marital home, would be denied; although awarded to the respondent in the divorce proceeding, the marital home benefitted the petitioner during the marriage, and the parties were not entitled to be restored to their former positions as if the marriage had never occurred. Ah Ching v. Ah Ching, 13 A.S.R.2d 34.

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.

Where a party to a divorce decree issued by the High Court which provided for a property settlement later sought to modify the decree when the parties no longer lived in American Samoa, the Court asserted jurisdiction regarding the property issue since the property in question was still located in American Samoa. Mahoney v. Mahoney, 16 A.S.R.2d 109.

Petition to modify the property settlement agreement in a divorce decree on the ground of mistake was denied where the language of the agreement unambiguously stated that one party would pay a fixed sum to another and did not condition such payment on the successful sale of the property in question. Mahoney v. Mahoney, 16 A.S.R.2d 109.

Petition to modify the property settlement provision in a divorce decree on the ground of mistake was denied where the provision was part of a final divorce decree that had settled the property rights of the parties for at least ten years. Mahoney v. Mahoney, 16 A.S.R.2d 109.

Court orders providing for property settlements, unlike orders for alimony, may not be modified by the court to reflect changes in the circumstances of the parties. Mahoney v. Mahoney, 16 A.S.R.2d 109.

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.

Where the court has jurisdiction over the parties, all assets of the marital estate, including assets held outside of the Territory, are also subject to the court's jurisdiction, although the court may not have jurisdiction to enforce an award of real property in another forum. Rocha v. Rocha, 20 A.S.R.2d 63.

Absent fraud, marital property does not include property that has been reasonably expended by one of the spouses for his or her own use or as a gift. Rocha v. Rocha, 20 A.S.R.2d 63.

That one spouse transferred money to a parent, apparently motivated by the filing of a divorce action, does not detract from the trial court's acceptance that the transfer was a bona fide gift. Rocha v. Rocha, 20 A.S.R.2d 63.

The presumption that property owned at the time of divorce is not separate property may be negated by testimony concerning gifts during the marriage or transfers prior to the marriage. Rocha v. Rocha, 20 A.S.R.2d 63.

Even if the trial court's decision concerning the value of the marital estate was perhaps mistaken in some particulars, it was not clearly erroneous. Rocha v. Rocha, 20 A.S.R.2d 63.

A foreign divorce decree was not recognized when (1) the decree was not properly authenticated, (2) the foreign jurisdiction lacked a legitimate interest in the parties' marital status, (3) the sole purpose of seeking a divorce in a foreign court was to evade American Samoa's laws, and (4) the divorce proceedings were ex parte and did not give reasonable notice to the defendant. Stevens v. Stevens, 21 A.S.R.2d 76.

The appropriate remedy for a lack of financial support from an estranged spouse is a lawsuit against him at common law, not a self-help resort to the assets of his corporation. Transpac Corp. v. Drabble, 25 A.S.R.2d 66.

A divorce decree which is final between the parties does not, and cannot, foreclose the possibility of ownership interests by others who were not parties to the decree, and a trial court is properly empowered to adjudicate those interests. Reine v. Taotoai, 25 A.S.R.2d 136.

A divorce decree prevails over a separation agreement as the final word on the issue of ownership of marital property. Pen v. Pen, 30 A.S.R.2d 119.

§ 2(3) —Child Custody

§ 2(3)(a)—In General

Trial court's decision on child custody issues will not be disturbed on appeal unless court has abused its discretion. Tapeni v. Tapeni, 6 A.S.R.3d 81 (App. Div. 2002).

When child custody dispute is between natural parents, no presumption arises as to who should get custody and court must determine which arrangement is in best interest of child. Tapeni v. Tapeni, 6 A.S.R.3d 81 (App. Div. 2002).

§ 2(3)(b)—Jurisdiction

Even if territorial law precludes granting a divorce, a court has authority in equity to issue orders on the care, custody and control of the parties' minor children and on both child and spousal support while the parties are separated. Sesepasara v. Sesepasara, 21 A.S.R.2d 71.

The court has exclusive original jurisdiction when the question of legal custody is incidental to the determination of a cause in the court. A.S.C.A. § 45.0115(d). Aumavae v. Aumavae, 27 A.S.R.2d 164.

The court has the inherent power, due to its authority to protect children, to make an order relative to the custody and support of a child born as an issue of an invalid marriage. Aumavae v. Aumavae, 27 A.S.R.2d 164.

In a state where the welfare of the child is the primary consideration in shaping a custody decree and where the custody decree is not irrevocable or unchangeable, the custody decrees of that state's courts are ordinarily not res judicata in that state or elsewhere, except as to the facts before the court at the time of judgment. In re A Minor Child, 28 A.S.R.2d 33.

The Parental Kidnapping Prevention Act, 28 U.S.C.A. § 1738A, was intended to preempt state and territorial law regarding the modification of child custody orders. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

The Parental Kidnapping Prevention Act requires that child a custody decree be given full faith and credit if the decree was made in a manner consistent with provisions of act. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

The Parental Kidnapping Prevention Act provides a two-part jurisdictional test in order to modify another state's decree: (1) Did rendering state lose or refuse jurisdiction?, and (2) Does modifying state now have jurisdiction? Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

Under, the Parental Kidnapping Prevention Act, a rendering court may retain jurisdiction in one of two ways: (1) by having continuing jurisdiction, or (2) by having pending jurisdiction over the case. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

The jurisdiction of a rendering court is exclusive as long as it satisfies two requirements: 1) the residence of the child or of any contestant remains in the rendering state; and 2) the rendering state has jurisdiction under its own laws. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

During the period of "continuing jurisdiction," other states or territories must enforce and cannot modify the initial custody determination. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

The Parental Kidnapping Prevention Act provides that a state court has exclusive jurisdiction when matter before it is pending. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

A matter is "pending" for purposes of the Parental Kidnapping Prevention Act at any point before the final custody order is made and the time for appeal has expired. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

Although enforcement action in Montana against petitioner for alleged visitation violation was pending, Montana court had previously resolved question of custody and, therefore, custody determination was no longer pending within meaning of Parental Kidnapping Prevention Act. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

The High Court of American Samoa exercises jurisdiction and modifies foreign custody decrees when the child in question is present in the territory. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

The Parental Kidnapping Prevention Act provides for four bases of jurisdiction: 1) home state jurisdiction, 2) significant connection jurisdiction, 3) emergency jurisdiction, and 4) default jurisdiction. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

The Court need not consider each of the four jurisdictional bases set forth in the Parental Kidnapping Prevention Act, and may premise its jurisdictional determination upon just one. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

Court considered evidence sufficient to establish emergency jurisdiction where respondent/father had history of drug abuse, propensity for violence, a recent pattern of hostility towards petitioner/mother, and demonstrated an inability to cope with petitioner's plan to remarry. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

§ 2(3)(c)—Considerations in Awarding Custody

Other things being equal, children of tender years should remain together and their custody given to the mother; other factors are a good home, congenial surroundings, and intelligent attention and direction in matters affecting the health, education, growth and development of the children. Stevens v. Stevens, 21 A.S.R.2d 76.

Circumstances to consider in custody situations are that (a) children of tender years should remain together and custody given to mother; (b) mother is natural custodian of her young; and (c) there is no satisfactory substitute for mother's love. Other things considered are good home, congenial surroundings, and intelligent attention and direction in matters affecting health, education, growth and development of children. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

Court concluded it would be in minor's best interest that sole and exclusive custody be reestablished with petitioner where petitioner had been historically responsible for minor's upbringing and day-to-day needs, had provided the child a stable and nurturing environment, had successfully reared the minor's two older siblings, had maintained gainful employment and had evidenced more of a commitment to her parental obligations that the respondent/father. Cox v. Paslov, 5 A.S.R.3d 150 (Trial Div. 2001).

When child custody dispute is between natural parents, no presumption arises as to who should get custody and court must determine which arrangement is in best interest of child. Tapeni v. Tapeni, 6 A.S.R.3d 81 (App. Div. 2002).

When child custody dispute is between parent (or parents) and

third party, court must determine which arrangement is in best interest of child. However, fit natural parent is prima facie entitled to custody. Tapeni v. Tapeni, 6 A.S.R.3d 81 (App. Div. 2002).

Where American Samoa courts confront the issue of child custody in marital dissolution proceedings, the best-interests test should be applied. Tapeni v. Tapeni, 6 A.S.R.3d 81 (App. Div. 2002).

When custody dispute is between natural parents and a third party, fit parents are entitled to rebuttable presumption of custody. If parent's fitness is not rebutted, third party has burden of proof upon issue of best interests of child. Tapeni v. Tapeni, 6 A.S.R.3d 81 (App. Div. 2002).

§ 2(3)(d)—Sources of Information

A trial court can properly resort to out-of-court information in reaching its child custody decision subject to the requirements that what is so considered be made available to all involved counsel for challenge, impeachment, criticism or refutation. Tapeni v. Tapeni, 6 A.S.R.3d 81 (App. Div. 2002).

A person responsible for providing out-of-court information, relevant to the issue of child custody, should ordinarily be available for cross-examination. Tapeni v. Tapeni, 6 A.S.R.3d 81 (App. Div. 2002).

Legal basis for considering out-of-court information in determining issue of child custody in marital dissolution proceedings exists under A.S.C.A. § 45.0130 and the Court's inherent authority. Tapeni v. Tapeni, 6 A.S.R.3d 81 (App. Div. 2002).

Trial court's consideration of out-of-court information without advising parties that it was considering this information or giving them opportunity to challenge it was error. Tapeni v. Tapeni, 6 A.S.R.3d 81 (App. Div. 2002).

§ 2(4) —Child Support

Where a party to a divorce decree issued by the High Court which provided for custody and support of the parties' minor children and a property settlement later sought to modify the decree when the parties no longer lived in American Samoa, the Court declined to exercise jurisdiction on the issues of child support and custody, since the courts of domicile or residence could more effectively enforce terms ensuring the children's welfare and best interests and had a more substantial interest in doing so. Mahoney v. Mahoney, 16 A.S.R.2d 109.

The court, in its role as parens patriae, can inquire into a situation in which minor children were deprived of financial support due to deductions made from their father's paychecks. Sa'aga v. Sa'aga, 20 A.S.R.2d 18.

It is generally unlawful to garnish more than 25% of an individual's disposable earnings, or to deduct earnings unless the employee has agreed in writing. 15 U.S.C. § 1673; A.S.C.A. § 32.0333. Sa'aga v. Sa'aga, 20 A.S.R.2d 18.

§ 2(5) —Service of Process

Awards for alimony and child support must be predicated upon in personam jurisdiction, which cannot constitutionally be had, except in unusual circumstances, in the absence of personal service of process within the court's discretion. Tafaoa v. Tafaoa, 1 A.S.R.2d 68 (Trial Div. 1982).

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.

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.

§ 2(6) —Residency Requirement

Proof of either residency or domicile will satisfy the one-year residency requirement under A.S.C.A. § 42.0206. Ainu'u v. Ainu'u, 7 A.S.R.3d 158 (Trial Div. 2003).

A party who married in American Samoa, lived in American Samoa for a number of years, was transferred away from American Samoa by his employer while maintaining an intent to return, maintained voter registration in American Samoa, and returned to American Samoa, is and always has been domiciled in American Samoa. Ainu'u v. Ainu'u, 7 A.S.R.3d 158 (Trial Div. 2003).

To change domicile, actual residence and the intent to change legal residence must occur. One must remove to the new residence without the intention of returning to the old as such. Ainu'u v. Ainu'u, 7 A.S.R.3d 158 (Trial Div. 2003).

A temporary absence from one's domiciliary state because of work or employment at another place does not of itself effect a change of domicile. Ainu'u v. Ainu'u, 7 A.S.R.3d 158 (Trial Div. 2003).

§ 3 Children

§ 3(1) —General Provisions

RESERVED

§ 3(2) — Involuntary Relinquishment of Parental Rights - Termination

§ 3(2)(a)—General Provisions

A natural parent's rights to his child can only be terminated against his will if there is a showing that the parents has abandoned or abused the child. In re Tuileisulefiatagata Hall, 2 A.S.R.2d 90 (Trial Div. 1986).

The statutory procedure for involuntary termination of parental rights should not be used in place of a voluntary relinquishment merely to avoid bringing the natural parents to court. In re Three Minor Children (Mem.), 3 A.S.R.2d 4.

Although the territorial statute dealing with involuntary termination of parental rights does not require the presence of the natural parents in court, it is quite difficult for the court to determine the best interest of the child unless the natural parents testify. In re Three Minor Children (Mem.), 3 A.S.R.2d 4.

Natural father's parental rights cannot be terminated without compliance with statutory requirements, including that diligent efforts be made to give actual notice. In re A Minor Child, 4 A.S.R.2d 181.

Proceedings to terminate parental rights upon ground that the children are neglected and dependent are adversarial in nature, in contrast to relinquishment proceedings which are voluntary. A.S.C.A. §§ 45.0115, 45.0103, 45.0401. In re Two Minor Children, 8 A.S.R.2d 75.

Court would not terminate parental rights on ground that the children are neglected and dependent where, although the parents had not provided for the children, they left the children in the care of grandparents due to economic necessity and have shown no deliberate disregard for their parental duties. In re Two Minor Children, 8 A.S.R.2d 75.

Parental rights should not be terminated without the testimony of each natural parent unless it is genuinely impossible to obtain such testimony or there is clear and convincing evidence that the parents genuinely understand and consent to the termination. In re A Minor Child, 7 A.S.R.2d 125.

Where grounds for petition to terminate parental rights were simply that the child's grandmother had taken care of her since birth, the petition failed to show circumstances of a "neglected or dependent child" as required by territorial statute. A.S.C.A. §§ 45.0401(a)(1) & (a)(3). In re A Minor Child, 12 A.S.R.2d 15.

The involuntary parental rights termination proceeding under A.S.C.A. § 45.0103(19) is not to be used to avoid the necessity of having the natural parents attend court. A.S.C.A. § 45.0103. In re a Minor Child, 27 A.S.R.2d.

Termination proceedings may only be had when the child has been neglected by his parents or is homeless. In re a Minor Child, 25 A.S.R.2d 52.

§ 3(2)(b)—Protections for Parents

In actions for the termination of parental rights, strict attention must be paid to compliance with statutes and also to ensuring that the natural parent has actual notice of the proceeding, a fair opportunity to be heard, and an understanding of the legal consequences. In re Three Minor Children (Mem.), 3 A.S.R.2d 4.

A party seeking the termination of parental rights must provide notice to the child's natural father, either by the statutorily approved method, or by publication if permitted by court order. In re A Minor Child, 4 A.S.R.2d 181.

Court will not order relinquishment of parental rights until it is satisfied that the relinquishing parent has been counseled and fully advised of the consequences of relinquishment. A.S.C.A. § 45.0402(d). In re Two Minor Children, 8 A.S.R.2d 75.

Even where court has jurisdiction over natural parents against whom termination of parental rights is sought, termination should not be granted unless the court is convinced that parents genuinely understand and consent to termination, or that termination is in the best interest of the child notwithstanding a lack of parental understanding or consent. In re Three Minor Children, 10 A.S.R.2d 57.

Legal termination of parental rights has important and irrevocable legal consequences that are often quite different from those of Samoan customary informal adoption, in which children often return to their natural parents. In re Three Minor Children, 10 A.S.R.2d 57.

Untruthful testimony by petitioner in proceeding for termination of parental rights cast into doubt her testimony concerning her inability to give the natural parents actual notice of the proceeding and their earlier willingness to let their child be raised by her. In re A Minor Child, 11 A.S.R.2d 107.

Petition by child's grandmother to terminate the parental rights of her daughter and son-in-law should be denied, even if it could be construed as a voluntary petition for relinquishment by the natural parents, where the court could neither ascertain whether absent natural parents were counseled and advised of consequences nor conclude that the child's best interests (considering age, income, prospects, and composition of both households) would be served. In re A Minor Child, 12 A.S.R.2d 15.

§ 3(2)(c)—Best Interests of the Child

Although the territorial statute dealing with involuntary termination of parental rights does not require the presence of the natural parents in court, it is quite difficult for the court to determine the best interest of the child unless the natural parents testify. In re Three Minor Children (Mem.), 3 A.S.R.2d 4.

The court should not grant a termination or relinquishment of parental rights unless it is proven by clear and convincing evidence to be in the best interest of the child. In re Three Minor Children (Mem.), 3 A.S.R.2d 4.

In assessing the best interests of a child for the purposes of a proceeding to terminate parental rights so that the child can be adopted, the court must consider the prospective adopting parents' ability to support the child until the child's majority and may therefore consider the ages of the child, of the natural parents, and of the prospective adopting parents. In re A Minor Child, 4 A.S.R.2d 181.

Petition for termination or relinquishment of parental rights should not be granted where no benefit to child would result. In re A Minor Child, 7 A.S.R.2d 115.

Termination of rights and obligations of natural parents who were in their thirties, and legal adoption of the children by their great-aunt, a 68-year-old widow who was not the primary provider of financial support for her household, was not in the best interest of the children. In re A Minor Child, 11 A.S.R.2d 107.

Relinquishment of parental rights must be predicated on the best interests of all concerned. A.S.C.A. § 45.0402(e). In re Three Minor Children, 25 A.S.R.2d 1.

Western Samoan courts are in a better position to meaningfully assess the natural circumstances of a Samoan baby who was born in Western Samoa to Western Samoan domiciled parents and, therefore to, judge whether it is in his best interests and welfare to sever his legal relationship to his parents. In re a Minor Child, 26 A.S.R.2d 105.

§ 3(3) —Voluntary Relinquishment of Parental Rights – Adoption

§ 3(3)(a)—General Provisions

A child cannot be adopted unless the rights of the natural parents to the child have been terminated. In re Tuileisulefiatagata Hall, 2 A.S.R.2d 90 (Trial Div. 1986).

The statutory procedure for involuntary termination of parental rights should not be used in place of a voluntary relinquishment merely to avoid bringing the natural parents to court. In re Three Minor Children (Mem.), 3 A.S.R.2d 4.

When natural parents desire to relinquish their own rights in order that some other person can adopt their child, the statutory procedure is a voluntary relinquishment of parental rights. A.S.C.A. § 45.0402. In re Three Minor Children (Mem.), 3 A.S.R.2d 4.

Where child lives with natural parents as well as prospective adopting parents and the only apparent effect of a termination of parental rights would be to enable a prospective adopting parent to obtain higher Social Security benefits, the termination will be denied. In re Two Minor Children, 4 A.S.R.2d 21.

When purpose of action for relinquishment of parental rights was to allow the child to live with his grandmother, purpose could be achieved without the necessity of formal relinquishment and adoption, and the grandmother proposing to adopt was less well-equipped than natural parents to support the child throughout the period of his minority, petition to relinquish would be denied. A.S.C.A. § 45.0402. In re A Minor Child, 6 A.S.R.2d 123.

Since termination or relinquishment of parental rights also divests natural parents of legal obligations to the child, court should take account of the ages of natural parents and of proposed adoptive parents as a factor in determining who will be better able to care and provide for the child during the remaining period of minority. A.S.C.A. § 43.0403. In re A Minor Child, 7 A.S.R.2d 115.

Parents who relinquished rights to their child so that he could be adopted by another family did not thereby terminate the child's legal relationship to his brother. Galo v. American Samoa Gov't, 10 A.S.R.2d 94.

That grandparents have cared for child since birth and that grandfather wishes to formalize his love for the child by legal adoption are not sufficient grounds to sustain natural parents' petition for relinquishment of their parental rights and obligations. In re Two Minor Children, 11 A.S.R.2d 91.

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.

Petitions of healthy, young, natural parents to relinquish their parental rights and obligations in favor of elderly relatives

have been consistently rejected by the High Court. A.S.C.A. §§ 45.0102, 45.0402. In re A Minor Child, 19 A.S.R.2d 97.

Western Samoan courts are in a better position to meaningfully assess the natural circumstances of a Samoan baby who was born in Western Samoa to Western Samoan domiciled parents and, therefore to, judge whether it is in his best interests and welfare to sever his legal relationship to his parents. In re a Minor Child, 26 A.S.R.2d 105.

In the absence of evidence to the contrary, the law favors preservation of the children's natural circumstances. In re Two Minor Children, 26 A.S.R.2d 117.

In a state where the welfare of the child is the primary consideration in shaping a custody decree and where the custody decree is not irrevocable or unchangeable, the custody decrees of that state's courts are ordinarily not res judicata in that state or elsewhere, except as to the facts before the court at the time of judgment. In re A Minor Child, 28 A.S.R.2d 33.

Generally, joint petitions for adoption can only be filed by married couples. In Re A Minor Child, 29 A.S.R.2d 18.

Under the facts of the particular case, wherein the best interests of the child are at stake, the court may accept a joint petition filed by a couple with a long standing stable relationship that closely approximates common law marriage. In Re A Minor Child, 29 A.S.R.2d 18.

A.S.C.A. § 45.0420 (a) requires a petition for adoption to be filed not later that 30 days after the child is placed in the home of the adoptive applicants for the purpose of adoption, unless the court finds that there was reasonable causes or excusable neglect for not timely filing the petition. If the court does so find, "[t]he court then fixes a date for the hearing." A.S..C.A. § 45.0420(a). In Re A Minor Child, 29 A.S.R.2d 20.

A.S.C.A. § 45.0420(d) requires that a petition for adoption be accompanied by a statement of any fee charged relative to the adoption. That statement must also include a clause that no additional fees are to be charged. In Re A Minor Child, 29 A.S.R.2d 20.

The rigid statutory adoption procedures of the Juvenile Justice Act of 1980, A.S.C.A. § 45.0101 et seq., has little effective application to relinquishment or termination of parental rights or adoptions in Samoa. When compared with traditional child rearing and child placement practices in Samoa, at almost no point can the statutes be bent to fit the local situation, as required of the court under the legislature's policy declarations set forth under A.S.C.A. § 45.0102. In Re A Minor Child, 29 A.S.R.2d 20.

Although the pre - 1980 adoption statutes were subject to some abuses, they at least provided a more culturally compatible and economical statutory scheme than the present statutes. While the Juvenile Justice Act of 1980 contains several workable chapters dealing with child shelter, care, support, and juvenile delinquency adjudications, the legislature may wish to reexamine those chapters dealing with adoption proceedings, including relinquishment or termination of parental rights for purposes of adoptions, and amend these statutes to work more effectively within the unique local context of the Samoan extended family child rearing practices. In the interim, however, all petitions for adoption must be timely filed and address all of the statutory requirements of A.S.C.A. § 45.0420(a), (b), (c), and (d). In Re A Minor Child, 29 A.S.R.2d 20.

Formal adoption via the adoption statute does not preempt the field of adoption, and does not forbid Samoan customary adoption. Fanene v. Malauulu, 30 A.S.R.2d 45.

§ 3(3)(b)—Samoan Custom Adoptions

SEE SAMOAN CUSTOMS § 3(2) – ADOPTION

Court will consider children adopted in accordance with Samoan custom to be members of family. Leasiolagi v. Fao, 2 A.S.R. 451.

In order for a child to leave his natural parents and live with another couple as their adopted child in accordance with Samoan custom, it is not necessary that the child be legally adopted or that the legal rights and obligations of the natural parents be terminated. In re A Minor Child, 4 A.S.R.2d 138.

Child would not benefit from relinquishment order where (1) proposed adoptive parent was 79, natural parents were 39 and 49, and child was 10; (2) natural parents were employed and had a family home; and (3) proposed adoptive parent received a total income of $275 per month and relied on support from other family members to maintain household. In re A Minor Child, 7 A.S.R.2d 115.

Informal fa`a Samoa adoptions do not require the consent of the Court because they do not affect the legal rights and obligations of the parties. In re Two Minor Children, 15 A.S.R.2d 28.

A Samoan customary adoption does not require Court approval or a legal termination of the rights and obligation of the natural parents. In re A Minor Child, 19 A.S.R.2d 97.

When a change in legal status is not in the child's best interest, customary Samoan adoption may continue to inure. In re a Minor Child, 20 A.S.R.2d 49.

Grandparents can be the primary caregivers of their grandchildren, as is often done in Samoan tradition, if all concerned agree, without legally severing the parent-child relationship. Such severance could leave the child without

legal recourse for support during a long period of dependency if the grandparents become unable to care for her. In re a Minor Child, 25 A.S.R.2d 70.

A change in legal status is not necessary to facilitate customary fa`a Samoa adoption. In re a Minor Child, 25 A.S.R.2d 89.

Formal adoption via the adoption statute does not preempt the field of adoption, and does not forbid Samoan customary adoption. Fanene v. Malauulu, 30 A.S.R.2d 45.

§ 3(3)(c)— Protections for Parents

The territorial statute dealing with voluntary relinquishment of parental rights requires that the natural parents be present in court. A.S.C.A. § 45.0402. In re Three Minor Children (Mem.), 3 A.S.R.2d 4.

Court will not order relinquishment of parental rights until it is satisfied that the relinquishing parent has been counseled and fully advised of the consequences of relinquishment. A.S.C.A. § 45.0402(d). In re Two Minor Children, 8 A.S.R.2d 75.

Court could not make the required finding that an order to relinquish only the mother's parental rights was in the best interests of all parties concerned where, although the mother appeared and testified that she appreciated the consequences of relinquishment, the father did not appear and the petition did not anticipate a piecemeal approach to the termination of parental rights. In re Two Minor Children, 8 A.S.R.2d 75.

Samoan parents who give their children to another family to raise, or who sign a waiver prepared by counsel for prospective adopting parents, cannot be conclusively presumed to understand and agree to the consequences of a legal termination of parental rights. In re Three Minor Children, 10 A.S.R.2d 57.

Except where it is genuinely impossible to locate natural parents whose rights are sought to be terminated, or where bringing them to American Samoa would occasion extraordinary hardship, they should be counseled by territorial child protective service and should be made available as witnesses before the court. In re Three Minor Children, 10 A.S.R.2d 57.

For parental rights to be voluntarily relinquished, the court must be satisfied that the relinquishing parent was counseled and fully advised of the consequences and that relinquishment best serves the interests of all concerned parties. A.S.C.A. §§ 45.0401(a)(2), (d), & (f). In re A Minor Child, 12 A.S.R.2d 15.

Where prospective adopting father was almost seventy years old, had suffered a stroke and was too sick to come to court for the relinquishment hearing, and natural parents were young and healthy, child could go on living with the prospective adopting parents for as long as the arrangement was suitable to all concerned, but it would not be in the child's best interest to terminate the natural parents' obligation to provide support. In re Two Minor Children, 12 A.S.R.2d 87.

Where the only effect of a legal adoption of a child by his grandparents, aside from any possible increase in the retirement or social security benefits of the grandfather, would be to deprive the child of the legal duty of support owed by his 38-year-old employed natural father and to substitute a similar duty on the part of a 62-year-old retired grandfather, a change in legal relationships would not be in the child's best interest. In re Two Minor Children, 12 A.S.R.2d 87.

In action to voluntarily relinquish parental rights pursuant to A.S.C.A. § 45.0402, the court may not dispense with the need to have the natural parents attend court to present such a voluntary relinquishment petition, even if the reason for the natural parents' absence is their inability to afford travel to American Samoa. A.S.C.A. § 45.0402. In re a Minor Child, 27 A.S.R.2d 160.

When natural parents voluntarily relinquish their parental rights, the appropriate action to legally terminate parental rights is an A.S.C.A. § 45.0402 petition for voluntary relinquishment of parental rights, which must be filed by the natural parents. A.S.C.A. § 45.0402. In re a Minor Child, 27 A.S.R.2d 122.

A.S.C.A. § 45.0402, the statutory provision that permits natural parents to voluntarily relinquish their parental rights, effectively requires that the natural parents be present in court. A.S.C.A. § 45.0402. In re a Minor Child, 27 A.S.R.2d 122.

In an action to voluntarily relinquish parental rights pursuant to A.S.C.A. § 45.0402, the court may not dispense with the need to have the natural parents attend court to present such a voluntary relinquishment petition, even if the reason for the natural parents' absence is their inability to afford travel to American Samoa. A.S.C.A. § 45.0402. In re a Minor Child, 27 A.S.R.2d 160.

Generally, joint petitions for adoption can only be filed by married couples. In Re A Minor Child, 29 A.S.R.2d 18.

Under the facts of the particular case, wherein the best interests of the child are at stake, the court may accept a joint petition filed by a couple with a long standing stable relationship that closely approximates common law marriage. In Re A Minor Child, 29 A.S.R.2d 18.

§ 3(2)(d)—Best Interests of the Child

Notwithstanding the consent of child's natural parents to the termination of their parental rights and obligations so that

child could be adopted by another couple, such termination would not serve the best interests of the child where (1) the prospective adopting parents were sixty-four and fifty-eight years old, (2) the natural parents were much younger, (3) the child had lived for most of his life with his natural parents, and (4) the only apparent advantage of a legal adoption would be increased Social Security benefits for the prospective adopting parents. In re A Minor Child, 4 A.S.R.2d 138.

The best interests of a two-year-old child would not be served by terminating the parental rights and obligations of her natural mother so that she could be adopted by her seventy-six-year-old great-grandmother. In re A Minor Child, 4 A.S.R.2d 181.

In assessing the best interests of a child for the purposes of a proceeding to terminate parental rights so that the child can be adopted, the court must consider the prospective adopting parents' ability to support the child until the child's majority and may therefore consider the ages of the child, of the natural parents, and of the prospective adopting parents. In re A Minor Child, 4 A.S.R.2d 181.

The difference in ages between grandparents of 62 and 63 years and a child of 7 years speaks against terminating the rights and obligations of the natural parents so that the grandparents can adopt the child. In re Two Minor Children, 11 A.S.R.2d 91.

Granting a petition for relinquishment of parental rights and obligations may be in the best interest of the child where natural parents have had a marriage punctuated by separations, natural father has not been responsive to his paternal obligations, and natural father opines that his father-in-law is better suited to care for the child. In re Two Minor Children, 11 A.S.R.2d 91.

Before granting a petition for relinquishment of parental rights and obligations, a court must consider the best interests and welfare of the child and the reasons relinquishment is sought, and must be satisfied that the parents have been counseled and fully advised of the consequences and also that relinquishment is in the best interest of all parties concerned. In re Two Minor Children, 11 A.S.R.2d 91.

Where natural parents provide an adequate home environment and are fit and suitable parents, and seem able to provide for the child as well as the grandparents who are seeking to adopt the child, granting petition for relinquishment of parental rights and obligations may not be in the best interest of the child. In re Two Minor Children, 11 A.S.R.2d 91.

Where children lived with both their natural parents and their grandparents, had close relationships with both, regarded their natural parents as their mother and father, and both parents and grandparents were financially able to provide for the children, termination of rights and obligations of the natural parents and legal adoption by grandparents was not in the best interest of the children. In re Two Minor Children, 11 A.S.R.2d 108.

Petition by natural parents to relinquish their parental rights was denied where petitioners failed to show they were unable to provide for the child, or that relinquishment was in child's best interests considering the age difference between the child and grandparents wishing to adopt her. In re A Minor Child, 13 A.S.R.2d 33.

Petitions to terminate legal rights and obligations of natural parents in order to facilitate adoption by much older prospective adopting parents were not in the best interest of the children, where natural parents were much younger, had potential to be good providers, and appeared to have strong bonds with the children. In re Two Minor Children, 13 A.S.R.2d 94.

Petition of the natural parents to relinquish their parental rights in favor of the grandparents was denied as not in the best interests of the child where grandparents were both 75 years old and parents would eventually have to resume the care of the child when grandparents could no longer do so. In re A Minor Child, 14 A.S.R.2d 54.

Where young and able-bodied natural parents had sent their child to live with an elderly couple because the older couple did not have anyone to do chores, court would deny legal termination of the natural parents' rights and obligations even though the elderly couple appeared to be fine people and appeared to have developed a genuine affection for the child. In re A Minor Child, 14 A.S.R.2d 82.

Legal termination of natural parents' rights and obligations is appropriate only when it would serve the best interests of the child. In re A Minor Child, 14 A.S.R.2d 82.

In the absence of extraordinary circumstances a child's best interests are not served by terminating the obligations of young able-bodied parents to support him. In re A Minor Child, 14 A.S.R.2d 82.

A legal termination of parental rights can be granted only if it is in the best interests of the children; absent a showing that the children will be better off, an adoption petition is properly denied. In re Two Minor Children, 15 A.S.R.2d 28.

Petition of capable, healthy, and young natural parents to relinquish their rights to their minor child was denied where the grandparents wishing to adopt the child relied upon sources of income (social security, military retirement, and disability benefits) that would be reduced or curtailed upon their deaths. In re A Minor Child, 16 A.S.R.2d 9.

Petition by middle aged, able-bodied natural parents to relinquish their parental rights was denied since they failed to

show relinquishment was in the best interest of their minor child where her father was gainfully employed and required to pay child support for her under a divorce decree, while her grandmother who wished to adopt her received social security benefits. In re A Minor Child, 16 A.S.R.2d 106.

Petition by middle aged, able-bodied natural parents to relinquish their parental rights was denied since they failed to show relinquishment was in the best interest of the minor where petitioners, their minor child, and the grandmother wishing to adopt him all lived together, the child was aware of his natural parents, and the parents were gainfully employed while the grandmother received only social security benefits and rental income. In re A Minor Child, 16 A.S.R.2d 108.

Petitions by natural parents to relinquish their parental rights and petition by grandmother with whom their minor child resided to terminate their parental rights were denied as not in the minor's best interests, where mother was now married and capable of caring for child, father was employed and reportedly also married, and grandmother was an elderly widow whose income was insufficient to support herself and child without assistance. In re a Minor Child, 17 A.S.R.2d 31.

A legal adoption was deemed not in the child's best interest, even though the prospective adopting parents love and could provide more than adequate financial support for the child, and the child appears to have been informally adopted. In re a Minor Child, 17 A.S.R.2d 86.

A legal adoption was deemed not in the child's best interest when her parents were thirty-years-old and the prospective adopting parent is her 64-year-old grandfather, who is a widower and will be almost eighty years old by the time the child reaches majority. In re a Minor Child, 17 A.S.R.2d 87.

A petition to relinquish parental rights to a child is not ordinarily favored unless the evidence is clear and convincing that the prospective adopting parents are in a better position to secure the best interest and welfare of the minor. A.S.C.A. §§ 45.0102, 45.0402. In re Two Minor Children, 19 A.S.R.2d 32.

In a petition to relinquish parental rights to a child, a court is required to first consider the best interest and welfare of the child, as well as the best interest of all concerned. A.S.C.A. §§ 45.0102, 45.0402. In re Two Minor Children, 19 A.S.R.2d 32.

Petitions of healthy, young, natural parents to relinquish their parental rights and obligations in favor of elderly relatives have been consistently rejected by the High Court. A.S.C.A. §§ 45.0102, 45.0402. In re A Minor Child, 19 A.S.R.2d 97.

Unless relinquishment of parental rights can be found to enhance a child's best interests, the court is not permitted to grant the petition. In re a Minor Child, 20 A.S.R.2d 49.

When a change in legal status is not in the child's best interest, customary Samoan adoption may continue to inure. In re a Minor Child, 20 A.S.R.2d 49.

Other things being equal, children of tender years should remain together and their custody given to the mother; other factors are a good home, congenial surroundings, and intelligent attention and direction in matters affecting the health, education, growth and development of the children. Stevens v. Stevens, 21 A.S.R.2d 76.

Relinquishment of parental rights must be based in very substantial part on the best interests of all persons concerned; as such, the court refused to legally sever a minor's relationships with his natural family to have him raised by an older, single parent who is in poor health. A.S.C.A. § 45.0402(e). In re a Minor Child, 23 A.S.R.2d 129.

Relinquishment of parental rights must be predicated on the best interests of all concerned, but disruption of natural family relationships may not be in the children's long-term best interests. A.S.C.A. § 45.0402(e). In re Three Minor Children, 23 A.S.R.2d 113.

The best interests of all persons concerned, particularly those of the minor child, must be served by the outcome of proceeding for the relinquishment of a parent-child relationship. In re a Minor Child, 25 A.S.R.2d 70.

This court has been loathe to take the drastic action of severing a child's legal relationship to his or her natural parents, unless it is satisfied that the child will realize some net benefit through the change in legal status and a severance of legal ties to the natural parents and corresponding obligations of support. In re a Minor Child, 25 A.S.R.2d 89.

Western Samoan courts are in a better position to meaningfully assess the natural circumstances of a Samoan baby who was born in Western Samoa to Western Samoan domiciled parents and, therefore to, judge whether it is in his best interests and welfare to sever his legal relationship to his parents. In re a Minor Child, 26 A.S.R.2d 105.

In the absence of evidence to the contrary, the law favors preservation of the children's natural circumstances. In re Two Minor Children, 26 A.S.R.2d 117.

Although a mother is the natural custodian of her young, other factors that the court should weigh in deciding custody are a good home, congenial surroundings, and intelligent attention and direction in matters affecting the health, education, growth and development of the children. Aumavae v. Aumavae, 27 A.S.R.2d 164.

When a court obtains jurisdiction over a minor, its power to modify the custody arrangements in the interest of that child

are equal to those of the state issuing the original decree. In re A Minor Child, 28 A.S.R.2d 33.

Relinquishment of parental rights must be based on the best interests of all concerned, but the child's best interests are paramount. In re Two Minor Children, 28 A.S.R.2d 113.

It is not in the children's best interests to divest the natural parents of their parental rights and obligations based on immediate financial pressures. In re Two Minor Children, 28 A.S.R.2d 177.

The provisions of Title 45, A.S.C.A. § 45.0102 et seq., must be liberally construed to effectuate, in part, "the preserv[ation] and strengthen[ing of] aiga ties whenever possible," A.S.C.A. § 45.0102(2), and "secur[ing] for any child removed from the custody of his parents, the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society." A.S.C.A § 45.0102(4). In Re A Minor Child, 29 A.S.R.2d 18.

Under the statutory scheme whereby the High Court hears relinquishment and termination of parental rights actions and the District Court separately hears the subsequent adoption actions, the only way for the government to monitor the minor child's best interests throughout this process is to appoint a Guardian of the person of the minor child. See A.S.C.A. § 45.0103(16). The logical choice for any such appointment would be the Child Protective Services Agency, Department of Human Resources, which could then actively monitor the minor child and his home environment until the decree of adoption is finally issued. In Re A Minor Child, 29 A.S.R.2d 20.

Formal adoptions based principally on impecunious circumstances are not in the children's best interests, the overriding concern. In Re Three Minor Children, 29 A.S.R.2d 52.

In determining the divestiture of parental rights for the purpose of subsequent adoption, a child's best interests come first. A child's interests are not best served by legally severing the parent-child relationship when the child is living with her natural parents, who provide her support. In Re A Minor Child, 29 A.S.R.2d 53.

§ 3(3)(e)—Legal Status After Adoption

Legally adopted children become members of family and have same rights as family members to use family lands. Fao Family v. Fao, 2 A.S.R. 299.

Court will consider children adopted in accordance with Samoan custom to be members of family. Leasiolagi v. Fao, 2 A.S.R. 451.

Parents who relinquished rights to their child so that he could be adopted by another family did not thereby terminate the child's legal relationship to his brother. Galo v. American Samoa Gov't, 10 A.S.R.2d 94.

§ 3(4) —Guardianships & Fiduciary Duties

SEE WILLS, TRUSTS & ESTATES § 11(2) – FIDUCIARIES FOR MINORS

Court's statutory responsibility to supervise litigation involving minors imposes a duty on the court to exercise its own best judgment on the fairness of attorney fee arrangements. c(Mem.), 3 A.S.R.2d 114.

In a personal injury action on behalf of a minor, court would not approve a contingency fee larger than one-third of the total amount recovered. Oto v. National Pacific Insurance Co.

Trustee of minor's estate is charged with preserving funds in the estate until the minor reaches adulthood, and should give careful scrutiny to all proposed expenditures. In re Moea'i (Mem.), 3 A.S.R.2d 12.

In deciding whether to approve expenditures recommended by trustee of minor's estate, court considered the amount remaining in the trust, whether the amount requested was a substantial percentage of the amount remaining, the length of time remaining before the minor reaches adulthood, other expenditures likely to be requested, and whether the trustee had carefully scrutinized the proposed expenditure. In re Moea'i (Mem.), 3 A.S.R.2d 12.

Duty of a fiduciary to be zealous in protection of the interests of beneficiaries is at its highest when interests of beneficiaries may compete with personal interests of the fiduciary. Logoa'i v. South Pacific Island Airways, Inc., 6 A.S.R.2d 28.

Court would not approve a proposed settlement negotiated by guardian ad litem for minor children, where guardian ad litem had also negotiated on her own behalf as surviving spouse and as representa-tive of the decedent's estate, proposed settlement would have redounded primarily to the benefit of the spouse and the estate, and no facts were alleged to justify the small amount awarded to the children. Logoa'i v. South Pacific Island Airways, Inc., 6 A.S.R.2d 28.

Court will not ordinarily approve proposed division of property among minors and their guardians without clear and convincing evidence that the proposed division is fair to the minors. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Duty of a guardian or other fiduciary to be zealous in the protection of the interests of those to whom the fiduciary duty is owed is at its highest in situations wherein these interests may compete with the personal interests of the fiduciary. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Although retention of a single attorney to represent the interests of minors and the personal interests of their guardian may sometimes be justified by convenience and financial savings, the guardian and the attorney must carefully consider potential conflicts between the interests of the guardian and those of the minors. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Joint representation of minors and their guardian by a single attorney is not appropriate where there is actual conflict between the reasonably arguable rights and interests of the guardian and those of the minors. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Court's signature on order authorizing guardian to proceed with a transaction and deposit a certain sum to the account of minors did not preclude court from subsequently deciding that the minors were entitled to a greater sum, where (1) guardian was an attorney who also represented another party to the same transaction; (2) the draft order was submitted to court by the guardian subsequent to a hearing at which court had given verbal approval of guardian's proposal to proceed with the transaction and hold the proceeds subject to the court's future orders on their disposition; (3) allocation of the proceeds among the minors and other parties to the transaction was not raised at the prior hearing; (4) at a subsequent hearing after the court had signed the order but before the transaction had actually occurred, the guardian did suggest that his other client was entitled to some of the proceeds of the transaction and the court expressed disagreement. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Funds held in trust for minors and other incompetents may be deposited in the court's registry, where they will be placed in interest-bearing accounts, no trusteeship fees will be charged, and disbursements will be subject to court approval. Judicial Memorandum No. 1-88, 7 A.S.R.2d 143.

Legal guardians are not responsible for funds deposited with the Court's registry and need not make periodic reports concerning such funds. Judicial Memorandum No. 1-88, 7 A.S.R.2d 143.

Funds held in trust may be held in interest-bearing accounts outside the registry of the court, but court may require periodic reports, bonding of guardian or trustee, and/or the continued involvement of an attorney in order to protect the interests of the beneficiary. Judicial Memorandum No. 1-88, 7 A.S.R.2d 143.

Father who spent funds belonging to minor for general family purposes rather than depositing them in court-ordered guardianship account would be required to restore the funds, plus the interest that would have accrued to the minor's estate if the funds had been deposited in the guardianship account. In re Guardianship of Sagapolutele, 8 A.S.R.2d 24.

Adult heirs were competent to decide whether to seek recovery of their share of decedent's estate from surviving spouse who had spent the funds in the estate, but minor heirs could not waive their share of the estate; accordingly, surviving spouse would be required to restore funds to minors' trust accounts. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26.

When parents who had accepted appointment as guardians ad litem for their minor child relinquished their parental rights to the child, parents and their attorney continued to have a fiduciary relationship requiring vigorous protection of the child's interests in connection with the lawsuit, especially insofar as these interests might conflict with their own. Galo v. American Samoa Gov't, 10 A.S.R.2d 94.

For guardians ad litem and their counsel to request that minor child receive no share in settlement award was inconsistent with their fiduciary obligation to him, especially where the result of disregarding the child's interests was to leave more money to be distributed among other family members including the guardians themselves. Galo v. American Samoa Government, 10 A.S.R.2d 94.

Attorney for guardians ad litem of minor child should have advised guardians of their fiduciary obligation rather than acquiescing in their request to eliminate the child from distribution of settlement award. Galo v. American Samoa Government, 10 A.S.R.2d 94.

Parents' intention to make use of settlement award in a way that would benefit the whole family was insufficient reason to award parents a greater portion of the settlement, and children a lesser portion, than reflected the injuries actually suffered by the various parties. Galo v. American Samoa Government, 10 A.S.R.2d 94.

Court presented with settlement of claims of minor children has the obligation not to approve the proposed settlement unless the children's interests are adequately protected. Moananu v. American Samoa Government (Mem.), 11 A.S.R.2d 100.

Where minor children were the only plaintiffs whose claims against the principal defendant had not been dismissed, their interests were not adequately protected by a settlement in which they were awarded less than their father and guardian ad litem. Moananu v. American Samoa Government (Mem.), 11 A.S.R.2d 100.

Recognition of a cause of action for collateral harm to parent arising out of his minor child's injuries would practically guarantee a conflict of interest in every settlement negotiation arising out of such injuries, since zealous representation of the child's claims would deplete the fund available to compensate the fiduciary. In re Guardianship of Falelua, 13 A.S.R.2d 83.

A guardian is a fiduciary, whose duty to be zealous in the protection of the interests of those to whom the fiduciary duty is owed is at its highest in situations wherein these interests may compete with the personal interests of the fiduciary. Stephens v. Stephens, 30 A.S.R.2d 165.

As a fiduciary, a guardian is charged with unscrupulous unselfishness, and is legally bound to perform his or her fiduciary duties in the best interests of his or her charge. Stephens v. Stephens, 30 A.S.R.2d 165.

"Next friend" is a term that was developed at common law, usually for a person designated to prosecute a civil action on a plaintiff minor's behalf, while a "guardian ad litem" referred to a person appointed to present a defendant minor's defense. However, in current practice and in American Samoa, the term "guardian ad litem" is used whether the minor is a party plaintiff or defendant. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

§ 3(5) —Rights in Court

SEE CRIMINAL PROCEDURE § 4(10) - JUVENILES

Adoption of child subsequent to natural parent's injury and death does not affect child's right to receive death benefits under workmen's compensation laws, since legal relationship of natural parent and child existed at time of injury and death. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 149.

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.

Court presented with settlement of claims of minor children has the obligation not to approve the proposed settlement unless the children's interests are adequately protected. Moananu v. American Samoa Government (Mem.), 11 A.S.R.2d 100.

Where minor children were the only plaintiffs whose claims against the principal defendant had not been dismissed, their interests were not adequately protected by a settlement in which they were awarded less than their father and guardian ad litem. Moananu v. American Samoa Government (Mem.), 11 A.S.R.2d 100.

Court presented with a settlement involving minor children would not approve a fee to an attorney from another jurisdiction who had not applied for admission pro hac vice and whose services, if any, constituted the unauthorized practice of law. Moananu v. American Samoa Government (Mem.), 11 A.S.R.2d 100.

Court presented with a settlement involving minor children would not approve a contingent fee agreement which was said to have been reduced to writing but of which all copies had inexplicably disappeared, but would base the fee award upon quantum meruit. Moananu v. American Samoa Government (Mem.), 11 A.S.R.2d 100.

Widow who signed document conveying house belonging to her late husband had no power to convey the interest of the surviving children of the deceased. Gi v. Temu, 11 A.S.R.2d 137.

Recognition of a cause of action for collateral harm to parent arising out of his minor child's injuries would practically guarantee a conflict of interest in every settlement negotiation arising out of such injuries, since zealous representation of the child's claims would deplete the fund available to compensate the fiduciary. In re Guardianship of Falelua, 13 A.S.R.2d 83.

Case in which (1) child's injuries were unlikely to have a shattering effect on the parent-child relationship; (2) the parent and guardian ad litem might herself have contributed to the injuries; and (3) the parent/guardian had waived any claim in her personal capacity by submitting a stipulated judgment requesting in effect that the entire settlement be deposited in a trust account for the child, was inappropriate for the recognition of a new cause of action for loss of filial companionship. In re Guardianship of Falelua, 13 A.S.R.2d 83.

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.

Siblings are ordinarily entitled to recover for wrongful death even though a parent may be living, provided that they can show the requisite injury. Saufo`i v. American Samoa Government, 16 A.S.R.2d 71.

"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.

Resulting in an attractive nuisance, the actions and omissions of a school's employees amounted to a serious breach of their duty to take care for the schoolchildren's safety when they left a long-abandoned trailer on the premises and failed to remove an air-conditioning unit or replace its missing support braces. Moors v. American Samoa Gov't, 19 A.S.R.2d 67.

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.

The wrongful death statute did not envision granting relief to every relative who can claim some parental role in the decedent's lifetime while there are surviving parents with compensable loss. Utu v. American Samoa Government, 20 A.S.R.2d 53.

While motorists must be vigilant when encountering children, the fact that an injury occurred does not automatically give rise to strict liability without fault. Estate of Tuilesu v. Asifoa, 20 A.S.R.2d 60.

A suit against police officers for assault, unlawful entry, and wrongful arrest was dismissed when hospital records showed a minor's injuries took place four months after the complaint was filed and when the credible evidence showed that his mother consented to the search of the house and that the minor was brought to the police station by another youth. Sepulona v. Mau, 22 A.S.R.2d 90.

An "equitable," "virtual," or "de facto" adoption for inheritance purposes exists when a decedent performs parental duties towards a child in his household and that child performs filial obligations in return, exactly equivalent to a formally-adopted child. Estate of Fuimaono, 23 A.S.R.2d 33.

Drivers whose conduct might result in injury to a child have a duty to exercise proportional vigilance and caution. Sciascia v. Lutali, 23 A.S.R.2d 38.

Drivers have an overriding duty to pedestrians, especially children, and a duty to refrain from careless driving. A.S.C.A. §§ 22.0406, 22.0701. Sciascia v. Lutali, 23 A.S.R.2d 38.

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.

A damage award to a minor shall be deposited directly into the depositary of the High Court of American Samoa and placed in an interest-bearing account with the minor as beneficiary; disbursements are to be made only on application by the guardian ad litem and with the approval of one of the Justices. Sciascia v. Lutali, 23 A.S.R.2d 38.

Disability under the law ceases when a minor reaches the age of majority or is otherwise earlier emancipated through marriage. A minor is no longer disabled for statute of limitations purposes when a guardian ad litem is named. Pasesa v. Laumatia, 28 A.S.R.2d 37.

The statute of limitations begins to run against a minor when a guardian ad litem is appointed and files suit on the minor's behalf. A.S.C.A. § 43.0120(2). Pasesa v. Laumatia, 28 A.S.R.2d 37.

§4 Legitimacy & Inheritance

Although the common law equated illegitimacy with disinheritance and the legitimation of offspring is essentially a statutory development, disinheritance constitutes impermissible discrimination when paternity or maternity is a genuinely-established fact. Estate of Fuimaono, 21 A.S.R.2d 121.

When parents perform their parental duties towards those acknowledged as their children, and those children perform their filial obligations in return, a de facto right of inheritance should be recognized in principle. Estate of Fuimaono, 21 A.S.R.2d 121.

If husband and wife are not cohabitating when a child is conceived, the conclusive presumption that the child is the legitimate child of the marriage is inapplicable. In such cases, a disputable presumption of legitimacy exists, but is overcome where there is a complete lack of any sexual access between the couple at the time of conception. In re a Minor Child, 25 A.S.R.2d 2.

The law of American Samoa may recognize equitable adoption for purposes of inheritance from the individual estate of the equitable adoptive parent. This doctrine may be applied in the absence of proof of a specific contract to adopt. Estate of Fuimaono, 25 A.S.R.2d 110.

Equitable adoption requires a finding that the equitably adopted child has stood from an age of tender years in a position exactly equivalent to a formally adopted child. Estate of Fuimaono, 25 A.S.R.2d 110.

When an individual lives as a member of a family's household, a presumption arises that the services for which compensation is sought were rendered gratuitously. This is true even when persons living in the same household are not related by blood or affinity. Farapo v. Schuster, 26 A.S.R.2d 112.

While mature consenting single adults can pretty much do whatever they want with respect to their relationships, there are some legal drawbacks to consensual cohabitation. Children of consensually cohabitating unions are not legally legitimate until and unless that couple eventually marries. See A.S.C.A § 42.0501. In Re A Minor Child, 29 A.S.R.2d 18.

§5 Family Purpose Doctrine

SEE TORTS § 8(2) – FAMILY PURPOSE DOCTRINE

§ 6 Records

Registrar of Vital Statistics has no authority to issue corrected birth certificate under present statute. Utu v. Beebe, 4 A.S.R. 762.

Where a person has exhausted all administrative remedies available to correct birth certificate and where failure to correct certificate would serve to damage to do damage to child named therein, court will invoke equity powers to instruct Registrar of Vital Statistics to issue corrected birth certificate. Utu v. Beebe, 4 A.S.R. 762

Court will deny petition to change name of child to that of deceased husband of mother when child is only eight years old but such dismissal shall be without prejudice to bringing of petition at later time when child is of sufficient age to understand nature of proceedings. In Re Sikalea, 4 A.S.R. 755.

In the absence of statutory abrogation of the common-law right to change one's name, courts should encourage petitions to make a public record of these changes and so abuse their discretion in denying such petitions without any substantial reason. Application of Mamea, 24 A.S.R.2d 66.

IMMIGRATION

§ 1 General Provisions
2 Immigration Board
3 Exclusion
4 Deportation
4(1) —General Provisions
4(2) —Procedures
4(3) —Grounds
4(4) —Stay of Order
5 Sponsors

§ 1 General Provisions

Citizens and nationals of the United States may reside in American Samoa as of right. Such persons are not subject to arbitrary and capricious limitations regarding sponsorship of aliens; rather, matter is determined with references to valid statutes and regulations. Ki v. Immigration Board, 1 A.S.R.2d 99 (App. Div. 1983).

There are no exceptions to the statute permitting a person who has been a resident of American Samoa for ten years to become a permanent resident. O v. Fa'alevao, 2 A.S.R.2d 17 (App. Div. 1984).

American Samoa, unlike the fifty states and the other territories of the United States, is specifically excluded from the scope of federal immigration laws and has, pursuant to congressionally delegated authority, enacted its own immigration laws. 8 U.S.C. § 1101(13), (29), (36), (38); A.S.C.A., Title 41. American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

The basis of the United States' immigration laws is the right of independent nation-states to protect their political institutions, their people, and their independent existence by legally and forcibly excluding undesirable foreigners. American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

The sole, stated purpose of the territorial immigration statute is to preserve the "limited land resources, water, sewage facilities, and educational and economic opportunities" of American Samoa. A.S.C.A. § 41.0201. American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

Under American Samoan law, the term "undocumented aliens" means aliens who have reached the borders of American Samoa but have not been authorized to remain as residents in the territory. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

The power to protect American Samoa's borders is vested in both the executive and legislative branches and the Governor's authority over immigration matters is limited by the statutory grant of the Legislature. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

Where Governor initiated amnesty program, allowing undocumented aliens to remain in territory, such program did not effectuate the purpose of limiting entry into American Samoa set forth in A.S.C.A. § 41.0201(b). Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

Although Governor may grant pardons, or amnesty, after convictions for immigration violations, he isn't empowered to change a particular undocumented alien's immigration status. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

The governor's constitutional pardoning power is expressly limited to pardons, even if that term is broadly construed to include amnesty grants, bestowed after convictions for criminal offenses. Even when the governor properly applies his pardoning power, the grantee's immigration status must still be approved in compliance with the immigration laws of American Samoa. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

The Governor is without authority to grant amnesty to undocumented aliens under his constitutional pardoning power or by other means. The governor can be empowered with that authority only by constitutional amendment or by legislative enactment. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

The Governor is without authority to grant amnesty to undocumented aliens, who have not been convicted of any criminal offense related to their illegal presence in American Samoa, in the absence of an effective constitutional amendment or legislation authorizing the governor to grant amnesty to undocumented aliens. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

While government employees need to provide different documents than other aliens, this does not exempt government employed aliens from other unequivocal requirements of the

Immigration Act. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

Although Government employed aliens are exempt from the numerical limits on immigration set out in A.S.C.A. § 41.0304, they are not exempt them from registering with the Immigration Board. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

The Immigration Act provides that no alien may be employed without Immigration board approval, and this requirement includes persons employed by the government; and the government may not be subject to penalties for employing aliens without prior approval, it does not follow that such employment is allowed. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

Because the Immigration Act is inartfully drafted and contains ambiguities and inconsistencies, anomalies within it do not manifest deliberately carved out exemptions for alien government employees. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

The Immigration Act allows the Immigration Board to exclude all aliens, including American Samoa Government ("ASG") employees; and the Act requires the Board's approval for an alien employed by the ASG to enter American Samoa, the Board's consent for the ASG to employ an alien, and the registration of aliens employed by the ASG. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

American Samoa law requires that every alien carry their registration card on their person at all times. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 2 Immigration Board

Lawful immigration board quorum requires presence of sufficient number of persons specificed in statute, and members may not delegate authority to sit on board in absence of statute to that effect. Yamazaki v. Immigration Board, 1 A.S.R.2d 8 (App. Div. 1980).

Determination that person is United States citizen precludes deportation or exclusion inquiry by immigration board. French v. Fa'alevao, 1 A.S.R.2d 44 (App. Div. 1980).

Court will not enforce a contested deportation order unless the record includes a statement of facts and authority upon which the immigration board relies. Fisher v. Fa'alevao, 1 A.S.R.2d 56 (App. Div. 1980).

Starting point for judicial inquiry in reviewing immigration board order is the record itself; where board did not supply a complete record of its proceedings, the missing facts would be found favorably to the appellant. A.S.C.A. § 41.0210. Rakhshan v. Immigration Board (Mem.), 13 A.S.R.2d 25.

A petition for review of an Immigration Board's decision need not be dismissed or be refilled 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.

If made upon unlawful procedure, a decision of the Immigration Board may be reversed, modified, or remanded for further proceedings by the Appellate Division of the High Court. A.S.C.A. § 41.0212(3). Farapo v. American Samoa Government, 23 A.S.R.2d 136.

The ten-day statutory period for reporting an address change to the Immigration Board can only sensibly be given effect if the prescribed period is computed to exclude the last day when it happens to fall on a Saturday, Sunday, or legal holiday. A.S.C.A. § 41.0308(b). Farapo v. American Samoa Government, 23 A.S.R.2d 136.

The Immigration Board possesses jurisdiction to issue authorizations to aliens so that they may remain in American Samoa. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

The Attorney General is charged with the administration and enforcement of the immigration laws except insofar as such laws relate to the powers, functions, and duties of the Immigration Board. Vaella'a v. Sunia, 1 A.S.R.3d 88 (Trial Div. 1997).

Even assuming the Attorney General has general authority to make original decisions on the immigration issues listed in A.S.C.A. § 41.0303, the Immigration Board remains ultimately responsible under A.S.C.A. § 41.0205(1) for the attorney general's decisions in these matters. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

The Immigration Board does not lose either its authority to make or responsibility for consummated decisions to grant first authorizations to remain simply by delegating any such power to the attorney general. Vaella'a v. Sunia, 1 A.S.R.3d 134 (Trial Div. 1997).

Under A.S.C.A. § 41.0206, the Attorney General (AG) has the legal authority to prevent the Immigration Board (IB) from acting, and so the AG did not act in its capacity as the Board's attorney when it interpreted the Immigration Act as exempting American Samoa Government employees from IB approval and registration; therefore a decision by the court would not be advisory. Tuilefano v. Toetogata, 3 A.S.R.3d 161 (Trial Div. 1999)

Under A.S.C.A. § 41.0206, the Immigration Board (IB) is legally required to follow the Attorney General's (AG) interpretation of the law, and where it therefore canceled deportation hearings despite its belief that the AG's

interpretation of the law was incorrect, a controversy exists between the parties, and there is sufficient adverse interest between them for the court to determine whether the IB must approve aliens employed by the American Samoa Government before they may enter American Samoa. Tuilefano v. Toetogata, 3 A.S.R.3d 161 (Trial Div. 1999)

Under A.S.C.A. § 41.0401, the Immigration Board of American Samoa Board is authorized to exclude any person who does not meet specified criteria, and because A.S.C.A. §§ 41.0201 and 41.0304 do not explicitly provide any exceptions, government employed aliens not meeting those criteria are subject to exclusion. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

Although Government employed aliens are exempt from the numerical limits on immigration set out in A.S.C.A. § 41.0304, they are not exempt them from registering with the Immigration Board. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

The Immigration Act provides that no alien may be employed without Immigration board approval, and this requirement includes persons employed by the government; and the government may not be subject to penalties for employing aliens without prior approval, it does not follow that such employment is allowed. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

The Immigration Act allows the Immigration Board to exclude all aliens, including American Samoa Government ("ASG") employees; and the Act requires the Board's approval for an alien employed by the ASG to enter American Samoa, the Board's consent for the ASG to employ an alien, and the registration of aliens employed by the ASG. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

Immigration Board decisions receive expedited limited judicial review under appeals before the Appellate Division of the High Court in which the Board is the named respondent. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 3 Exclusion

Under A.S.C.A. § 41.0401, the Immigration Board of American Samoa Board is authorized to exclude any person who does not meet specified criteria, and because A.S.C.A. §§ 41.0201 and 41.0304 do not explicitly provide any exceptions, government employed aliens not meeting those criteria are subject to exclusion. Tuilefano v. Attorney General, 4 A.S.R.3d 67 (Trial Div. 2000).

§ 4 Deportation

§ 4(1) —General Provisions

The Attorney General's position on the immigration board denies an applicant due process of law. O v. Fa'alevao, 2 A.S.R.2d 17 (App. Div. 1984).

The power to expel aliens is a fundamental, sovereign power exercised by the political branches of government. American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

Persons deemed deportable under the immigration statute are almost invariably deemed excludable from readmission; but in many circumstances, they be readmitted at the discretion of American Samoa's Immigration Board and Attorney General. A.S.C.A. §§ 41.0613, 41.0615-16, 41.0617. American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

American Samoa's Attorney General may have the discretion to allow a deportable or excludable alien to return and/or remain in the territory. A.S.C.A. § 41.0617. American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

The Government's right to hold a prisoner gives rise to a correlative duty to protect that prisoner against assault and injury, especially when the prisoner is an immigration detainee who has been convicted of no crime. Rakhshan v. Tuilefano, 18 A.S.R.2d 18.

A prisoner detained for immigration purposes is entitled to relief from conditions of confinement that include exposure to other inmates of proven vicious temperament. Rakhshan v. Tuilefano, 18 A.S.R.2d 18.

It is not unreasonable to confine an immigration detainee and other non-dangerous inmates within an enclosed building for two hours a day while a dangerous inmate exercises and attends religious services. Rakhshan v. Tuilefano, 18 A.S.R.2d 46.

§ 4(2) —Procedures

Under territorial immigration statute, the immigration board determines only whether an alien is deportable; the decision actually to deport a deportable alien is within the discretion of the attorney general. A.S.C.A. § 41.0616. Leti v. Immigration Board, 8 A.S.R.2d 107.

Order of deportation must be made by the Attorney General. A.S.C.A. § 41.0616. Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

No substantive due process right exists for not being deported. American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

American Samoa's Attorney General has the power to "enforce and administer" the laws pertaining to immigration and the status of aliens, and the statutory procedures are the exclusive method for "determining the deportability of any person."

A.S.C.A. §§ 41.0103(a), 41.0614. American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

The Immigration Board may deport an alien only after he has been accorded an opportunity for a public hearing. A.S.C.A. § 41.0205(2). Farapo v. American Samoa Government, 23 A.S.R.2d 136.

Although deportation hearings may be closed under certain circumstances, the Immigration Board may only close the hearings in a specific case to protect witnesses, the respondent, or the public interest and only if the interest in a closed hearing outweighs the "value of openness." A.S.A.C. § 41.0807(a). Farapo v. American Samoa Government, 23 A.S.R.2d 136.

Aliens facing deportation hearings are to be given notice which is "reasonable under the circumstances." A.S.C.A. §§ 41.0205(7)(a), 41.0607(a)(1). Farapo v. American Samoa Government, 23 A.S.R.2d 136.

Though the Immigration Board's documents are confidential by statute, this statute may not be used to deny constitutionally guaranteed due-process rights, nor does it prohibit the Court from ordering the Attorney General to produce these records when needed. U.S. Constitution Amend. V; Rev. Const. Am. Samoa Art. I, § 2; A.S.C.A. § 41.0307. Farapo v. American Samoa Government, 23 A.S.R.2d 136.

An alien in a deportation proceeding is entitled to cross-examine the government's witnesses, and an improper curtailment of this right constitutes a violation of procedural due process. U.S. Constitution Amend. V; Rev. Const. Am. Samoa Art. I, § 2; A.S.C.A. § 41.0205(7)(c); A.S.A.C. § 41.0807(a). Farapo v. American Samoa Government, 23 A.S.R.2d 136.

§ 4(3) —Grounds

The statute providing that polygamists who are not permanent residents of American Samoa are excluded from admission into the Territory and are subject to deportation does not authorize the deportation of an alien who was not a polygamist at the time he entered the territory. Falelua v. Immigration Board, 2 A.S.R.2d 98 (App. Div. 1986).

When a person loses the status, which entitled him to enter or remain in the territory, he has no further right to remain indefinitely. A.S.C.A. § 41.0407. Rakhshan v. Immigration Board (Mem.), 13 A.S.R.2d 25.

Alien who wilfully fails to report a change of address to the immigration authorities is subject to deportation. A.S.C.A. § 41.0312. Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

Alien may be deported on the ground of being the object of a valid foreign arrest warrant only when the warrant is issued by his country of citizenship. 15 A.S.R.2d A.S.C.A. § 41.0616(17). Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

Alien who makes statements he knows are false in an immigration application is subject to deportation. A.S.C.A. § 41.0313. Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

Immigration Board finding that an alien submitted false information "with intention to mislead the Board" implies that the alien knew the information was false. Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

Person who loses the status on which his permit to enter the Territory was based is presumed not to be entitled to remain, and may rebut such presumption only by showing that he is of good character, has no excludable offenses or characteristics, has a local sponsor, is not likely to be a financial burden on Samoa, and offers a needed skill or expertise not readily available in American Samoa. A.S.C.A. § 41.0401. Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

Government's refusal to accept a surety bond in lieu of cash bail for an alien arrested for immigration offenses violated his constitutional rights, where government's reason for refusal was its hope that his friends would put up the money it would otherwise cost the government to deport him. Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

Criminal convictions are proper grounds for deportation. A.S.C.A. § 41.0616(4), (6), (9), (10), (11), (16); 8 U.S.C. § 1251(a)(5), (11), (14), (15), (16). American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

The mere fact that a person who has committed a serious crime is required for that reason to return to his own country is not, absent extraordinary circumstances, either cruel or unusual. U.S. Const., Amend. VIII. American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

A person who has been "convicted of a crime involving moral turpitude committed within 5 years after any entry" is deportable; if he were outside the territory, he would be excludable as a convicted felon. A.S.C.A. §§ 41.0615(8), 41.0617(4). American Samoa Government v. Falefatu, 17 A.S.R.2d 114.

§ 4(4) —Stay of Order

SEE CIVIL PROCEDURE § 11(3) – STAY OF PROCEEDINGS

Filing of a petition for review of an immigration board decision does not automatically stay a final order of deportation made by the board. A.S.C.A. § 41.0646. Leti v. Immigration Board, 8 A.S.R.2d 107.

Appellate court cannot entertain an ex parte motion for stay of immigration order, since applicable rule requires that notice be given to all parties. Appellate Court Rule 18. Rakhshan v. Immigration Board, 12 A.S.R.2d 72.

Stay of deportation order should not be granted unless petitioner proves both that there is a substantial likelihood of his prevailing on the merits and that he will be greatly or irreparably injured if the stay is not granted. Rakhshan v. Immigration Board, 12 A.S.R.2d 72.

Proof of elements required for stay of deportation order ordinarily requires a hearing. Rakhshan v. Immigration Board, 12 A.S.R.2d 72.

Interlocutory stay of a deportation order should be granted only when there is a substantial likelihood that the petitioner will prevail on the merits and the petitioner will be greatly or irreparably injured if the stay is not granted. A.S.C.A. § 41.0211. Rakhshan v. Immigration Board (Mem.), 13 A.S.R.2d 25.

Because deportation tends severely to disrupt the life of the one deported, whether a stay is granted pending appeal of deportation order usually depends on whether the petitioner appears to have a good chance of prevailing. A.S.C.A. § 41.0211. Rakhshan v. Immigration Board (Mem.), 13 A.S.R.2d 25.

Where it was not clear from immigration board decision that in the absence of allegedly false statements the appellant would have been deported solely because he was no longer employed, and where the court had found no false statements in the record, a stay of deportation would be granted and the matter remanded for a new hearing. A.S.C.A. §§ 41.0210-11. Rakhshan v. Immigration Board (Mem.), 13 A.S.R.2d 25.

Pending civil suit by an alien in the High Court is not a ground on which the Court may grant a stay of deportation. Rakhshan v. Immigration Board, 15 A.S.R.2d 29.

§ 5 Sponsors

Citizens and nationals of the United States may reside in American Samoa as of right. Such persons are not subject to arbitrary and capricious limitations regarding sponsorship of aliens; rather, matter is determined with references to valid statutes and regulations. Ki v. Immigration Board, 1 A.S.R.2d 99 (App. Div. 1983).

A.S.C.A. section 41.0606, providing that aliens must have a sponsor, is subject to abuse but it is not unconstitutional. Tuivai v. Suiava, 2 A.S.R.2d 35 (Trial Div. 1984).

Alien whose sponsor had moved out of the territory was left without a sponsor and would appear to have had the right to remain in the territory for only ten days. A.S.C.A. § 41.0408(i). Rakhshan v. Immigration Board (Mem.), 13 A.S.R.2d 25.

Although the Immigration Board may revoke a sponsorship without a sponsor's permission, no statutory provision requires it to approve a sponsorship's termination or gives it the power to impose conditions on a sponsorship's termination. A.S.C.A. § 41.0408(f), (g). Farapo v. American Samoa Government, 23 A.S.R.2d 136.

The Immigration Board's merely announcing a sponsorship's termination fails to meet the notice requirements for a deportation hearing, as the notice must include the time and place of the hearing. A.S.C.A. §§ 41.0205(7)(a), 41.0607(a)(1). Farapo v. American Samoa Government, 23 A.S.R.2d 136.

Because a sponsor need not give the reasons for revoking a sponsorship, aliens facing deportation are not entitled to access to the Immigration Board's confidential documents in order to determine if the sponsorship was revoked for the "wrong reasons." A.S.C.A. § 41.0408(g). Farapo v. American Samoa Government, 23 A.S.R.2d 136.

The immigration laws allow an alien worker’s sponsor almost unlimited discretion to revoke sponsorship, the only requirement being that the sponsor provide written notice to the immigration board and the person sponsored of his or her intent to end the alien’s sponsorship. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

INSURANCE

§ 1 Insurance Commissioner/General Insurer Requirements
1(1) —Generally
1(2) —Commissioner's Authority & Duties
1(3) —Certificates to Transact Insurance
1(4) —Statutory Deposits
1(5) —Orders of the Commissioner
1(6) —Withdrawal from American Samoa
1(7) —Agents & Brokers
1(8) —Bailees as Insurers
3 Policy as a Contract
2(1) —Generally
2(2) —Warranties
2(3) —Interpretation
2(4) —Modification & Reformation
2(5) —Termination
2(6) —Cancellation
2(7) —Warranties
2(8) —Misrepresentation
2(9) —Applicable Law
3 Parties & Interests
3(1) —General Provisions
3(2) —Role & Authority of Agent
3(3) —Insured's Duties
3(4) —Insurer's Duties
3(4)(a) —Generally
3(4)(b) —Duty to Pay
3(4)(c) —Good Faith Attempt to Resolve Dispute
3(4)(d) —Duty to Act on Application
3(5) —Insurer's Right of Subrogation
3(6) —Beneficiaries
3(7) —Insurable Interests
3(8) —Transfer of Insured Property
3(9) —Reinsurance
3(10) —Double Insurance
3(11) —Stacking Benefits
3(12) —Statutory Right to Sue
4 Coverage
4(1) —Policy Terms & Limitations
4(2) —Proof of Loss
4(3) —Measure of Recovery
4(4) —Exclusions & Exceptions
4(5) —Public Policy Prevents Recovery
5 Automobile Insurance
5(1) —General Provisions
5(2) —Liability

5(3) —Permission by Owner
5(4) —Uninsured & Underinsured Motorists
6 Liability Insurance
7 Property Insurance

§ 1 Insurance Commissioner & General Insurer Requirements

§ 1(1) —General Provisions

RESERVED

§ 1(2) —Commisioner's Authority & Duties

The laws of American Samoa do not grant ASG's insurance commissioner absolute discretion to grant certificates of authority but rather constrain the commissioner to follow and enforce all insurance laws. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

The insurance commissioner does not have unbridled discretionary authority to issue certificates of authority. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

§ 1(3) —Certificates to Transact Insurance

The laws of American Samoa do not grant ASG's insurance commissioner absolute discretion to grant certificates of authority but rather constrain the commissioner to follow and enforce all insurance laws. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

The insurance commissioner does not have unbridled discretionary authority to issue certificates of authority. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

All insurers must comply with the specifically delineated statutory requirements of A.S.C.A. § 29.0302. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

§ 1(4) —Statutory Deposits

The insurance laws of American Samoa do not provide for transfer of ownership of insurer's bonds or statutory deposits, save for transfers by an insurer to ASG's Insurance Commissioner, and only then or the use and benefit of any person injured by the breach of the condition of any bond. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

The statutory deposit, required to be made by insurers under the AS.C.A. §29.0302, is not freely transferable, but is specifically committed to rendering legal obligations incurred by the principal. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

A deposit made by an insurance company as a condition of its right to do business constitutes a trust fund for the benefit of the insurer's policyholders, and for the insurer's creditors after the claims of policyholders are satisfied. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

A statutory deposit is essentially a trust for the insured; its establishment and maintenance must be directed towards ensuring that insurers perform their obligations. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

An insurer may assign its statutory deposit to another insurer, but it must first comply with the proper legal means for establishing a formal succession of interest. An assignee insurer is entitled to the statutory deposit of an assignor insurer only if the assignee insurer has assumed all obligations liabilities and assets of the assignor insurer, through corporate merger or other lawful means. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

The mere fact that a company has ceased to do business within the state does not warrant full withdrawal of the insurer's bond. A statutory deposit may only be returned to an insurer when the insurance commissioner is satisfied that all obligations for which the deposit was made to secure have been paid or are extinguished. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

Where there is misappropriation by one party of another's statutory insurance deposit, in order to make an illegitimate business seem legitimate, the court will apply principles of equity to prevent a withdrawal of the statutory deposit so long as innocent policyholders might be defrauded thereby. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

Interest earned on a statutory deposit belongs to the insurance company for whom the deposit is made. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

Where a bank holds a certificate of deposit assigned to ASG's insurance commissioner for use as a statutory deposit in lieu of an insurer's bond under A.S.C.A. § 29.0302(6), the bank is

obligated to exercise reasonable care as bailee of the deposit, and must use it for its intended purpose. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

Bank holding a statutory insurance deposit held not liable to the owner insurance company for refusing to allow withdrawal of the funds where no formal evidence or documentation was proffered to bank regarding the planned purpose of the funds, ASG Attorney General informed bank his office was investigating a claim for those funds by a court appointed liquidator and insurance company was being investigated by FBI and AG requested bank not release funds. American Samoa Gov't v. Amerika Samoa Bank, 4 A.S.R.3d 249 (Trial Div. 2000).

§ 1(5) —Orders of the Commissioner

RESERVED

§ 1(6) —Withdrawal from American Samoa

RESERVED

§ 1(7) —Agents & Brokers

RESERVED

§ 1(8) —Bailees as Insurers

It is a well-settled rule of law that an ordinary bailee is not an insurer of bailed property absent statute or express agreement but is liable only for loss resulting from his negligence in caring for and protecting the bailed property. Holland v. Haleck's Island Motors, 18 A.S.R.2d 2.

A bailee for mutual purposes is under no legal obligation to insure. Holland v. Haleck's Island Motors, 18 A.S.R.2d 2.

§ 2 Policy as a Contract

§ 2(1) —Generally

Even if the "last injurious exposure" rule were not the law in American Samoa, employers and insurers may contractually adopt this rule, which places full liability on the insurer providing coverage at the time of the most recent injury causally related to the disability. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

Defendant could not unilaterally withhold a percentage of the commissions payable to plaintiff on his sales of insurance policies in order to recoup commissions defendant paid on lapsed or cancelled policies, where the contract did not so specify. Mauga v. Pioneer Pacific Financial Services, Inc., 16 A.S.R.2d 16

An insurance policy is a contract and the same rules of construction applicable to other contracts are applicable to insurance policies. If an insurance contract is unambiguous, the vast majority of U.S. jurisdictions require that a court follow the prescriptions of the policy as written, and need look no further in resolving any disputes. Asifoa v. National Pacific Insurance, 26 A.S.R. 2d 23.

An insurance policy is a contract, and the same rules of construction applicable to other contracts are applicable to insurance policies. Plaza Department Store v. Duchnak, 26 A.S.R.2d 106.

An insurance policy is construed like other contracts. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

A.S.C.A. § 29.1533 requires insurance companies to include the conditions of insurance, as well as other pertinent information, in their insurance policies. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

§ 2(2) —Documents Included in the Contract

Endorsements are forms added to basic policies to address a situation's particular coverage needs. Endorsements become part of an insurance contract and must be construed with it. Asifoa v. National Pacific Insurance, 26 A.S.R.2d 23.

If there is a conflict between the terms of the endorsement and those in the body of the main policy, then the endorsement prevails, particularly when it favors the insured. Asifoa v. National Pacific Insurance, 26 A.S.R.2d 23.

An application or proposal for an insurance policy becomes a part of the contract if it is made a part thereof by the express terms of the policy. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

Even if a writing is not specifically referenced in another writing as being part of the contract, but the two were written as part of the same transaction, they should be read together as forming the contract. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

§ 2(3) —Interpretation

Auto rental contract expressly prohibiting all drivers except the party signing the contract does not conclusively prove that other drivers are not covered by the owner's omnibus insurance clause, since the facts may show that the owner gave implied permission regardless of the contractual prohibition. Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

Where auto insurance policy excluded coverage for damages incurred while the vehicle was operated by a person under the influence of intoxicating liquor or any drug, but continued

coverage provided on behalf of "any other person or party" who proves he did not consent to the vehicle being driven by the intoxicated driver, "any other person or party" refers to third party beneficiaries rather than the insured. Thompson v. National Pacific Insurance, 16 A.S.R.2d 114.

Words used in an exclusionary clause in an insurance policy are to be given the meaning that common speech imports. Thompson v. National Pacific Insurance, 20 A.S.R.2d 85.

When a party disputed an assertion that a written insurance contract was the product of mutual mistake and so did not reflect the actual terms of the policy, a factual dispute precluding summary judgment existed. American Samoa Power Authority v. National Pacific Insurance Co., 23 A.S.R.2d 100.

An insurance policy is a contract and the same rules of construction applicable to other contracts are applicable to insurance policies. If an insurance contract is unambiguous, the vast majority of U.S. jurisdictions require that a court follow the prescriptions of the policy as written, and need look no further in resolving any disputes. Asifoa v. National Pacific Insurance, 26 A.S.R.2d 23.

Once an insurance policy is found to be ambiguous, further inquiry is generally allowed by the court. Asifoa v. National Pacific Insurance, 26 A.S.R.2d 23.

An insurance policy is to be read from the viewpoint of a layperson. Asifoa v. National Pacific Insurance Co., 26 A.S.R.2d 99.

When a conflict exists between the endorsement and the body of a policy, the conflict is resolved in favor of the endorsement. Asifoa v. National Pacific Insurance Co., 26 A.S.R.2d 99.

A court cannot inquire into the intent of either party unless the policy is ambiguous. Asifoa v. National Pacific Insurance Co., 26 A.S.R.2d 99.

An insurance policy is a contract, and the same rules of construction applicable to other contracts are applicable to insurance policies. Plaza Department Store v. Duchnak, 26 A.S.R.2d 106.

A court may inquire into the circumstances surrounding an insurance policy if that policy is found to be ambiguous. Plaza Department Store v. Duchnak, 26 A.S.R.2d 106.

Contracts of insurance are, as a rule, construed in accordance with general principles of contractual construction. ASPA v. NPI, 31 A.S.R.2d 201.

Terms in an insurance contract are taken in their plain, ordinary and popular sense. ASPA v. NPI, 31 A.S.R.2d 201.

When the language of an insurance policy is plain and unambiguous, the court must refrain from application of rules of construction in order to find coverage for a risk of loss not intended or contemplated within the contract. ASPA v. NPI, 31 A.S.R.2d 201.

If the language of an insurance contract is plainly ambiguous on the issue of coverage, the court can consider parole evidence. ASPA v. NPI, 31 A.S.R.2d 201.

Statute requiring liability insurance for taxis is for protection of public and should be liberally construed. R.C.A.S. 25.20. Tung v. Ah Sam, 4 A.S.R. 764.

Ambiguous clause in motor vehicle liability must be construed in favor of insured. Tung v. Ah Sam, 4 A.S.R. 764.

§ 2(4) —Modification & Reformation

Reformation involves rewriting a contract in order to reflect the actual intent of both parties, and an insurance contract may be reformed after a loss has occurred. However, reformation is not appropriate to enforce terms to which the defendant never assented, but is used only to correct a mistake in writing to conform to the actual agreement of the parties. Plaza Department Store v. Duchnak, 26 A.S.R.2d 106.

Reformation is an extraordinary remedy, and courts have in general exercised it with caution. However, courts have reformed insurance contracts in regard to the amount of coverage provided. Plaza Department Store v. Duchnak, 26 A.S.R.2d 106.

The proof to reform a policy on the ground of mutual mistake must be more then a mere preponderance of the evidence. At the same time, the mistake warranting reformation must be harbored by both parties, and not just one, and must be proven by more then a mere preponderance of evidence. ASPA v. NPI, 31 A.S.R.2d 201.

A court may reform an insurance contract upon proof of a mutual mistake, which is reciprocal and common to both parties. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

§ 2(5) —Termination

"Cancellation" as used in insurance law usually refers to termination of a policy prior to the expiration of the policy period, while "termination" refers to the expiration of a policy by lapse of the policy period. A.S.C.A. § 22.2013. Pu`u v. Leupule, 12 A.S.R.2d 59.

"Cancellation" of an insurance policy generally refers to conclusion of a policy prior to the expiration of the policy period, while "termination" refers to expiration of the policy

by lapse of the policy period. A.S.C.A. § 22.2013. Pu`u v. Lepule, 8 A.S.R.2d 68.

As adequate safeguards exist to inform the Director of Administrative Services of the natural "termination" of insurance policies by expiration of the policy period, the legislature did not intend the statute requiring an insurer to notify the Director at least ten days prior to "cancellation" of a policy to apply to "terminations." A.S.C.A. § 22.2013. Pu`u v. Lepule, 8 A.S.R.2d 68.

§ 2(6) —Cancellation

"Cancellation" as used in insurance law usually refers to termination of a policy prior to the expiration of the policy period, while "termination" refers to the expiration of a policy by lapse of the policy period. A.S.C.A. § 22.2013. Pu`u v. Leupule, 12 A.S.R.2d 59.

Where a contract stated that plaintiff would receive commissions on insurance premiums collected via payroll deduction, defendant was liable for such commissions on premiums collected under a subsequent payroll deduction plan until he gave timely written notice of cancellation to plaintiff as required by the contract. Mauga v. Pioneer Pacific Financial Services, Inc., 16 A.S.R.2d 16

"Cancellation" of an insurance policy generally refers to conclusion of a policy prior to the expiration of the policy period, while "termination" refers to expiration of the policy by lapse of the policy period. A.S.C.A. § 22.2013. Pu`u v. Lepule, 8 A.S.R.2d 68.As adequate safeguards exist to inform the Director of Administrative Services of the natural "termination" of insurance policies by expiration of the policy period, the legislature did not intend the statute requiring an insurer to notify the Director at least ten days prior to "cancellation" of a policy to apply to "terminations." A.S.C.A. § 22.2013. Pu`u v. Lepule, 8 A.S.R.2d 68.

§ 2(7) —Warranties

RESERVED

§ 2(8) —Misrepresentation

A statement is a misrepresentation acting to nullify an insurance policy only if it regards a fact material to be known for estimating the risk. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

A representation relates to a fact actually material to the risk which the insurer is asked to assume. If the statement does not relate to a fact material to the risk it is not a "representation" within the sense that if it is false it affords the insurer a basis for avoiding the contract. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

As decedent represented that he did not have, or take medication for, medical condition other than hypertension for five years preceding date of application, and there is uncontested evidence that decedent in fact had knowledge of another medical condition and had been medicated for medical condition, decedent in fact misrepresented his medical condition when he applied for life insurance. Langkilde v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 198 (Trial Div. 2002).

Untrue statement regarding matter materially affecting health of life insurance applicant, made by one who knows statement is not true, allows insurer to avoid policy. Langkilde v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 198 (Trial Div. 2002).

If misrepresentation causes insurer to assume risk it otherwise would not have taken, or would not have taken at rate of premium charged, there is legal ground for avoidance. Langkilde v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 198 (Trial Div. 2002).

"Misrepresentation" in the insurance context is a statement or representation by omission, made by an insured, that is untrue; and is either made with intent to deceive or without knowing it to be true; that misleads or has tendency to mislead by causing reliance by insurer; and is material to the insured risk. Suluai v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 203 (Trial Div. 2002).

Decedent's representation of good health was misrepresentation when decedent knew he was afflicted with diabetes for five years preceding application for insurance and was fully aware of condition at time of his application. Suluai v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 203 (Trial Div. 2002).

Untrue statement regarding matter materially affecting health of applicant for life insurance, made by one who knows statement is untrue, allows insurer to avoid policy. Suluai v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 203 (Trial Div. 2002).

If misrepresentation causes insurer to assume risk it otherwise would not have taken, or would not have taken at rate of premium charged, there is legal ground for avoidance. Suluai v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 203 (Trial Div. 2002).

§ 2(9) —Applicable Law

Where insurance contract was initiated, signed, and enforceable in American Samoa, where insured lived in American Samoa, where claim originated in American Samoa, and where plaintiff sought to collect on claim in American Samoa, law of American Samoa law controlled the rights and duties of the parties. Suluai v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 203 (Trial Div. 2002).

§ 3 Parties & Interests

§ 3(1) —General Provisions

RESERVED

§ 3(2) —Role & Authority of Agent

RESERVED

§ 3(3) —Insured's Duties

Defendant could not unilaterally withhold a percentage of the commissions payable to plaintiff on his sales of insurance policies in order to recoup commissions defendant paid on lapsed or cancelled policies, where the contract did not so specify. Mauga v. Pioneer Pacific Financial Services, Inc., 16 A.S.R.2d 16

§ 3(4) —Insurer's Duties

§ 3(4)(a)—Generally

RESERVED

§ 3(4)(b)—Duty to Pay

There exists at common law a tort for bad faith delay in paying legitimate insurance claims. Paisano's Corp. v. National Pac. Ins., 30 A.S.R.2d 139.

The tort of bad faith delay in paying legitimate insurance claims is not preempted by A.S.C.A. § 29.1577 because the statute penalizing delay in paying insurance claims does not rest upon a showing of bad faith. Paisano's Corp. v. National Pac. Ins., 30 A.S.R.2d 139.

Statute requiring insurance carrier to notify the director of administrative services of the "cancellation" of a policy did not require such notice when the policy expired because the term of coverage ran out and the policy was not renewed. A.S.C.A. § 22.2013. Pu`u v. Leupule, 12 A.S.R.2d 59.

A.S.C.A. § 29.1577 is a penalty statute, imposing a 12% mandatory penalty upon a dilatory insurer. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

A.S.C.A. § 29.1577 prescribes that an insurer pay a legitimate claim within the time specified in the policy. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

A.S.C.A. § 29.1577 provides that an insurer's duty to pay is triggered only after an insured has made a demand to the insurer. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

Where insureds failed to submit a written demand, they were precluded from complaining that insurer was untimely in paying such unspecified claims. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

A.S.C.A. § 29.1577 is meant to provide a mandatory penalty against a late paying insurer, not to curtail an insurer's right to seek court intervention in situations where a claim is reasonably disputed. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

A tort cause of action exists in American Samoa for bad faith delay in paying insurance claims. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

To prevail on a bad faith claim, the insured must demonstrate: (1) the absence of a reasonable basis for denying benefits of the policy, and (2) the insured's knowledge or reckless disregard for denying the claim. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

The tort of bad faith can only succeed upon a showing of the absence of a reasonable basis for denying the claim, i.e., would a reasonable insurer under the circumstances have denied or delayed payment of the claim under the facts and circumstances. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

In determining whether an insurance company has acted in bad faith, the courts of American Samoa employ the two part test set forth in Anderson v. Continental Ins. Co., 271 N.W.2d 368 (Wis. 1978). Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

§ 3(4)(c)—Good Faith Attempt to Resolve Dispute

The implied covenant of good faith and fair dealing contained in every insurance contract includes a duty to effect reasonable settlement of a claim against the insured within its policy limits when there is a substantial likelihood of recovery in excess of those limits. Seumalo v. American International Underwriters, 2 A.S.R.2d 72 (Trial Div. 1985).

An insurer must resort to court action only after having made a good faith attempt to resolve a disputed claim. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

An insurer that fails to make a good faith attempt to resolve a disputed claim, and abuses the judicial process by filing an interpleader complaint to deliberately avoid payment of a legitimate claim will be found in violation of A.S.C.A. § 29.1577. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

§ 3(4)(d)—Duty to Act on Application

In appropriate circumstances, an insurer may be liable in tort for negligent failure to act on an application for insurance.

Overland Olotoa, Inc. v. National Pacific Ins. Co., 1 A.S.R.2d 111 (Trial Div. 1983).

§ 3(5) —Subrogation

Under the collateral source rule, which applies to torts in admiralty and virtually all other tort cases, an injured party's compensation from a source independent of the tortfeasor is not deducted from damages otherwise collectable from the tortfeasor. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 108.

Every action shall be prosecuted in the name of the real party in interest. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

If a subrogee has paid an entire loss suffered by the insured, it is the only real party in interest and must sue in its own name. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

If a subrogee has paid only part of a loss, both the insured and insurer have substantive rights against the tortfeasor which qualify them as real parties in interest. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

§ 3(6) —Beneficiaries

Where auto insurance policy excluded coverage for damages incurred while the vehicle was operated by a person under the influence of intoxicating liquor or any drug, but continued coverage provided on behalf of "any other person or party" who proves he did not consent to the vehicle being driven by the intoxicated driver, "any other person or party" refers to third party beneficiaries rather than the insured. Thompson v. National Pacific Insurance, 16 A.S.R.2d 114.

Where auto insurance policy excluded coverage for damages incurred while the vehicle was operated by a person under the influence, but continued coverage provided on behalf of third party beneficiaries who did not consent to the vehicle being driven by the intoxicated driver, defendant insurance company was granted summary judgment against plaintiff insured who had not consented to his intoxicated brother driving the vehicle, since the exception to the exclusionary clause did not apply where the indemnity and/or insurance was provided on behalf of the insured. Thompson v. National Pacific Insurance, 16 A.S.R.2d 114.

§ 3(7) —Insurable Interests

One has no insurable interest in property obtained by unenforceable contracts or illegal activity. YRT, Inc. v. Progressive Ins. Co., 6 A.S.R.3d 108 (Trial Div. 2002).

To have the capacity to insure against property damage, the insured must have an insurable interest in the covered property. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

Without an insurable interest, a contract for property insurance will be considered void. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

An "insurable interest" is broadly defined in A.S.C.A. § 29.1522(a) as encompassing every interest in property, any relation thereto, or liability in respect thereto. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

An interest that is merely contingent or expectant in something, not founded upon an actual right to or in the thing, nor upon any valid contract for it, is not insurable. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

The legal status of an insured with respect to property is instructive as to whether or not that person has an insurable interest in the subject property; however, it is not conclusive. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

Generally speaking, a person has an insurable interest in property whenever he would profit by or gain some advantage by its continued existence and suffer some loss or disadvantage by its destruction. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

Interpreting American Samoa's insurable interest statute in pecuniary terms is appropriate in the case of property insurance policies. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

An interest in a building solely because it housed a place of employment for one's sponsored foreigners cannot be said to be a reasonable expectation of the pecuniary benefit derived from the continued existence of the subject of insurance. Such an interest is merely contingent, or expectant and not a sufficient interest to be insurable. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

§ 3(8) —Transfer of Insured Property

RESERVED

§ 3(9) —Reinsurance

Under definition of "contract of reinsurance" in A.S.C.A. § 29.1590, T.C.R.C.P. 26(b)(2) allows discovery of existence and contents of insurance agreement between reinsurer and insurer. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 31 (Trial Div. 2001).

Reinsurance contract is made by original insurer for its own protection. It creates privity only between reinsurer and reinsured, and no rights accrue to original insured. YHT, Inc. v. Oxford/Progressive Group, 5 A.S.R.3d 31 (Trial Div. 2001).

§ 3(10) —Double Insurance

RESERVED

§ 3(11) —Stacking Benefits

RESERVED

§ 3(12) —Statutory Right to Sue

Territorial government which was required by law to pay for an accident victim's medical expenses, and which had paid these expenses, was an "injured person" within the meaning of a statute allowing injured person to bring direct action against the insurer of a person alleged to have caused the accident. A.S.C.A. § 22.2018. American International Underwriters v. American Samoa Government, 3 A.S.R.2d 115.

Territorial statute which required the government to provide free medical services to all citizens, and which did not require citizens who had ability to pay their own medical expenses to reimburse the government, implicitly required that government's claim for reimbursement from tortfeasor's insurer should be subordinate to victim's claim for pain and suffering. A.S.C.A. § 13.0601. American International Underwriters v. American Samoa Government, 3 A.S.R.2d 115.

Insurance company may be sued directly for the wrongful acts of its insured. A.S.C.A. § 22.2018 Sataua v. Himphill, 5 A.S.R.2d 61.

On causes of action arising in American Samoa from any policy of liability insurance, a plaintiff may take direct action against an insurer regardless of whether the policy forbids such action, whether the insured is bankrupt, or whether the plaintiff is suing for personal injury or property damages. A.S.C.A. § 29.1537. Holland v. Haleck's Island Motors, 15 A.S.R.2d 44.

Statute granting a right of direct action against an insurer even if a policy forbids such action must be liberally construed to enhance its public policy purpose of allowing direct actions on liability insurance policies. A.S.C.A. § 29.1537. Holland v. Haleck's Island Motors, 15 A.S.R.2d 44.

Statutory right of direct action applies to any policy of liability insurance. A.S.C.A. § 29.1537. Holland v. Haleck's Island Motors, 15 A.S.R.2d 44.

Plaintiff has a right of direct action against an insurance company. A.S.C.A. § 29.1537. Holland v. Haleck's Island Motors, 18 A.S.R.2d 2.

The statutory right of direct action against an insurer on a liability-insurance policy does not apply to an insurance broker, which is typically an agent of the insured and is not an insurance company. Bryant v. Southwest Marine of Samoa, Inc., 23 A.S.R.2d 148.

In regards to subrogation, an insurance company must be joined as a necessary party plaintiff only if it has compensated an insured for his entire loss and if a danger exists that a defendant will face future lawsuits from the insurance company. T.C.R.C.P. 17(a), 19. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 108.

§ 4 Coverage

§ 4(1) —Policy Terms & Limitations

Where a contract stated that plaintiff would receive commissions on insurance premiums collected via payroll deduction, defendant was liable for such commissions on premiums collected under a subsequent payroll deduction plan until he gave timely written notice of cancellation to plaintiff as required by the contract. Mauga v. Pioneer Pacific Financial Services, Inc., 16 A.S.R.2d 16

Damages resulting from auto accident were limited to the maximum insurance coverage under defendant's policy where the evidence showed that some pain and suffering resulted from plaintiff's delay in acting on and following up medical recommendations, and her loss of earnings resulted from an unrelated medical condition rather than from the injuries caused by the accident. To`omalatai v. Moliga, 15 A.S.R.2d 77.

A.S.C.A. § 29.1533 requires insurance companies to include the conditions of insurance, as well as other pertinent information, in their insurance policies. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

§ 4(2) —Proof of Loss

RESERVED

§ 4(3) —Measure of Recovery

If a total loss occurs under a valued policy, the stated value of the policy is conclusive, and the insured is entitled to such full value. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

A building need not be totally annihilated before constituting a total loss. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

The question of the existence of total loss is a question of fact. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

§ 4(4) —Exclusions & Exceptions

RESERVED

§ 4(5) —Public Policy Prevents Recovery

Public policy dictates that if an insured sets fire to his property, either intentionally or willfully, he shall be denied the right to collect from his fire insurance. YHT Inc. v. Progressive Ins. Co., 7 A.S.R.3d 150 (Trial Div. 2003).

The majority rule places the burden on the insurer to prove a claim that an insured set fire to his property by a preponderance of the evidence. YHT Inc. v. Progressive Ins. Co., 7 A.S.R.3d 150 (Trial Div. 2003).

There are three common elements to an insurer's defense that an insured set fire to his own property: (1) incendiary fire, (2) motive on the part of the insured to destroy the property, and (3) opportunity on the part of the insured to set the fire or to procure the setting of the fire by another. YHT Inc. v. Progressive Ins. Co., 7 A.S.R.3d 150 (Trial Div. 2003).

In a case where an insured seeks to prevent recovery of insurance funds due to suspected arson, an insured may rely on circumstantial evidence to prove that the insured was involved because direct evidence of arson is often elusive. YHT Inc. v. Progressive Ins. Co., 7 A.S.R.3d 150 (Trial Div. 2003).

In order to preclude an insured from recovering due to a fire it set, an insurer need only show that the insured had the opportunity to procure the setting of the fire, or in the case of a corporate insured, that the fire can be traced to any of its corporate officers. YHT Inc. v. Progressive Ins. Co., 7 A.S.R.3d 150 (Trial Div. 2003).

§ 5 Automobile Insurance

§ 5(1) —General Provisions

Licensing of a car requires proof of liability insurance, and only licensed cars may be driven on public highways, so that use of public highways is effectively conditioned on maintenance of insurance. A.S.C.A. §§ 22.1001, 22.1002. Pu`u v. Lepule, 8 A.S.R.2d 68.

Where auto insurance policy excluded coverage for damages incurred while the vehicle was operated by a person under the influence of intoxicating liquor or any drug, but continued coverage provided on behalf of "any other person or party" who proves he did not consent to the vehicle being driven by the intoxicated driver, "any other person or party" refers to third party beneficiaries rather than the insured. Thompson v. National Pacific Insurance, 16 A.S.R.2d 114.

Where auto insurance policy excluded coverage for damages incurred while the vehicle was operated by a person under the influence, but continued coverage provided on behalf of third party beneficiaries who did not consent to the vehicle being driven by the intoxicated driver, defendant insurance company was granted summary judgment against plaintiff insured who had not consented to his intoxicated brother driving the vehicle, since the exception to the exclusionary clause did not apply where the indemnity and/or insurance was provided on behalf of the insured. Thompson v. National Pacific Insurance, 16 A.S.R.2d 114.

Inclusion of one's name on an automobile's registration is not conclusive evidence of ownership of the vehicle. Pen v. Pen, 30 A.S.R.2d 119.

§ 5(2) —Liability

SEE TORTS § 8(3) – COMPULSORY INSURANCE ACT

Compulsory liability insurance statute defines "accident" to include battery when victim did not invite or provoke aggression and owner of vehicle did not consent to nor authorize assault. R.C.A.S. 25.2003(b)3. Tung v. Ah Sam, 4 A.S.R. 764.

Statute requiring the owner of a vehicle to purchase and maintain liability insurance for losses inflicted by any person using his vehicle, and related statutes forbidding the operation of uninsured vehicles on the public highway and giving an injured person the right to bring direct action against the insurer, were intended to ensure recovery in tort for victims injured by drivers who could not afford to pay damages. A.S.C.A. §§ 22.1001, 22.2002-03. Foma'i v. Samana, 4 A.S.R.2d 102.

Rental company that allowed its automobile to be operated on the highway without insurance required by law was liable for damages suffered by person injured by negligent driver of company's automobile, up to the amount that would have been covered by insurance if the rental company had not breached its statutory duty to provide insurance. A.S.C.A. §§ 22.1001, 22.2002-03. Foma'i v. Samana, 4 A.S.R.2d 102.

Licensing of a car requires proof of liability insurance, and only licensed cars may be driven on public highways, so that use of public highways is effectively conditioned on maintenance of insurance. A.S.C.A. §§ 22.1001, 22.1002. Pu`u v. Lepule, 8 A.S.R.2d 68.

Legislature designed the compulsory insurance statute to facilitate compensation of, and afford a realistic remedy for,

victims of negligence. A.S.C.A. § 22.2001 et seq. Pu`u v. Lepule, 8 A.S.R.2d 68.

A vehicle owner's policy of liability insurance must insure the person named therein and any other person who uses the vehicle or vehicles with the express or implied permission of the named insured. A.S.C.A. § 22.2003. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

Compulsory Insurance Act limits recovery to victims who prove actionable fault on the part of a named insured or persons driving the insured vehicle with his express or implied permission. A.S.C.A. § 22.2003(2). Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

§ 5(3) —Permission by Owner

Owner's implied permission to use his vehicle, which extends compulsory liability insurance coverage to a non-owner driver, may be inferred from a course of conduct or relationship between the vehicle owner and driver in which there is mutual acquiescence or lack of objection under circumstances signifying consent. A.S.C.A. § 22.2003(2). Maulupe v. American International Underwriters, 12 A.S.R.2d 1.

Evidence must show owner's permission, express or implied, in order for non-owner driver to be covered by owner's compulsory vehicle liability insurance policy. A.S.C.A. § 22.2003(2). Maulupe v. American International Underwriters, 12 A.S.R.2d 1.

Plaintiff failed to show owner's express or implied permission to employee living on premises to use vehicle where: employee had never before driven owner's vehicles; her duties did not require driving; and she obtained vehicle key by breaking locks on home office door and key cabinet in owner's absence. Maulupe v. American International Underwriters, 12 A.S.R.2d 1.

Compulsory Insurance Act requires auto insurance omnibus clause to insure the named insured and persons using the vehicle with his express or implied permission. A.S.C.A. § 22.2001. Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

Under initial permission rule, owner of a vehicle who permits it to be used by a first person is considered to have allowed that person's permittees to use the vehicle, even if the owner tried to limit his consent to the first person. Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

Under initial permission rule, owner of a vehicle who permits it to be used by another is considered to have permitted any later use by that person short of theft or conversion, even if such use violates the scope of the use originally permitted by the owner. Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

Under strict rule, if the owner of a car expressly forbids his permittee to lend it to another, anyone driving the car in violation of such a prohibition is not covered by the omnibus insurance clause. Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

Whether a particular driver has the insured's permission and is thus insured is a matter of fact to be proven on the evidence. Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

Initial permission rule reflects a public policy of avoiding litigation of the details of factual issues concerning the terms and scope of permission granted by a named insured. Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

American Samoa statutory scheme does not reflect public policy underlying initial permission rule; instead, it extends coverage only to express or implied permittees of the named insured, and does not deem permission to exist as a matter of law for all uses short of theft or conversion. Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

Auto rental contract expressly prohibiting all drivers except the party signing the contract does not conclusively prove that other drivers are not covered by the owner's omnibus insurance clause, since the facts may show that the owner gave implied permission regardless of the contractual prohibition. Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

When a vehicle's owner did not insure his car as required by law and the driver was using the car with his permission, the owner is liable to compensate the plaintiff for any losses up to the $10,000 insurance amount he had a duty to provide. A.S.C.A. § 22.2003. Vaiti v. So'oso'o, 19 A.S.R.2d 71.

The liability of an uninsured vehicle's owner is secondary to that of a principal tortfeasor who was driving with the owner's permission; while a plaintiff may collect from either defendant, the vehicle's owner has a right of indemnity and subrogation against the driver. Vaiti v. So'oso'o, 19 A.S.R.2d 71.

Compulsory vehicle insurance covers the named insured, as well as any other person who uses the insured's vehicle with his express or implied permission. A.S.C.A. § 22.2003(2). Leilua v. Ali'itaeao, 23 A.S.R.2d 97.

Inferential in nature, implied permission for a vehicle's use is usually shown by usage and practice of the parties over a sufficient period of time. Leilua v. Ali'itaeao, 23 A.S.R.2d 97.

Although weaker evidence will support a finding of implied permission to use a vehicle if the drivers are blood relatives than if they were strangers or mere acquaintances, the mere

existence of a close family relationship does not of itself establish permissive use. Leilua v. Ali'itaeao, 23 A.S.R.2d 97.

Where company policy gives only three persons permission to drive a company vehicle, and defendant is not one of those persons, defendant does not have "express" permission to drive the vehicle. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

§ 5(4) —Uninsured & Underinsured Motorists

RESERVED

§ 6 Liability Insurance

Insurance statute that specifically includes certain losses but does not comprehensively define "liability insurance" does not necessarily exclude all other losses. Holland v. Haleck's Island Motors, 15 A.S.R.2d 44.

§ 7 Property Insurance

Property insurance policies are indemnity policies that provide the insured with the right to be compensated to be made whole after a loss has been sustained. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

A.S.C.A. § 29.1539, requires that policies written on real property for fire insurance must be valued policies. Progressive Ins. Co, Ltd. v. S. Star Int'l, Inc., 6 A.S.R.3d 112 (Trial Div. 2002).

INTERNATIONAL LAW

§ 1 Procedural Provisions
1(1) —Generally
1(2) —Comity
1(3) —Jurisdictional Immunities for Foreign States Act
2 Air Transportation
2(1) —Generally
2(2) —Applicability
2(3) —Baggage Claims
3 International Banking
4 Customs
4(1) —General Principles
4(2) —Applicable Law
4(3) —Searches & Seizures

§ 1 Procedural Provisions

§ 1(1) —Generally

RESERVED

§ 1(2) —Comity

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.

Judgments of the courts of foreign nations may be recognized in American Samoa under the doctrine of comity, by which a nation recognizes in its territory the legal acts of another nation with due regard both to international duty and convenience and to the rights of persons protected by its laws. In re Petition of Puailoa, 13 A.S.R.2d 22.

Recognition of any particular judgment of a foreign court depends on wide ranging local policy considerations, including whether the foreign proceeding comports with due process requirements. In re Petition of Puailoa, 13 A.S.R.2d 22.

§ 1(3) —Jurisdictional Immunities of Foreign States Act

The Jurisdictional Immunities of Foreign States Act contains provisions for the service of process upon foreign governmental instrumentalities and agencies. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

The Jurisdictional Immunities of Foreign States Act was enacted to provide access to courts of the United States, its states and territories, for resolution of ordinary legal disputes involving a foreign sovereign, their subdivisions, agents, and instrumentalities. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

With regard to application of the Jurisdictional Immunities of Foreign States Act, the High Court of American Samoa constitutes a court of the United States. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Service in accordance with the Jurisdictional Immunities of Foreign States Act is made upon a foreign state's agency or instrumentality by delivery of a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Individual who served as authorized representative for two foreign government-related entities, who regularly reported to such entities, and who was specifically entrusted to deal with legal matters pertaining to employment of workers from such foreign country, was an "agent" under the Jurisdictional Immunities of Foreign States Act and authorized to receive process on behalf of such entities in employment-related case. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Under the Jurisdictional Immunities of Foreign States Act, a court has subject matter jurisdiction to adjudicate suits against foreign government-related agencies so long as the activity concerned is not covered by the JIFSA's immunity provisions. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

A foreign sovereign is not immune from a court's jurisdiction in any case in which the action is based upon a commercial

activity carried on in the United States by the foreign state. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

In order to satisfy the exception to immunity under the Jurisdictional Immunities of Foreign States Act, the alleged conduct must be a commercial activity, in which a private actor could take part; and there must be a nexus between the plaintiffs' action and the commercial activity. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

Where foreign, government-related entities recruited, exported, and employed workers in a for-profit garment manufacturing company in American Samoa, such actions clearly constituted commercial activity in which a private actor could equally participate and was the premise of the workers' lawsuit. Therefore, such entities were not immune to suit under the Jurisdictional Immunities of Foreign States Act. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 138 (Trial Div. 2002).

§ 2 Air Transportation

§ 2(1) —Generally

The government's terminal facilities tax is in violation of Title 49 U.S.C. § 1513(a), prohibiting the levying of a head charge on persons traveling in interstate commerce. Am. Samoa Gov't v. South Pacific Island Airways, 2 A.S.R.2d 47 (App. Div. 1985).

§ 2(2) —Applicability

Rules of liability established by the Warsaw Convention apply to "international transportation," that is, to air transportation between one signatory country and another. Warsaw Convention, art. 1(2). American Samoa Government ex rel. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

Terms of air carriage contract which were inconsistent with Warsaw Convention were void, because the contract itself so provided and also because treaty obligations are the supreme law of the land and therefore supersede private contracts. U.S. Const. art. VI. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

§ 2(3) —Baggage Claims

In order to effectuate its drafters' intent to foster international air transportation by creating uniform rules of liability, the Warsaw Convention should be read to create its own cause of action for loss of baggage, so that whether particular damage occasioned by loss of baggage is compensable depends on construction of the Convention and not on internal law of signatory countries. Warsaw Convention art. 18(1). Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

Provision of the Warsaw Convention creating liability for "damage sustained by" loss of baggage, and containing no language limiting the amount of recovery to the value of the lost baggage or to "foreseeable" damages, should be construed to allow recovery of consequential damages occasioned by loss of baggage. Warsaw Convention art. 18(1). Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

Under provision of the Warsaw Convention which, unlike the common law, allows recovery of consequential damages whether or not they were foreseeable, passenger's purchase of a battery pack for use during his trip to replace one lost by defendant airline constitutes compensable damage even though the lost battery pack belonged to plaintiff's employer and not to plaintiff. Warsaw Convention art. 18(1). Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

Airline's disclaimer of liability for "valuable items" such as video equipment is unenforceable in light of Warsaw Convention clause that nullifies contractual provisions "tending to relieve the carrier of liability or to fix a lower limit" than that allowed by the Convention. Warsaw Convention art. 23. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

Warsaw Convention limits liability for lost baggage to $9.07 per pound. Warsaw Convention art. 22(4). Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

Under Warsaw Convention where carrier's liability for lost baggage depends on weight, defendant airline has the burden of proving weight of the lost bag, and in the absence of such proof court will assume the bag weighed seventy pounds, the maximum amount the contract allowed passenger to carry in one bag. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

To be sufficiently conspicuous, a notice of baggage liability limitations must be positioned and identified so as to penetrate the traveling public's reasonably focused consciousness. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Baggage liability limitation found on ticket jacket was sufficiently conspicuous where: (1) type though small was legible; (2) the message was set out in a separate box at the tope of the page; and (3) a bold-faced "PLEASE NOTE" drew attention to it. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Although the common law prohibited a common carrier from attempting to exculpate itself from all liability for loss of baggage due to its own negligence, federal common law has developed the "released value doctrine" under which a carrier may limit the amount of its liability to the agreed value of the goods, provided that the shipper has the option of obtaining coverage for the full value of its goods, is made aware of that

option, and knowingly chooses to pay a lower price for the lesser coverage. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

In promulgating regulations allowing airlines to limit liability for lost baggage by providing notice to passengers, and in rejecting a proposal that would have required passengers to sign a "statement of understanding" as a prerequisite to limitation of liability, the Civil Aeronautics Board implicitly limited the extent to which passengers may rely on the "released value doctrine" to avoid an airline's attempt to limit liability. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Expressed intention of Civil Aeronautics Board not to preempt state courts on applicability of "released value doctrine" to limitation of airlines' liability for lost baggage, and the Board's somewhat conflicting intention to facilitate incorporation by reference of limitations of liability, could be harmonized by requiring carriers (1) to make excess valuation insurance available; (2) to make this fact known to the traveling public in a manner at least as conspicuous as the required notices of the airline's limited liability; and (3) to set out the outlines of the coverage provided. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, Inc., 10 A.S.R.2d 31.

Auto parts, clothing, and modestly priced mats are not the type of goods—such as live animals, jewelry, fragile, perishable, or inherently dangerous items, or items with unique value—which an airline may reject from carriage altogether, or for which it may require increased payment or a release or other condition before agreeing to carry the goods. American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, 13 A.S.R.2d 5.

Language in airline ticket limiting airline's liability for lost baggage adequately notifies passenger of such limited liability where language is conspicuous and understandable, even though the language deviates from that provided in federal regulation. 14 C.F.R. § 254.5(b). American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, 13 A.S.R.2d 5.

Language suggested in federal regulation to give notice of monetary limitations on airline's liability for passengers' baggage is not mandatory; alternative language that effectively notifies passengers is permitted. 14 C.F.R. § 254.5(b). American Samoa Gov't ex rel. Uikirifi v. Hawaiian Airlines, 13 A.S.R.2d 5.

§ 3 International Banking

The Uniform Customs and Practice for Documentary Credits embodies an effort by international bankers at consensual regulation. Amerika Samoa Bank v. Pacific Reliant Industries, 20 A.S.R.2d 102.

The Uniform Customs and Practice for Documentary Credits (UCP) 16(e) addresses only notice, and does not limit the issuing bank's liability to the party which actually presents the documents. Amerika Samoa Bank v. Pacific Reliant Industries, 20 A.S.R.2d 102.

§ 4 Customs

§ 4(1) —General Principles

A.S.C.A. § 27.1002(a) dictates that all merchandise and baggage brought into American Samoa from any foreign country be inspected by a customs officer. YRT, Inc. v. Progressive Ins. Co., 6 A.S.R.3d 108 (Trial Div. 2002).

§ 4(2) —Applicable Law

Federal customs law is applied here as practicable under A.S.C.A. § 27.1030. YRT, Inc. v. Progressive Ins. Co., 6 A.S.R.3d 108 (Trial Div. 2002).

§ 4(3) —Searches & Seizures

SEE ALSO CRIMINAL LAW § 11 SEARCHES & SEIZURES

Items which must be declared before a customs officer examines baggage and are not so declared are subject to forfeiture. YRT, Inc. v. Progressive Ins. Co., 6 A.S.R.3d 108 (Trial Div. 2002).

LEGAL PROFESSION

§ 1 The Office of Attorney
1(1) —Generally
1(2) —Public Service
1(3) —Special Role of Prosecutor
2 Scope of Representation
3 Duty to Client
3(1) —General Provisions
3(2) —Conflict of Interest
3(3) —Malpractice
3(4) —Ineffective Assistance of Counsel
4 Duty to Court
4(1) —General Provisions
4(2) —Sanctions
4(3) —Contempt of Court
5 Compensation
5(1) —Compensation From Client
5(2) —Litigation Expenses
6 Practice of Law Without a License

§ 1 The Office of Attorney

§ 1(1) —Generally

Where legally trained counsel is not available to petitioner, court will not disregard his right to hearing on technicality. Tuia v. Yandall, 4 A.S.R. 559

Although Court could dismiss appeal brought by non-licensed Practitioner, this would be unduly harsh, and appellants may obtain appropriate counsel. In re Asaivao v. Immigration Board, 4 A.S.R. 980.

Trial Practitioner may only practice in Land and Titles Division of High Court, unless court finds Practitioner qualified to practice in other division or divisions. 5 A.S.C. § 202(d); 26 A.S.C. § 1. In re Asaivao v. Immigration Board, 4 A.S.R. 980.

Court cannot allow violation of its rules forbidding Practitioner licensed only for Land and Titles Division to practice in Appellate Division. In re Asaivao v. Immigration Board, 4 A.S.R. 980.

Two week period without formal response from bar association to petitioner's letter requesting reinstatement was not the sort of "failure to act" which might be remedied by extraordinary writ proceedings, especially where petitioner did not file a formal application or provide requested information to the bar association. Siofele v. Hall, 12 A.S.R.2d 9.

As officers of the court, members of the bar may be appointed, without compensation if necessary, as counsel to insure that indigent criminal defendants receive legal representation. Rev. Const. Am. Samoa Art. I, § 6; A.S.C.A. §§ 46.0502(2), 46.1001. American Samoa Gov't v. Wilson, 23 A.S.R.2d 159.

Conduct of attorneys is governed by the American Bar Association Model Rules of Professional Conduct. Haleck v. TRT,Inc., 7 A.S.R.3d 133 (Trial Div. 2003).

§ 1(2) —Public Service

The American Samoa Rules of Professional Conduct encourage attorneys to perform public interest legal service. Congregational Church in American Samoa v. Tagaloa, 3 A.S.R.3d 198 (Land & Titles Div. 1999).

Although the Public Defender is required to devote full time to the performance of his duties, and prohibited in engaging in the private practice of law, he or she may engage in pro bono and public service when such activities: (1) do not present a conflict of interest of any kind; and (2) do not interfere with official government duties. Congregational Church in American Samoa v. Tagaloa, 3 A.S.R.3d 198 (Land & Titles Div. 1999).

Prosecution’s comment on a defendant’s silence, which occurs after arrest and Miranda warnings, is not allowed. American Samoa Gov't v. Faletogo, 4 A.S.R.3d 190 (Trial Div. 2000).

§ 1(3) —Special Role as Prosecutor

RESERVED

§ 2 Scope of Representation

Mere proffering of retainer to attorney by client does not create attorney-client relationship if attorney refuses retainer and does not agree to take case. Tago v. Hunkin, 3 A.S.R. 427.

Counsel's statement at trial conceding opponent's position did not bind client who, with opponent's knowledge, was not and could not have been given notice of trial and therefore could not have apprised counsel of her position or have authorized the concession. Wray v. Wray, 5 A.S.R.2d 34.

Court did not deprive attorney of life, liberty, or property without due process of law, either by injury to his reputation or otherwise, where (1) attorney had represented judgment debtor; (2) attorney also represented other members of judgment debtor's family; (3) after judgment, the judgment debtor and her family had agreed to changes in the record ownership of property formerly recorded as property of the judgment debtor, had arranged for the sale of the property, and had removed themselves from the territorial jurisdiction of the court; (4) attorney had in his possession the proceeds of the sale, which judgment creditor alleged to be the property of the debtor but which debtor and other family members claimed to be the property of other family members; (5) court had held the funds to be the property of the judgment debtor and subject to seizure by the judgment creditor; and (6) court ordered the funds to be deposited in the registry of the court pending further proceedings. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

"Practice of law" includes legal representation of another in court or in settlement negotiations with opposing attorneys. A.S.C.A. § 31.0104. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

"[O]ther reason[s] justifying relief from the operation of the judgment" were found when a case was not actually litigated, the stipulation resulted from dealings between an attorney and an unrepresented party, the unrepresented party may have believed himself to be stipulating only to pay $9700 "inclusive of interest," and that interpretation was not altogether unreasonable under the circumstances. T.C.R.C.P. 60(b)(6). Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

In an attorney-client relationship, the attorney advises the client, but the client makes the ultimate decisions on how to proceed. Tuilefano v. Toetogata, 3 A.S.R.3d 161 (Trial Div. 1999)

§ 3 Duty to Client

§ 3(1) —General Provisions

Attorney in land case has a duty to know exactly what land is being claimed by each party and to explain this to his client well before trial; court would therefore deny motion for new trial by a party who did not claim certain land during the trial because neither he nor his attorney knew that it was part of the land being claimed by another party. Moea`i v. Te`o, 9 A.S.R.2d 107.

For guardians ad litem and their counsel to request that minor child receive no share in settlement award was inconsistent with their fiduciary obligation to him, especially where the result of disregarding the child's interests was to leave more money to be distributed among other family members including the guardians themselves. Galo v. American Samoa Gov't, 10 A.S.R.2d 94.

Attorney for guardians ad litem of minor child should have advised guardians of their fiduciary obligation rather than acquiescing in their request to eliminate the child from distribution of settlement award. Galo v. American Samoa Gov't, 10 A.S.R.2d 94.

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.

Attorney who was suspended from practice of law for a period beginning four days after he was served with court's opinion and judgment should have informed his clients of the opinion and explained their right to appeal prior to the date of his suspension. Gi v. Temu (Mem.), 12 A.S.R.2d 33.

Disbarred attorney had a duty to assist his former clients in an orderly transition to new counsel, but had no right to sell or barter his practice or any part of it to another attorney in exchange for a percentage of the proceeds. Model Rule of Professional Conduct 5.4. Te`o v. Continental Insurance Co. (Mem.), 13 A.S.R.2d 42.

Although mere consultation with a prospective client does not always give rise to the full panoply of attorney-client obligations, it imposes at the very least a duty not to induce detrimental reliance on the part of the prospective client. In re Matai Title Muagututi`a, 15 A.S.R.2d 1.

A lawyer or legal practitioner who indicates his willingness to take a particular case if a retainer is paid, without even inquiring into the existence of any impending deadlines in the case, runs a great risk of inducing detrimental reliance in the client. In re Matai Title Muagututi`a, 15 A.S.R.2d 1.

Although courts have granted relief from judgment when a party did not learn of the judgment prior to the appeal deadline

through some fault of the clerk or another court official, it is an abuse of discretion for the court to grant relief when the party missed the appeal deadline through his own or his lawyer's fault. Lualemana v. Asifoa, 17 A.S.R.2d 151.

Even if a party's counsel is being paid by someone else, his obligation is to represent that party and not the person making the payments. Leapagatele v. Nyel, 17 A.S.R.2d 201.

An attorney who undertakes to conduct a legal proceeding promises, among other things, to see the matter through to its conclusion, and may not withdraw from the suit without the client's consent or justifiable cause. Rakhshan v. Fuimaono, 18 A.S.R.2d 77.

Even where an attorney's non-consensual withdrawal from representation of a client might be appropriate under the Model Code of Professional Conduct, the attorney nonetheless owes it to his client to first take all reasonable steps to secure his client's case from foreseeable prejudice. Rakhshan v. Fuimaono, 18 A.S.R.2d 77.

To ensure that a client is not prejudiced by his attorney's withdrawal of representation, the attorney should take precautions such as giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with all applicable laws and rules. Rakhshan v. Fuimaono, 18 A.S.R.2d 77.

An attorney acting without permission from his client must either show good cause for withdrawal or show that withdrawal can be accomplished without a material, adverse effect on the client's interests; as such, good cause does not include counsel's threatening to withdraw from representation unless the court rules favorably upon a motion. H.C.R. 104. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 145.

An attorney must file a timely notice of appeal if the client so requests, even if the attorney thinks the appeal frivolous, in order to avoid prejudicing the client's cause before the court decides whether the appeal is actually frivolous. American Samoa Gov't v. Suani, 30 A.S.R.2d 27.

If a motion to withdraw by counsel of an indigent in a criminal case is successful, the appeal is found by the appellate court to be frivolous and simultaneously dismissed. The appellate division, not the trial court, is therefore the proper forum for a motion to withdraw under the Anders doctrine. American Samoa Gov't v. Suani, 30 A.S.R.2d 27.

An attorney filing an Anders brief must make a thorough review of the record and discuss the strongest arguments revealed by that review. This discussion of arguments requires analysis, the citation of applicable case authority, and specific references within the record. American Samoa Gov't v. Suani, 30 A.S.R.2d 27.

§ 3(2) —Conflict of Interest

Legal practitioner who has served as arbitrator in a land dispute in his capacity as an employee of the Office of Samoan Affairs may not serve as counsel to one of the parties in a case resulting from the same dispute. Fanene v. Seva'aetasi (Mem.), 3 A.S.R.2d 108.

Where government attorney advised government official against retaining separate counsel in grievance procedure, but did not claim to be representing the government official, and where there was no evidence that the official's failure to employ separate counsel deprived her of any remedy that would otherwise have been available to her, the attorney's conduct did not entitle the official to recover damages against the government. Banks v. American Samoa Gov't, 4 A.S.R.2d 113.

Although retention of a single attorney to represent the interests of minors and the personal interests of their guardian may sometimes be justified by convenience and financial savings, the guardian and the attorney must carefully consider potential conflicts between the interests of the guardian and those of the minors. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Joint representation of minors and their guardian by a single attorney is not appropriate where there is actual conflict between the reasonably arguable rights and interests of the guardian and those of the minors. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Party who wishes to seek relief from judgment in land case on the ground that his attorney did not explain to him before trial what land was involved in the case should consult another attorney, since pursuit of such relief will give rise to a conflict between the party and his present attorney. Moea`i v. Te`o, 9 A.S.R.2d 107.

When parents who had accepted appointment as guardians ad litem for their minor child relinquished their parental rights to the child, parents and their attorney continued to have a fiduciary relationship requiring vigorous protection of the child's interests in connection with the lawsuit, especially insofar as these interests might conflict with their own. Galo v. American Samoa Gov't, 10 A.S.R.2d 94.

Even if a party's counsel is being paid by someone else, his obligation is to represent that party and not the person making the payments. Leapagatele v. Nyel, 17 A.S.R.2d 201.

Rule 1.13(e) of the Model Rules of Professional Conduct addresses representation of corporations in lawsuits by third parties, not shareholder derivative suits. Haleck v. TRT,Inc., 7 A.S.R.3d 133 (Trial Div. 2003).

When determining whether a conflict of interest exists between a corporate attorney's duty to the corporate and duty to the board, Rule 1.7 of the Model Rules governs. Haleck v. TRT,Inc., 7 A.S.R.3d 133 (Trial Div. 2003).

One possible exception to the disqualification of an attorney for conflict of interest arises when a case is patently frivolous. Haleck v. TRT,Inc., 7 A.S.R.3d 133 (Trial Div. 2003).

While some jurisdictions have held that non-client litigants only have standing to disqualify opposing counsel in narrow circumstances, shareholders in a derivative suit are technically clients of corporate counsel and cannot be classified as non-clients. Haleck v. TRT,Inc., 7 A.S.R.3d 133 (Trial Div. 2003).

When the court ordered counsel of record to withdraw based on a conflict of interest, the court would not take it upon itself to appoint new counsel and instead left that task to the corporations. Haleck v. TRT,Inc., 7 A.S.R.3d 133 (Trial Div. 2003).

§ 3(3) —Malpractice

SEE TORTS § 7(2) – LEGAL PROFESSION

Consequences of attorney's failure to comply with court rules should fall whenever possible on attorney rather than client. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 137.

Former counsel's failure to communicate a judgment to a client, if true, might or might not give rise to a cause of action for malpractice, but this does not give the court jurisdiction it does not have. Taulaga v. Patea, 17 A.S.R.2d 206.

An attorney who abandons a legal proceeding without justifiable cause or the client's consent is generally liable to the client for damages. Rakhshan v. Fuimaono, 18 A.S.R.2d 77.

Where validity of plaintiff's action remains unchanged after inappropriate withdrawal of counsel, no damages will be found for former counsel's failure to prosecute a claim. Rakhshan v. Fuimaono, 18 A.S.R.2d 77.

Where plaintiff has had ample time to obtain substitute counsel but fails to do so because he "trusts no other lawyers," withdrawing counsel will not be assessed damages for leaving plaintiff to pursue his suit pro se. Rakhshan v. Fuimaono, 18 A.S.R.2d 77.

Improper withdrawal of representation may expose counsel to liability for the resultant harm to the client, and any intentional breach of the Model Rules of Professional Responsibility is sufficient grounds for the imposition of disciplinary sanctions. H.C.R. 155. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 145.

A.S.C.A. § 43.0210 states that the statute of limitations shall be two years and not afterward; therefore applying Rule 6(a) to extend the time prescribed by A.S.C.A. § 43.0210 would be in conflict with the expressed intent of the Fono. A.S.C.A. § 43.0210; T.C.R.C.P. 6. Patau v. Hildre, 27 A.S.R.2d 83.

T.C.R.C.P. 6(a) does not extend the computation of time for the statute of limitations regarding a cause of action for legal malpractice pursuant to A.S.C.A. § 43.0210(2). A.S.C.A. § 43.0210; T.C.R.C.P. 6. Patau v. Hildre, 27 A.S.R.2d 83.

Relief with regard to an inexcusable mistake of an attorney lies against the attorney, not relief from judgment. Vivao v. Alepeni, 28 A.S.R.2d 147.

Counsel's inability to keep track of his calendar is not excusable neglect. Vivao v. Alepeni, 28 A.S.R.2d 147.

§ 3(4) —Ineffective Assistance of Counsel

SEE CRIMINAL PROCEDURE § 12(3) – EFFECTIVE ASSISTANCE OF COUNSEL

§ 4 Duty to Court

SEE AMERICAN SAMOA GOVERNMENT § 5(2) – ADMINISTRATION OF COURT

§ 4(1) —General Provisions

An appeal that raises no legal issues constitutes an abuse of process. Leomiti v. Pagofie, 2 A.S.R.2d 97 (App Div. 1986).

A lawyer has a duty not to bring a frivolous proceeding. Leomiti v. Pagofie, 2 A.S.R.2d 97 (App Div. 1986).

Counsel who believes requested appeal of criminal conviction to be frivolous must so advise the court, request permission to withdraw, and file a brief identifying any points in the record that could conceivably support an appeal. American Samoa Gov't v. Agasiva, 6 A.S.R.2d 32.

Counsel who despite court's notices repeatedly submitted proposed orders and notices that did not comply with requirements of notice by publication statute would be ordered to pay cost of court time consumed in connection with the improper notice, and to refrain from billing his client for time and costs of effecting improper notice. In re A Minor Child, 7 A.S.R.2d 24.

Consequence of attorney's failure to comply with court rules should fall whenever possible on attorney rather than client. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 137.

An attorney who signs a complaint certifies to the court that he has not only read the pleading but that, to the best of his knowledge, there is good ground to support it. T.C.R.C.P. Rule 11. Rakhshan v. Fuimaono, 18 A.S.R.2d 77.

An appeal that raises no legal issues is an abuse of process and if brought by a lawyer would violate his or her duty not to bring a frivolous appeal. Rakhshan v. American Samoa Gov't, 20 A.S.R.2d 115.

As officers of the court, members of the bar may be appointed, without compensation if necessary, as counsel to insure that indigent criminal defendants receive legal representation. Rev. Const. Am. Samoa Art. I, § 6; A.S.C.A. §§ 46.0502(2), 46.1001. American Samoa Gov't v. Wilson, 23 A.S.R.2d 159.

Severe economic hardship is a factor which the court may appropriately consider in deciding whether to permit an attorney to withdraw as counsel. American Samoa Gov't v. Wilson, 23 A.S.R.2d 159.

Because of the interest in the finality of judgments, "fraud on the court" (1) is typically confined to the most egregious cases, such as an attorney's exerting improper influence on the court or the bribery of a judge or juror, in which the integrity and impartial functioning of the court is directly impinged; and (2) must be proven by "clear and convincing evidence." Rocha v. Rocha, 24 A.S.R.2d 55.

Professional standards are violated by filing a frivolous petition for rehearing, against the explicit warning of sanctions in a prior opinion, using the same arguments attempted in the appeal. T.C.R.C.P. 11. Fanene v. Fanene, 30 A.S.R.2d 115.

When counsel's examination of party opponent's employee raised collateral issue of his own unethical contact with witness, in violation of rules of professional conduct, it was not improper for court to interrupt such examination and to take brief recess so that opposing counsel could inquire with witness as to scope of improper communications between witness and examining counsel. Suluai v. Nat'l W. Life Ins. Co., 6 A.S.R.3d 216 (Trial Div. 2002).

§ 4(2) —Sanctions

SEE AMERICAN SAMOA GOVERNMENT § 5(7) – CONTEMPT

Motion to dismiss for failure to timely file pre-trial brief would be denied, but moving party could recover attorney fees and expenses occasioned by the delay and related proceedings from attorney who had failed to file brief. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 137.

Where plaintiff's counsel had been ordered to amend his pleading, did not do so for a period of two years, and did not answer letters from opposing counsel respecting the failure to amend, court would not dismiss the action for failure of diligent prosecution, but would assess against plaintiff's counsel an award to opposing parties of the fees incurred in connection with the motion to dismiss, and would impose deadlines within which plaintiff must complete discovery and move to set a trial date. Kane v. Country Comfort, 10 A.S.R.2d 16.

Improper withdrawal of representation may expose counsel to liability for the resultant harm to the client, and any intentional breach of the Model Rules of Professional Responsibility is sufficient grounds for the imposition of disciplinary sanctions. H.C.R. 155. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 145.

When the court directs parties to brief issues, it asks questions of real concern to them and expects timely and relevant answers. Attorneys who inadvertently or willfully disregard such orders act unprofessionally, and contemptuously if the disobedience is willful. The court will impose sanctions for such conduct. Interocean Ships, Inc. v. Samoa Gases, 29 A.S.R.2d 198.

The court will impose fitting sanctions on counsel personally for transgressions of either new Rule 11 or the contempt rules. Interocean Ships, Inc. v. Samoa Gases, 29 A.S.R.2d 198.

Although Rule 11 sanctions are normally imposed against an attorney, they may be imposed against a party when warranted. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

Under T.C.R.C.P. 11, sanctions sufficient to deter repetition of such conduct or comparable conduct by others similarly situated may be imposed upon an attorney who signs a pleading in violation of Rule 11, and upon a client in appropriate circumstances. Alai`asa v. Fanene, 2 A.S.R.3d 186 (Land & Titles Div. 1998).

T.C.R.C.P. 11 sanctions are appropriate where causes of action challenge previously adjudicated land ownership, are without merit ab initio, cause clouds on owner's titles, disparage court decisions, disrupt the order of the land tenure system, waste judicial resources, and cause landowners considerable distress and expenditure of substantial time and money in defending their titles. Alai`asa v. Fanene, 2 A.S.R.3d 186 (Land & Titles Div. 1998).

Rule 11 is applicable to land actions, which are civil proceedings and do not lose that characteristic simply because a separate organizational division of the trial court is established by A.S.C.A. § 3.0208 to hear land and matai title controversies. Alai`asa v. Fanene, 2 A.S.R.3d 186 (Land & Titles Div. 1998).

Where counsel submits and advocates legal contentions

unwarranted by existing law, or are frivolous arguments for the modification or reversal of existing law or the creation of new law, counsel may be held in violation of T.C.R.C.P. 11(b)(2), and appropriate sanctions for a party's violation of T.C.R.C.P. 11(b)(1), and for counsel's violation of T.C.R.C.P. 11(b)(2) may include holding the party and counsel personally responsible, and jointly and severally liable, for the payment of reasonable attorney's fees and costs. Alai`asa v. Fanene, 2 A.S.R.3d 186 (Land & Titles Div. 1998).

Whenever counsel signs a motion, counsel is certifying that the motion is not being presented for any improper purpose, and that legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and under T.C.R.C.P. 11(c)(1)(B) the Court is empowered to enter an order describing the specific conduct that appears to violate this rule, and direct an attorney to show cause why it has not violated the rule. Progressive Ins. Co, Ltd. v. Southern Star Int'l, Inc., 4 A.S.R.3d 180 (Trial Div. 2000).

§ 4(3) —Contempt of Court

Where party's interpretation of order regarding time in which to remove home from land was reasonable and landowner's actions were consistent with such interpretation, party would not be held in contempt despite the fact that Court intended a significantly shorter time period. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

§5 Compensation

§5(1) —Compensation From Client

Court will enforce oral attorney's fee contract contingent upon attorney obtaining registration of land and providing for portion of land so registered as fee. Tuana'itau v. Fuimaono, 4 A.S.R. 150.

Court's statutory responsibility to supervise litigation involving minors imposes a duty on the court to exercise its own best judgment on the fairness of attorney fee arrangements. Oto v. National Pacific Insurance Co. (Mem.), 3 A.S.R.2d 114.

In a personal injury action on behalf of a minor, court would not approve a contingency fee larger than one-third of the total amount recovered. Oto v. National Pacific Insurance Co. (Mem.), 3 A.S.R.2d 114.

Counsel should be appointed by the court without cost to a criminal defendant only when he is genuinely unable to pay for his own lawyer. American Samoa Gov't v. Fesagaiga, 4 A.S.R.2d 29.

For the purpose of determining whether a criminal defendant is unable to pay for his own lawyer, the court should consider all funds available to the defendant from all sources, not just the income from his employment. American Samoa Gov't v. Fesagaiga, 4 A.S.R.2d 29.

Trial court decision that attorney was entitled to fee from former client would be affirmed when the underlying case had been decided against the client on the merits and not due to inadequate representation by the attorney. Tuika v. Ala`ilima, 8 A.S.R.2d 163.

Contingent fee agreements must be in writing. Rule of Professional Conduct 1.5. Moananu v. American Samoa Gov't (Mem.), 11 A.S.R.2d 10.

Court presented with a settlement involving minor children would not approve a fee to an attorney from another jurisdiction who had not applied for admission pro hac vice and whose services, if any, constituted the unauthorized practice of law. Moananu v. American Samoa Gov't (Mem.), 11 A.S.R.2d 10.

Court presented with a settlement involving minor children would not approve a contingent fee agreement which was said to have been reduced to writing but of which all copies had inexplicably disappeared, but would base the fee award upon quantum meruit. Moananu v. American Samoa Gov't (Mem.), 11 A.S.R.2d 10.

Disbarred attorney had no right to enforce contingent fee agreements he had made while still a licensed attorney. Model Rule of Professional Conduct 5.4. Te`o v. Continental Insurance Co. (Mem.), 13 A.S.R.2d 42.

Disbarred attorney had a duty to assist his former clients in an orderly transition to new counsel, but had no right to sell or barter his practice or any part of it to another attorney in exchange for a percentage of the proceeds. Model Rule of Professional Conduct 5.4. Te`o v. Continental Insurance Co. (Mem.), 13 A.S.R.2d 42.

Disbarred attorney might be able to collect on a quantum meruit basis for work performed for clients prior to his disbarment, but disbarred attorney who had apparently already illegally collected several thousand dollars after his disbarment could not collect additional fees without filing a claim to substantiate his entitlement to quantum meruit recovery. Model Rule of Professional Conduct 5.4. Te`o v. Continental Insurance Co. (Mem.), 13 A.S.R.2d 42.

Attorney who agreed to share contingent fee with disbarred attorney, and who had no fee agreement of his own with the client, could not enforce the fee agreement made by the disbarred attorney but could collect for his work on a quantum meruit basis. Model Rule of Professional Conduct 5.4. Te`o v. Continental Insurance Co. (Mem.), 13 A.S.R.2d 42.

Attorney's fees can be validly granted in a written promissory note. Pago Petroleum Products, Inc. v. Ye Ahn Moolsoan, Ltd., 29 A.S.R.2d 34.

Attorney's fees are allowed for a bad-faith refusal to pay maintenance and cure. Clifton v. Voyager, Inc., 29 A.S.R.2d 80.

Although defamation law is relatively complex, where the fact situation is simple, and the prospective damages are not monetarily great, charging defamation plaintiffs an hourly rate, in place of the usual one-third contingent fee arrangement in a tort action, can result in fee calculations substantially overstated in value. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

§5(2) —Litigation Expenses

In the absence of contractual or other legal basis for the collection of attorney's fees in an action to recover a debt, such fees will not be awarded and should not be included by the plaintiff in his pleadings as part of the balance on an "open account." Samoa Products v. Pereira, 3 A.S.R.2d 45.

When the court concludes by a preponderance of the evidence that defendants were the innocent victims of a lawsuit brought to recover money that the plaintiff knew they did not owe, the court may award the defendants their attorney's fees. Samoa v. Gibbens, 3 A.S.R.2d 121.

Party defending against attempt to relitigate claim previously decided against claimant could recover reasonable attorney fees. Taulaga M. v. Patea S., 4 A.S.R.2d 186.

Bank could not recover attorney fees as provided in promissory notes on which borrower defaulted when bank had breached its contract and was entitled only to quantum meruit recovery. Development Bank v. Lava, 5 A.S.R.2d 24.

Contractual provision for "reasonable" attorney fees would not be construed to authorize a fee award greater than the amount of attorney fees actually incurred, even if the greater amount might have been reasonable. Development Bank of American Samoa v. Pritchard, 7 A.S.R.2d 102.

Motion to dismiss for failure to timely file pre-trial brief would be denied, but moving party could recover attorney fees and expenses occasioned by the delay and related proceedings from attorney who had failed to file brief. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 137.

Whether to award attorney fees in interpleader proceedings is within discretion of court. National Pacific Insurance Co., Ltd., v. Mauala, 7 A.S.R.2d 146.

Court should not award attorney fees to stakeholder in interpleader proceedings where the claims sought to be interpled are of a sort that ordinarily arise in course of stakeholder's business and inter-pleader would be of benefit to the stakeholder even in the absence of an attorney fee award. National Pacific Insurance Co., Ltd., v. Mauala, 7 A.S.R.2d 146.

Attorney fees may be awarded to an appellee where the appellant has taken a frivolous appeal. Tuika v. Ala`ilima, 8 A.S.R.2d 163.

Where plaintiff's counsel had been ordered to amend his pleading, did not do so for a period of two years, and did not answer letters from opposing counsel respecting the failure to amend, court would not dismiss the action for failure of diligent prosecution, but would assess against plaintiff's counsel an award to opposing parties of the fees incurred in connection with the motion to dismiss, and would impose deadlines within which plaintiff must complete discovery and move to set a trial date. Kane v. Country Comfort, 10 A.S.R.2d 16.

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 Gov't, 10 A.S.R.2d 94.

UCP art. 12(e) does not provide a basis for awarding attorney's fees. Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

Concerning an unwritten contract, which affords no contractual or legal basis for variation from the rule that each party pays his own attorney fees, plaintiff was entitled to recover only the principal amount plus six per cent pre-judgment interest. Samoa Products, Inc. v. A`asa, 17 A.S.R.2d 66.

An employer, while entitled to reimbursement from employee's third-party recovery, is not required to bear a proportionate share of the litigation expenses and attorney's fees incurred by the employee. Vaeao v. Samoa Air, 20 A.S.R.2d 37.

A plaintiff's attorney's fees are ordinarily excluded from judgments for injunctive relief in the absence of statutory authorization or special circumstances. Thompson v. Toluao, 24 A.S.R.2d 127.

The High Court has jurisdiction over monetary claims exceeding $5,000, pursuant to A.S.C.A. § 3.0208(a)(1), but in calculating the amount in controversy, attorney's fees expressly provided for by contract, and interest accrued prior

to the commencement of the action may be included. Non-contractual attorneys fees and other incidental costs may not be included in the calculation. Jessop v. Hisatake, 25 A.S.R.2d 12.

Under a motion for attorney's fees and costs filed pursuant to T.C.R.C.P. Rule 37(a), the court may require either party, or the attorney advising the conduct that necessitated the motion, to bear all or part of such costs. Johnson v. Coulter, 25 A.S.R.2d 84.

The general rule is against recovery of attorney's fees as such, by a party which incurs them in enforcing a claim against another. It is equally well settled, however, that the reasonable expenses incurred by an indemnitee in defending a claim against him may be recovered of his indemnitor--and that these expenses include attorney's fees. This exception applies equally to courts sitting in admiralty. However, the prevailing party in an admiralty case is generally not entitled to an award of attorney's fees, absent statutory authorization. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

In cases where contribution has been allowed for damages, both in admiralty and non-admiralty, courts have generally denied a right to contribution for attorney's fees and expenses incurred in defense of the action brought by the injured party. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

Attorney's fees are not ordinarily recoverable by the prevailing party, but courts do have the power to award attorney's fees when an opposing party has acted in bad faith, wantonly, oppressively or when a statute dictates. Fiaui v. Faumuina, 27 A.S.R.2d 36.

Court costs are allowed to the prevailing party as of course unless the court otherwise directs. T.C.R.C.P. 54(d). Pago Petroleum Products, Inc. v. Ye Ahn Moolsoan, Ltd., 29 A.S.R.2d 34.

A successful litigant in summary eviction cases may be awarded costs of suit, but not attorney's fees in absence of specific statutory authority or the parties' agreement. A.S.C.A. § 43.1412. Cox v. Williams, 31 A.S.R.2d 110.

A party is entitled to recover reasonable attorney's fees and actual costs from a claimant who unsuccessfully relitigates land titles. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

Under A.S.C.A. § 43.0101, the "costs" of a suit usually includes filing fees, process and other service fees, and similar costs which are fixed by law and are necessarily paid to the court or its officers, and a prevailing party is entitled to recover costs as a matter of course, in the absence of a different provision by statute, court rule, or court order. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

Recovery of attorney's fees and recovery of costs of suit are unrelated issues; in the absence of a contractual, statutory, or other legal basis, attorney's fees are not recoverable - the usual rule is that each party bears its own burden of this expense. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

Where the plaintiff offers evidence giving some credence to his claim of damages, the claim is not frivolous, and an award of attorney's fees to the defendant would not be appropriate. Salofa v. South Seas Steamship, Inc., 3 A.S.R.3d 130 (Trial Div. 1999).

American Samoa follows the "American Rule," whereby in the absence of statute, contract, or other legal basis to the contrary, each party bears the burden of his or her own attorney's fees. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

Absent statutory authorization, the prevailing party in an admiralty case is generally not entitled to an award of attorney's fees. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

In exception to the rule that each party bears its own costs exists when a party is found to have acted in bad faith, vexatiously, wantonly, or for oppressive reasons. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

Where company refused to pay any wages until resolution of litigation, such action did not rise to level of "bad faith" necessary to invoke the exception to the American Rule. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

Under T.C.R.C.P. 54(d), costs are allowed as of course to the prevailing party unless the court otherwise directs. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

A plaintiff recovering a judgment is a prevailing party to whom costs are owed, even though he may fail to sustain all of his claims in the action. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

A.S.C.A. § 43.0101 (a) requires that costs be in an amount which is reasonable, fair and just compensation for the service rendered. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Parties may not normally collect fees as witnesses, even where they are also witnesses for other parties. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Expert witness fees, interpreter fees, and deposition costs are generally limited by statute, and taxation of costs in excess of

these amounts are outside a court's discretion unless expressly authorized by statute. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

Attorney travel expenses are not allowable as costs. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

A party may recover expenses for service of process in the amount of what a marshal would have charged. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

The general rule is that a party cannot recover attorney's fees incurred in enforcing a claim against another. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

The court can and does award attorney's fees where required by statute, or where an opposing party has acted wantonly, oppressively, or in bad faith. Samoa Dev., Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 172 (Trial Div. 2001).

Where individual, acting as objector in probate action, had actually raised objection contrary to his authority as objector, said attorney lacked standing to object and reasonable attorney's fees were properly awarded to the estate for the unnecessary expense caused by the objection. Estate of Rose Turner, 6 A.S.R.3d 272 (Trial Div. 2002).

§ 6 Practice of Law Without a License

Rule providing for admission to tax court of persons who have demonstrated expertise by examination does not entitle person not so admitted to represent clients before High Court of American Samoa on matters of taxation. Hi v. Coleman, 1 A.S.R.2d 35 (Trial Div. 1980).

Under the rules of the High Court, only members of the court's bar may practice in the High Court and although the High Court may accept briefs from counsel who are not members of its bar, counsel must comply with local rules regarding the filing of motions. In re M/V Ocean Pearl, 2 A.S.R.2d 106 (Trial Div. 1986).

One who is not licensed to practice law but who attempts to represent another person in court, by taking a pro forma assignment of an interest in the subject matter giving rise to litigation and appearing as a pro se plaintiff, thereby engages in the unauthorized practice of law. A.S.C.A. § 31.0104. Parisi v. Parisi, 10 A.S.R.2d 106.

Attorney licensed in another jurisdiction, who in the course of providing legal services to a client took a pro forma assignment of a judgment belonging to the client and entered a court appearance in the guise of a pro se plaintiff without applying for admission pro hac vice, engaged in unauthorized practice of law. A.S.C.A. § 31.0104; H.C.R. 145. Parisi v. Parisi, 10 A.S.R.2d 106.

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.

Court presented with a settlement involving minor children would not approve a fee to an attorney from another jurisdiction who had not applied for admission pro hac vice and whose services, if any, constituted the unauthorized practice of law. Moananu v. American Samoa Gov't (Mem.), 11 A.S.R.2d 10.

Chief Justice of the High Court has the ultimate authority to decide who may practice law in the territory. A.S.C.A. § 31.0101(a). Siofele v. Hall, 12 A.S.R.2d 9.

"Practice of law" includes legal representation of another in court or in settlement negotiations with opposing attorneys. A.S.C.A. § 31.0104. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

Evidence was sufficient to convict defendant of unauthorized practice of law where it was established that appellant filed a memorandum in a criminal case containing legal argument offered on behalf of the defendant. A.S.C.A. § 31.0104. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

Evidence was sufficient to convict defendant of unauthorized practice of law where appellant had written letters on behalf of a convicted prisoner stating that defendant was prepared to bring a civil action on behalf of the prisoner "pro se," and proposing a settlement which defendant termed "my personal offer and compromise." A.S.C.A. § 31.0104. Pene v. American Samoa Gov't, 12 A.S.R.2d 43.

Only members of the American Samoa Bar Association may practice law in American Samoa. H.C.R. 140. Patau v. Rosendahl Corp., 19 A.S.R.2d 80.

It is a crime for a non-lawyer to represent another person or business entity in court. Alamoana & Yu-Tong Co. v. American Samoa Gov't, 4 A.S.R.3d 3 (App. Div. 2000).

Under A.S.C.A. § 31.0104, it is a misdemeanor for an unlicensed or unauthorized person to practice law, and while a party may represent himself as a plaintiff in a lawsuit, he may not represent other plaintiffs; a corporation almost always must be represented by counsel. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

MATAI TITLE DISPUTES

§ 1 Territorial Registrar Procedures
2 Procedural Rules
2(1) —General Provisions
2(2) —Exempt from Rules of Civil Procedure
2(3) —Judges & Justices
2(4) —Family Meeting Requirement
2(5) —Counterclaims
2(6) —Retrials
2(7) —Stays of Proceedings
3 Appellate Review
4 Traditional Determination of Matai
4(1) —General Provisions
4(2) —Split Titles
4(3) —Joint Title Holders
4(4) —Holding Two Titles
5 Initial Qualifications for Title
6 Statutory Qualifications for Title
6(1) —General Provisions
6(2) —Best Hereditary Right
6(3) —Clan Support
6(4) —Forcefulness, Character & Personality, Knowledge of Customs
6(5) —Value to Family, Village and County
7 Priority of Statutory Criteria
8 Determination of Prevailing Candidate
9 Enforcement of Matai Title Decisions
10 Removal of Matai

§ 1 Territorial Registrar Procedures

Where objector merely protests candidate's registration for title, objector's intervention in the action will not cause objector to become candidate. Utu v. Tu'itu'i, 2 A.S.R. 184.

Where objector to applicant to be registered as matai title holder is not eligible at time he objects, which must be within thirty days after filing of application, then he cannot become matai title holder, even though he would have become eligible by time of hearing by virtue of his having resided in American Samoa for five years preceding, and right to hold matai title vests in applicant upon expiration of thirty days after his application if he is eligible and if there are no other eligible applicants at that time. Stevens v. Tee, 2 A.S.R. 627.

After time for objecting to matai title registration has run, one person cannot substitute his objection for that of timely objector who has withdrawn claim. In re Matai Title Lutali, 4 A.S.R. 10.

Using matai title without being registered as holder is criminal offense. Faagau v. Tulei, 4 A.S.R. 490.

Law provides penalties for persons using matai title without having registered it. (CAS 6.0109.) Mailo v. Fuimaono, 4 A.S.R. 757.

Matai title not registered before November 1, 1932 should not be considered for registration since law requires that all matai titles be registered (CAS 6.0102; CAS 6.0103.) Mailo v. Fuimaono, 4 A.S.R. 757.

Only in rare and equitable circumstances will Court allow intervention in Matai title case by candidate who did not timely proceed before the territorial registrar. In re Matai Title "Maga," 1 A.S.R.2d 39 (Land & Titles Div. 1980).

The Territorial Registrar's records on land and matai-title registrations are, without contrary evidence, presumed to be accurate. In re Matai Title Seva'aetasi, 19 A.S.R.2d 133.

The Territorial Registrar's discretion to rule on the legal sufficiency of a claim to a matai title is minimal. The Registrar's authority is, essentially, limited to a determination that information in the claimant's petition is "valid," A.S.C.A. § 1.0405(c); see also Id. at § 1.0407(c), and that the "claim, certificate, and petition are in proper form. In Re Matai Title "Leniu", 29 A.S.R.2d 126.

Matai titles are regulated by law. A.S.C.A. §§ 1.0401-1.0414. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

The territorial registrar maintains the title register, A.S.C.A. § 1.0401, and may register successors to vacant titles only after a specific administrative process, A.S.C.A. §§ 1.0405-1.0408, 1.0410. The court must resolve disputed claims that remain unresolved by the administrative process. A.S.C.A. § 1.0409. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

The territorial registrar is prohibited from accepting counterclaims for the title or objections to the offer following the sixtieth day after the registrar posts notice of the original offeree's claim. A.S.C.A. § 1.0407(a). In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

A.S.C.A. § 1.0407(a) does not permit a substitute candidate after the sixtieth day under all circumstances, including a candidate's death. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

The death of one matai title candidate does not automatically entitle the solely remaining candidate to the title by default. A fair and reasonable opportunity must be given to the contentious elements within the family, or those who supported the deceased candidate, to promote their title candidates and to the family to resolve their internal differences. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

Without evidence to the contrary, the Court must presume that the Territorial Registrar's records are accurate. Ripley v. American Samoa Gov't, 4 A.S.R.3d 331 (Land & Titles Div. 2000).

A.S.C.A. § 1.0401, which mandates that that matai titles not registered before January 1, 1969 cannot thereafter be registered does not violate the constitutional policy set forth in AM. SAMOA REV. CONST. art. I, § 3 of protecting "the lands, customs, culture, and traditional Samoan family organization of persons of Samoan ancestry." Ripley v. American Samoa Gov't, 4 A.S.R.3d 331. (Land & Titles Div. 2000).

A.S.C.A. § 1.0401 does not apply only to newly-created titles. Ripley v. American Samoa Gov't, 4 A.S.R.3d 331 (Land & Titles Div. 2000).

§ 2 Procedural Rules

§ 2(1) —General Provisions

Person not party to matai title determination at tile order of dismissal entered, lacks standing to later seek relief from order of dismissal. F. R. Civ. P. 60(b). (CAS 6.0608.) In re Matai Title Lutali, 4 A.S.R. 10.

Where prospective matai title holder applies to court for determination as matai, and two objectors intervene, three persons become candidate for title. (CAS 6.0106.) Reid v. Talalele, 4 A.S.R. 458.

A.S.C.A. § 1.04.09, requiring the Court to write findings of fact in matai title cases, does not require negative findings. In re Matai Title "Lualemaga," 2 A.S.R.2d 49 (App. Div. 1985).

Court is called upon to evaluate a claimant to a contested matai title under statutory criteria only when the family cannot, in its customary manner of selecting a matai, reach agreement over who should hold the title. In re Matai Title Ma'ae, 6 A.S.R.2d 75.

Proposed registration of matai title can be contested even by someone who does not himself claim the title, and court need not bestow a vacant title merely because only one candidate wishes to hold it. In re Matai Title Ma'ae, 6 A.S.R.2d 75.

Territorial statutes concerning matai titles and other customary matters represent the best efforts of the legislature to incorporate custom into written law and to provide procedures for its preservation and enforcement. In re Matai Title Sotoa, 6 A.S.R.2d 91.

Court deciding matai title disputes is not required to consider the views of the village, county or district councils except to the extent that they are evidence of facts that are relevant to issues properly before the court. A.S.C.A. § l.0401 et seq. In re Matai Title Sotoa, 8 A.S.R.2d 10.

In matai title dispute, recognition or non-recognition of matai by village, district, and county councils were properly before the court only insofar as might be relevant to whether the matai had wilfully failed to comply with customary requirements and formalities for acceptance and recognition by the village. In re Matai Title Sotoa, 8 A.S.R.2d 10.

Village, county, and district councils have no power to veto a court decision, rendered after trial in accordance with statutory procedure, that a particular person is entitled to hold a matai title. A.S.C.A. § 1.0401 et seq. In re Matai Title Sotoa, 8 A.S.R.2d 10.

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.

Objection to a matai title claim was not filed within the sixty days required by statute where the timely original objection was filed and withdrawn by relatives without objector's knowledge and his motion to intervene in the case was not filed until eight years later. A.S.C.A. § 1.0407(a). In re Matai Title Liua, 15 A.S.R.2d 80.

The 60 day time period for filing objections to a claim of matai title, as required by A.S.C.A. § 1.0407(a), runs from the time the Territorial Registrar is satisfied that the claim is in proper form. In Re Matai Title "Leniu", 29 A.S.R.2d 126.

A.S.C.A. § 1.0407(d) only applies to a family with fewer than 25 qualified members. In Re Matai Title "I`aulualo" of the Village of Afono, 29 A.S.R.2d 128.

A.S.C.A. § 1.0407 has no provision for the transfer of signatures. In Re Matai Title "I`aulualo" of the Village of Afono, 29 A.S.R.2d 128.

A.S.C.A. § 1.0407 functions like a jurisdictional limit on the Land and Titles Division. If a candidate does not submit a petition with 25 signatures, the court simply cannot consider his claim. In Re Matai Title "I`aulualo" of the Village of Afono, 29 A.S.R.2d 128.

Under A.S.C.A. § 43.0302, where a matai title candidate insists on his position that the matter be taken to court, meetings must first be held at the Office of Samoan Affairs. In re Matai Title "I`aulualo", 2 A.S.R.3d 238 (Land & Titles Div. 1998).

Under A.S.C.A. § 3.0208(b), the land and titles division has exclusive jurisdiction over all matters relating to matai titles and land, and provides that in matai cases one justice and four associate judges hear the controversy. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

The statutory selection process for a successor in matai title cases is an alternative to the preferred historical selection process in which the extended family meets and, by consensus, selects a successor based upon that family's particular traditions and practices, and in order to preserve the broad discretion afforded by statute to the associate judges to determine the best qualified successor to a matai title, the court must resist the imposition of broad invariable rules of preference for certain individual attributes of the candidates. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

§ 2(2) —Exempt from Rules of Civil Procedure

Court is not bound by Federal Rules of Civil Procedure in cases involving title to land or Matai title disputes, and therefore, findings of fact and conclusions of law are not required. In re Matai Title "Tuiolesega," 1 A.S.R.2d 37 (Land & Titles Div. 1980).

Under A.S.C.A. § 3.0242, proceedings before the land and titles division of the High Court are specifically exempted from the rules of civil procedure, and that division is specifically authorized to act in each case in such a manner as it considers to be most consistent with natural justice and convenience. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

The carefully developed statutory plan for deciding matai title controversies is unique and indicates clear legislative intent to insulate such trials from the strict application of arguably inapposite judicial rules, practices, and procedures applicable to nearly all other civil controversies within the jurisdiction of the High Court. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

§ 2(3) —Judges & Justices

Statute prescribing participation in matai title dispute of one law-trained judge, as well as four associate judges who are not lawyers but who are chosen for their familiarity with Samoan custom, did not require that the law-trained judge be present during all deliberations of the associate judges. A.S.C.A. § 3.0240. In re Matai Title La'apui, 4 A.S.R.2d 7.

If a majority of the four associate judges make a decision the justice need not participate in the four associate judges' deliberations. In re Matai Title Tualolo, 28 A.S.R.2d 137.

Under A.S.C.A. § 3.0208(b), the land and titles division has exclusive jurisdiction over all matters relating to matai titles and land, and provides that in matai cases one justice and four associate judges hear the controversy. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

The Legislature having carefully constructed a statutory scheme for associate judges to decide matai title controversies, and for the exclusive means of such judges' recommendation, appointment, and confirmation, there is no legal basis for the contention that the U.S. Secretary of the Interior could appoint an entirely new panel. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

Because the Revised Constitution of American Samoa authorizes the Secretary of the Interior to appoint the Chief Justice and such Associate Justices as necessary under R.C.A.S. Art. III Sec. 3, and, under 48 U.S.C. 1662(a) (1983), Congress has prohibited any amendments to or modifications of the R.C.A.S. except by Act of Congress, it appears clear that the Secretary of the Interior's judicial appointment powers extend only to the Chief Justice and Associate Justice(s); and to judicially extend that power of appointment to include associate judges, whose role in matai title controversies is to hear and decide matters pertaining to the Samoan culture,

appears neither prudent nor legally possible without the prior consent of Congress. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

Under A.S.C.A. § 1.0409 and § 3.0221, by prescribing what the trial court is to determine in matai title controversies and the priority of the considerations, and by prohibiting any justice of the High Court from participating in the ultimate decision of the four-member associate judge panel unless to break a tie, the Legislature has strongly indicated that in the absence of an uncontested family consensus as to who should succeed to a vacant matai title, the next best selectors of the successor are associate judges, who historically have been ranking titleholders within their own extended families. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

§ 2(4) —Family Meeting Requirement

Under A.S.C.A. § 1.0406(b), a prerequisite to filing a claim to succeed to a vacant matai title is that a family meeting was held for the purpose of selecting the successor, according to the traditions of the family, and that the family thus had a meaningful opportunity to decide for itself whether it can select a new titleholder without judicial intervention. In re Matai Title "Letuli", 4 A.S.R.3d 273 (Land & Titles Div. 2000).

Under A.S.C.A. § 1.0409(c)(2), the criteria for judicial determination of a matai controversy includes the wish of the majority or plurality of the customary clans of the family with respect for the common Samoan custom of choosing a matai by a consensus of the participants at a meeting of the family during which the integral elements of discussions and good faith efforts to settle disputes occur. In re Matai Title "Letuli", 4 A.S.R.3d 273 (Land & Titles Div. 2000).

Where a number of gatherings are held, those which include only a particular matai title candidate's immediate family, clan, or some other portion of the extended family cannot be classified as extended family meetings. In re Matai Title "Letuli", 4 A.S.R.3d 273 (Land & Titles Div. 2000).

Where there have been several meetings of an extended family to consider matai title succession with varying outcomes and a consensus to postpone the selection decision, there has not been a meaningful family meeting which the court can consider so as to adjudicate a title dispute. In re Matai Title "Letuli", 4 A.S.R.3d 273 (Land & Titles Div. 2000).

§ 2(5) —Counterclaims

Under A.S.C.A. § 1.0407(b), a counterclaim to a vacant matai title must be signed by no fewer than 25 supporters related by blood to the vacant title. In re Matai Title "Letuli", 4 A.S.R.3d 273 (Land & Titles Div. 2000).

§ 2(6) —Retrials

There is no clear legislative intent to preclude otherwise qualified candidates from participating in the retrial of a matai title controversy. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

§ 2(7) —Stays of Proceedings

Under A.S.C.A. § 43.0803 and T.C.R.C.P. 62(d), a court, in its sound discretion, may stay a final judgment only for cause, such as irreparable harm to the appellant if not granted or irreparable harm to the appellee if granted, and after considering the likelihood of success on appeal and whether the public interest would be affected by a stay. In re Matai Title "Galea`i", 4 A.S.R.3d 309 (Land & Titles Div. 2000).

Although in most matai title cases the balance of hardships will militate strongly in favor of granting a stay, even when reversal on appeal is highly unlikely, where the equities do not dramatically sway the balance in favor of either party a dispute should be resolved without undue delay since a family's welfare and fortune depend largely on having a leader to allocate and protect the family's lands, oversee family matters, and otherwise serve and lead family members. In re Matai Title "Galea`i", 4 A.S.R.3d 309 (Land & Titles Div. 2000).

Where there is a consensus of the clans of a family which is not likely to change, it is more important for an investiture to proceed than for a stay to be granted because of a party's personal interests. In re Matai Title "Galea`i", 4 A.S.R.3d 309 (Land & Titles Div. 2000).

There is a public interest in denying stays that serve to encourage litigants to appeal only to postpone the effective date of judgments against them. In re Matai Title "Galea`i", 4 A.S.R.3d 309 (Land & Titles Div. 2000).

§ 3 Appellate Review

Because decisions in matai cases are based on customs and traditions there are no issues of law for the appellate division to review. In re Matai title "Aoelua," 2 A.S.R.2d 104 (1986).

Appellate court will not reverse trial court's finding with regard to hereditary right of candidates for matai title where judgment is supported by substantial evidence. In re Matai Title Togiola, 3 A.S.R.2d 127.

Trial court holding that no candidate prevailed on issue of best hereditary right was not substantial error justifying reversal by appellate court, where (1) trial court found that there were "minute distinctions" among candidates' blood relationship to original titleholder, and (2) candidate who prevailed at trial would clearly have had the best hereditary right under traditional rule that hereditary right to title depends on blood

relationship to any holder of the title. In re Matai Title Le'iato, 3 A.S.R.2d 133.

In the absence of evidence of contrary Samoan custom, appellate court would not reverse trial court judgment that candidate for matai title could cumulate two separate claims to ancestry from original titleholder in determining the degree of his blood relationship to titleholder. In re Matai Title La'apui, 4 A.S.R.2d 7.

Trial court judgment refusing to remove matai would not be overturned on appeal, but would be modified to enjoin the matai to exercise the leadership qualities with which the court credited him when it found him best qualified to hold the title under statutory criteria of "forcefulness, character, and personality," and "value to the family, village, and country." In re Matai Title Sotoa, 6 A.S.R.2d 91.

Where trial court, in deciding that a trusteeship devolved upon the appellee in his capacity as a successor in matai title to the original trustee, had failed to consider a plausible argument raised at trial to the effect that the trusteeship should instead have devolved upon the original trustee's successors in the office of district governor, but the appellee had recently assumed the office of district governor, the question whether the trusteeship devolved upon the holders of the office of district governor of the matai title was moot in the context of the case and remand to trial court was inappropriate. Mose v. Tufele, 12 A.S.R.2d 31.

In most matai title cases the balance of hardships will militate strongly in favor of granting a stay pending appeal, as the only hardship on the prevailing party is that he must wait a year or so to register the title; on the other hand, if the prevailing party quickly registers the title, holds the traditional installation ceremonies, but has his right to hold the title reversed on appeal, the consequences for the whole family could be disastrous. In re Matai Title Mulitauaopele, 17 A.S.R.2d 71.

Even though the Appellate Division has rarely, if ever, reversed a judgment of the Land and Titles Division in a matai-title case, the "balance of hardships" will generally weigh heavily in favor of granting a stay. In re Matai Title Mulitauaopele, 17 A.S.R.2d 71.

In reviewing a decision of the Land and Titles Division or the Trial Division, the Appellate Division utilizes a "clear error" standard. This standard of review applies to the lower court's evaluation of witnesses' credibility. Paolo v. Utu, 26 A.S.R.2d 18.

The trial court's findings with regard to matai criteria can only be set aside if clearly erroneous. Lealai v. Aoelua, 1 A.S.R.3d 12 (App. Div. 1997).

Trial Court's determination of the candidates' hereditary rankings can only be set aside if clearly erroneous. Misaalefua v. Hudson, 1 A.S.R.3d 23 (App. Div. 1997).

Trial Court's determination of the family clans can only be set aside if clearly erroneous. Misaalefua v. Hudson, 1 A.S.R.3d 23 (App. Div. 1997).

Trial Court's determination regarding the support of the majority of the family can only be set aside if clearly erroneous. Misaalefua v. Hudson, 1 A.S.R.3d 23 (App. Div. 1997).

Trial court's factual findings with respect to the four matai title criteria can only be reversed if they are clearly erroneous. Tuaolo v. Fruean, 1 A.S.R.3d 33 (App. Div. 1997).

Under A.S.C.A. § 3.0240, appeals from the land and titles division, unlike other appeals, afford the associate judges equal voice in such appellate decisions. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

To insure that culturally experienced jurists also fairly participate at the appellate level, the Legislature has provided that associate judges sitting in the appellate division on appeals from the land and titles division have equal decision-making power with the justices assigned to that case. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

§ 4 Traditional Determination of Matai

§ 4(1) —General Provisions

Historically, only recognized heads of families could elect holder of "matai" title. Aumavae v. Moefaauo, 1 A.S.R. 38.

Holder of "matai" title has the right to nominate his successor and the family has the right of confirmation. Matautia v. Tautunu, 1 A.S.R. 226.

"Matai" has right to express his wish as to successor and, in choosing successor, family must give such wish due consideration. Tupua v. Aumavae, 1 A.S.R. 231.

Prior to the raising of the American Flag in Samoa, according to Samoan custom a "matai" designated his successor. Sagapolu v. Tanielu, 1 A.S.R. 331.

A "pule" can resto only in one person or title and "pule" in a title means that that title has authority over another title or titles. Sagapolu v. Tanielu, 1 A.S.R. 331.

"Pule" or power to select "matai" gradually transferred to the family members and out of the hands of the individual "matai." Sagapolu v. Tanielu, 1 A.S.R. 331.

Where family is closely split in selection of "matai", former "matai", if living, may choose successor and if not living, the closest male blood descendant in the highest degree of the "matai" name may choose the successor. Sapapolu v. Tanielu, 1 A.S.R. 331.

In considering selection of "matai," family should take into account the true descendant, rendering of service to the family and taking care of the family property. Sagapolu v. Tanielu, 1 A.S.R. 331.

Court will take judicial notice of custom in most jurisdictions where award of title, name or position depends on descent that holder from male line will be chosen where possible. Fava v. Moso'oi, 1 A.S.R. 375.

The Annual Fono of 1926 determined that, in the trial of "matai" cases, question of hereditary right would take precedence over question of fitness of applicant to hold "matai" title. Fia v. Pine, 1 A.S.R. 387.

Where candidates for title have equal hereditary right, question of fitness to hold title becomes relevant. Fia v. Pine, 1 A.S.R. 387.

Where two candidates for matai title have equal hereditary right to hold title, name should be given to the applicant who filed for the title first and applicant with the greatest number of supporters. Muavae v. Ui, 1 A.S.R. 399.

Court does not favor awarding title to candidate selected by one who has pule over the title on that basis alone. Mulivai v. Atofau, 1 A.S.R. 409.

Court favors title candidate who will be agreeable to as many of the family members as possible and who is familiar with the material affairs of the family. Mulivai v. Atofau, 1 A.S.R. 409.

Under Samoan custom the holder of a matai name was selected by the family whereas the right to select a rules was vested in certain families. Young v. Tufele, 1 A.S.R. 429.

The name "Tuimanua" is that of a ruler and not a matai name in the sense that matai is commonly understood in Samoa. Young v. Tufele, 1 A.S.R. 429.

In considering appointment of matai, court will inquire whether candidate is a member of and supported by a large majority of the family and whether candidate is familiar with and capable of handling family affairs. Fonoti v. Galo, 1 A.S.R. 442.

Court will award matai title to candidate having best hereditary right, and who has lived with an renders service to the family and who is the choice of a large majority of the family. Malu v. Ene, 1 A.S.R. 446.

Court awards matai titles on basis of who is the true descendant of the last holder of the name, who is the choice of the family and who would make a good matai. Kalala v. Ekuati, 1 A.S.R. 454.

Court will not discuss relative fitness of matai candidates unless both have equal hereditary rights to the name, then the balance will tip in favor of the candidate best prepared to hold the name by reason of education. Uele v. Taleni, 1 A.S.R. 458.

Court is bound to choose matai candidate strictly on basis of heredity and may not consider worth or ability. Taofi v. Foster, 1 A.S.R. 464.

Court may choose to appoint none of the candidates before it to assume matai title and may leave title vacant pending the application of a suitable candidate. Sami v. Semaia, 1 A.S.R. 481.

While Fono declared that matai names should be awarded on the basis of heredity, court will not appoint candidate who has hereditary right to title but is otherwise unfit to assume it. Sami v. Semaia, 1 A.S.R. 481.

Matai name and land case parties who do not take their cases before the Judicial Commission but instead waive this right to go directly to the High Court face court's final decision from which no appeal can be taken. Moelupe v. Pisa, 1 A.S.R. 491.

Where matai name candidate is ineligible to hold title from standpoint of heredity and there is no other qualified candidate before the court, court will dismiss the case subject to reopening upon the petition of a new candidate. Moelupe v. Pisa, 1 A.S.R. 491.

First criterion court uses to select new matai is that of heredity; i.e., is the candidate a true member of the family to which the matai name belongs. Moelupe v. Pisa, 1 A.S.R. 491.

Matai title "Tuitele" is one of the oldest and most important titles in Samoa; several of the Tuiteles having been classed as kings. Magauli v. Save, 1 A.S.R. 509.

Court may call disinterested parties as its own witnesses in matai title cases to testify as to existence of alleged title holder. Moelupe v. Savali, 1 A.S.R. 517.

Court will not appoint matai candidate to hold vacant title where such action would serve no useful purpose and only cause trouble. Fanene v. Yandall, 1 A.S.R. 535.

At the direction of the Annual Fono of 1936, Court will inquire only as to which candidate has best hereditary right to

title and questions such as fitness of candidates will not be considered. Foleni v. Faateleupu, 1 A.S.R. 541.

Wish of Samoan people has been indicated by two separate Fonos that court select matai strictly on basis of hereditary right to name. Teutusi v. Faga, 1 A.S.R. 543.

Because heredity is sole criterion for matai selection, all testimony bearing on character, ability and past service of title candidate is irrelevant. Teutusi v. Faga, 1 A.S.R. 543.

Where hereditary rights of candidates are equal, Court may consider general fitness of candidates to hold title. Petelo v. Sope, 1 A.S.R. 557.

1937 law which requires Court to select matai on basis of four considerations rules out award of matai title by one having pule over that title. Ioasa v. Aivao, 1 A.S.R. 567.

Custom of American Samoa requires that losing candidate in matai title case abide by decision of Court and effect reconciliation with selected candidate to end that family may live in peace and harmony. Mauga Family v. Mauga, 1 A.S.R. 587.

Prior decision of court determining matai title holder is inapplicable since it preceded legislation establishing more democratic procedures and eligibility requirements in selection of matai. Simaile v. Lafoa'i, 2 A.S.R. 170.

Court will not order man registered as matai if he does not wish to be so registered. Faagata v. Taupo, 2 A.S.R. 271.

Decisions of court which based selection of matai on old custom of choice of one man, before enactment of legislation providing specific procedures, are not applicable to present disputes over matai titles, and right to resort to court for public trial in accordance with present law is not barred by such prior decisions. Simaile v. Lafoa'i, 2 A.S.R. 170.

When court awards matai title, it is not bound by prior practice of family of alternating titles among branches of family but is bound only by statute. Tiumalu v. Tiumalu, 3 A.S.R. 502.

"Mauga" is not split title. In re High Chief Title Mauga, 4 A.S.R. 132.

Evidence that prior litigants treated title as not split, tends to show "Mauga" is single title. In re High Chief Title Mauga, 4 A.S.R. 132.

Fact there is only one objector to claimant of matai title holder indicates objector was selected at meeting to hold title. Vainini v. Ala, 4 A.S.R. 683.

Only a registered matai has power, authority and pule of a matai. Malaga v. Alaga, 4 A.S.R. 735.

"Maugaoali'i" has never been used as matai title in American Samoa. Mailo v. Fuimaono, 4 A.S.R. 757.

Under Samoan custom "Mauga" title is among oldest and most influential matai titles of American Samoa. Taufaasau v. Manuma, 4 A.S.R. 947.

The "Mauga" title is a paramount matai title of American Samoa and the highest ranking title in Pago Pago. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

Matai titles are of central importance in Samoan customs, and maintaining a proper selection process is important to preserve fa`a Samoa. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

A.S.C.A. § 1.0403(b), which sets forth qualifications for candidates to matai titles, was enacted with the purpose of ensuring that titleholders possess close relationships with American Samoa. Such purpose is related to the government's duty to preserve fa`a Samoa, and the statute's restrictions constitute a rational way to ensure that a titleholder has a close association with the territory. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

§ 4(2) —Split Titles

Court does not favor splitting "matai" titles among two or more persons. Tupua v. Aumavae, 1 A.S.R. 231.

Court does not favor splitting "matai" title among two or more persons. Mauga-Moimoi v. Taelase, 1 A.S.R. 276.

Court will not appoint two people to hold the same matai name. Kalala v. Ekuati, 1 A.S.R. 454.

A matai title may be split, and once established by founder, section of family descending has right to title as well as descendants of original title holder. In re Matai Title Salave'a, 4 A.S.R. 44.

Splitting paramount title would lessen its influence in Samoan affairs, disintegrate important family, and be inconsistent with constitutional obligation of court to protect Samoan family organization. Rev. Con. of Am. Samoa, Art. I, Section 3 (1968). In re High Court Title Mauga, 4 A.S.R. 132.

Conclusion in Tauvevematalio v. Fanene Filo, Trial Division, Civil No. 1035 (1970) that title may be "split" is reversed—two (2) persons may only hold same title jointly. In re High Chief Title Mauga, 4 A.S.R. 132.

Where register of matai title holders shows that two persons have been registered as "Fanene" matai at the same time, title is split title. Fanene v. Fanene, 4 A.S.R. 603.

Where prior decision held that two persons may hold "Fanene" matai title and applicant has qualifications, court may make him matai even though another matai holds title concurrently. Fanene v. Fanene, 4 A.S.R. 603.

§ 4(3) —Joint Title Holders

Joint title holders share single matai title, with attributes of that single title, with right of survivorship. In re High Chief Title Mauga, 4 A.S.R. 132.

Two (2) persons holding same matai title jointly share all duties, responsibilities, honors, privileges and respect due titleholder, including tenancy in common of communal lands. In re High Chief Title Mauga, 4 A.S.R. 132.

§ 4(4) —Holding Two Titles

Under Samoan custom, man cannot have two matai titles at same time, and must resign present title to accept higher ranking one. Kosi v. Viliamu, 2 A.S.R. 349.

Man cannot hold two matai titles at same time, and determination of candidate as matai is subject to his resignation from present title. Saufea v. Filipo, 2 A.S.R. 477.

Since person cannot hold two matai titles at the same time, he must resign title presently held before he can be registered for new title. Veve v. Faatama, 4 A.S.R. 418.

After court determines matai title holder, she must resign all presently held matai titles held within three weeks after date of judicial decree. Reid v. Talalele, 4 A.S.R. 458.

§ 5 Initial Qualifications

In matai title cases, no evidence may be admitted attacking the validity of previously held titles as all previous holders of matai titles are assumed to have held their names legally. Teutusi v. Faga, 1 A.S.R. 543.

Assault with deadly weapon is infamous crime and disqualifies candidate from eligibility for matai title. Akeimo v. Mulu, 2 A.S.R. 89.

Candidate for matai who has committed infamous crime cannot be registered as matai. Akeimo v. Mulu, 2 A.S.R. 89.

Determination as to whether crime is infamous, and therefore excludes matai convicted thereof from registration, depends on maximum punishment which court is authorized to impose and not what court in fact did impose. Akeimo v. Mulu, 2 A.S.R. 89.

Candidate for matai title who has not resided in American Samoa for five years preceding vacancy in title is ineligible, since statute insures that matai is familiar with customs of American Samoa and of needs and habits of family. Titi v. Suiava, 2 A.S.R. 160.

Applicant for matai title who has been convicted of burglary is ineligible to hold matai title. Simaile v. Lafoa'i, 2 A.S.R. 170.

Where person is registered as matai after he fails to notify court of conviction for forgery and embezzlement as he is required to do by law, registration is of no effect and void, since person cannot be matai who has been so convicted. Taliutafa v. Toaga, 2 A.S.R. 218.

Candidate for matai title who has not resided continuously within limits of American Samoa for five years preceding vacancy in title is not eligible to become matai. Hunkin v. Pio, 2 A.S.R. 233.

Applicant to be registered as matai title holder who was born in Western Samoa and who was not registered in American Samoa within thirteen years after birth, is ineligible to become matai. Faagata v. Taupo, 2 A.S.R. 271.

Mere temporary absence from American Samoa with intention to return does not effect a change in domicile so as to render candidate ineligible on grounds that he has not resided in Samoa for five years preceding vacancy in title. Kosi v. Viliamu, 2 A.S.R. 349.

Requirement of Code that candidate for matai title have continuous residency in American Samoa for five years preceding vacancy in title means having domicile in American Samoa for that time, and mere temporary presence in another place for purpose of pleasure, health, or business does not affect domicile. Sauafea v. Filipo, 2 A.S.R. 477.

Candidate for matai title who was born in Western Samoa and who has not registered as inhabitant of American Samoa is ineligible. Sauafea v. Filipo, 2 A.S.R. 477.

Eligibility of person to be matai title holder requires that he be resident of American Samoa for five years preceding date of his application or objection. Stevens v. Tee, 2 A.S.R.627.

Applicant for matai title is eligible therefore, even if he lacks any blood of family, if he is member of family under Samoan custom. Atoa v. Meredith, 3 A.S.R. 159.

Sec. 926(b) (amended) of Code requires 5 years continuous residence in American Samoa immediately preceding vacancy in title for eligibility for matai title. Tago v. Hunkin, 3 A.S.R. 427.

Code requires that matai title holder must be at least one-half Samoan blood. (CAS 926.) Malaga v. Mase, 3 A.S.R. 518.

Adopted person or person who has married into family may become matai. Betham v. Faumuina, 3 A.S.R. 537.

Court will seek to preserve "Faa-Samoa" in construing Matai Determination Statute. In re Matai Title Fagaima, 4 A.S.R. 83.

Matai title candidate must meet statutory residence requirement by being actually present in American Samoa for required period and have intent to remain. R.C.A.S. 6.0112. In re Matai Title Fagaima, 4 A.S.R. 83.

1 A.S.C. 752(a) requires on year of actual residence in American Samoa immediately preceding any claim for or objection to a matai title. In re Matai Title Afoafouvale, 4 A.S.R. 145.

1 A.S.C. 752(d) provides statutory procedure for those not physically present in American Samoa to register as absent residents. In re Matai Title Afoafouvale, 4 A.S.R. 145.

1 A.S.C. 752(b)(1) and (2) allows absences from American Samoa for education or military service, without disqualifying absent resident from claiming or objecting to matai title. In re Matai Title Afoafouvale, 4 A.S.R. 145.

Registering as an absent resident solely to qualify for matai title is not sufficient under 1 A.S.C. 752. In re Matai Title Afoafouvale, 4 A.S.R. 145.

Eligibility requirements of 1 A.S.C. 752 for matai applicants and objectors will be strictly construed to preserve "Fa'a Samoa." In re Matai Title Afoafouvale, 4 A.S.R. 145.

Ambiguous statute will not be construed literally so as to frustrate obvious intent of legislature that court select matai if family is unable to do so. Aseuga v. Manuma, 4 A.S.R. 616.

Law setting forth eligibility for matai title requires that person succeed to matai title, which implies that there must have been previous title holder (CAS 6.0101.) Mailo v. Fuimaono, 4 A.S.R. 757.

Statute requires that applicant for matai title must show right to succession which implies that title name existed before claim was filed but has been vacated. (CAS 6.0104.) Mailo v. Fuimaono, 4 A.S.R. 757.

Only in rare and equitable circumstances will Court allow intervention in Matai title case by candidate who did not timely proceed before the territorial registrar. In re Matai Title "Maga," 1 A.S.R.2d 39 (Land & Titles Div. 1980).

Where a candidate for a matai title might not have been born on American soil but was born of inhabitants of American Samoa and has lived in American Samoa for at least ten years prior to registering for the title, he comes within the exception of A.S.C.A. § 1.0403(b)(2) to the requirement that candidates be born on American soil. In re Matai Title "Le'iato," 2 A.S.R.2d 94 (Land & Titles Div. 1986).

No one is eligible to claim or object to the succession to a matai title unless he has resided in American Samoa for one calendar year immediately preceding the date of the claim or objection. A.S.C.A. § 1.0404. In re Matai Title Niuatoa, 16 A.S.R.2d 25.

Matai who for the last ten years has lived, worked, and owned a home in the United States, but occasionally visited American Samoa and was registered to vote there, was not an American Samoan resident and could not claim succession to a matai title. In re Matai Title Niuatoa, 16 A.S.R.2d 25.

An applicant for matai-title registration is normally required to submit, among other things, a "certificate from the chiefs of the village to which the title is attached to the effect that the matai title is an old and traditional title of the Samoan people." A.S.C.A. § 1.0405(b). In re Matai Title Seva'aetasi, 19 A.S.R.2d 133.

Despite a written objection by the leading chiefs of the village, a matai title was ordered to be registered in the applicant's name as an "old and traditional title of the Samoan people" when the Territorial Registrar's records pointed to recognition of the title's status in a village prior to its registration, and court cases affirmed the family's landholdings. A.S.C.A. § 1.0405(b). In re Matai Title Seva'aetasi, 19 A.S.R.2d 133.

Application for matai title was dismissed when the applicant failed to comply with requirements and showed no real interest in pursuing the title. In re Matai Title Fonoti, 20 A.S.R.2d 22.

In order to register for a matai title under the absent resident provision, which requires that absence from the Territory in the year preceding the filing of matai claim or counterclaim was due to medical reasons, an applicant must produce more than a cursory and equivocal statement from a doctor. A.S.C.A. § 1.0404(b)(3). In re Matai Title Fonoti, 20 A.S.R.2d 22.

Candidates who do not meet the residency requirements of A.S.C.A. § 1.0404 will be, at that time, ineligible to claim succession to a matai title. In re Matai Title Fonoti, 20 A.S.R.2d 22.

Active service for the matai and the family is necessary to have the requisite standing to petition for a matai's removal for cause; however, only family membership is necessary to have standing to petition for the removal of a matai who has been absent from American Samoa for more than one year. A.S.C.A. §§ 1.0411, 1.0412. Aoelua v. Aoelua Family, 21 A.S.R.2d 1.

As long as a matai-title candidate acts within his legal rights, he remains eligible for the title, even if he abuses the traditional selection process by a premature offer of registration which forces other candidates to object to protect their interests. In re Matai Title Atiumaletavai, 22 A.S.R.2d 94.

In regards to a candidate's matai-title qualifications, American Samoa follows the traditional rule of determining domicile or permanent residency by the union of physical presence at a particular place and intent to indefinitely fix habitation there, frequently denoted as the place to which, when a person is absent, he or she intends to return. In re Matai Title Atiumaletavai, 22 A.S.R.2d 94.

A citizen of Western Samoa, born in that country of parents who were not inhabitants of American Samoa, is ineligible to hold a matai title in American Samoa. A.S.C.A. § 1.0403(a). Toilolo v. Poti, 23 A.S.R.2d 130.

A person born outside American soil is eligible for a matai title only if both parents were inhabitants of American Samoa and were temporarily residing outside of American Samoa or engaged in foreign travel at the time of that person's birth. A.S.C.A. § 1.0403. Toilolo v. Poti, 24 A.S.R.2d 1.

Regarding the statutory exception for families having fewer than 25 adult, blood family-members, the term "family" is equated with the claimant's or counter-claimant's clan for purposes of testing the validity of matai-title petitions. A.S.C.A. § 1.0405, 1.0407. Registration of Matai Title Le'aeno, 24 A.S.R.2d 117.

Until there is further legislated direction, the word "family" is equated with the claimant's or counterclaimant's clan for purposes of testing the validity of the petitions. In Re Matai Title Leano, 25 A.S.R.2d 4.

Requirement of A.S.C.A. § 1.0407 that a counterclaim or objection to succession to a matai title must be supported by a petition signed by no less than 25 persons related by blood to the title in question is not a mere "formality." Rather, the Fono has determined that at least twenty-five or more qualified family members constitutes a serious enough contention within a family to warrant access to the judicial process. In re the Matai Title I`aulualo, 25 A.S.R.2d 116.

Pursuant to A.S.C.A. § 1.0403(b) the requirement that parents are" temporarily residing outside of American Samoa" connotes a short time, or at least a definite intention to return to American Samoa. In re the Matai Title I`aulualo, 25 A.S.R.2d 116.

The fact that person was born and raised in Western Samoa strongly suggests, without anything further, that his parents were not "temporarily residing outside of American" at the time of his birth. In re the Matai Title I`aulualo, 25 A.S.R.2d 116.

Fact that one is a U.S. national from American Samoa is not necessarily equivalent to being an "inhabitant" of American Samoa since the place where one lives may be different than the place of one's legal nationality. In re the Matai Title I`aulualo, 25 A.S.R.2d 116.

The physical presence requirement is excepted by A.S.C.A. § 1.0404(b) only by registering with the Territorial Registrar absences for attendance at an educational institution, service in the United States armed forces, medical treatment and recuperation, temporary traveling, or missionary work as a minister. In re Matai Title Patea, 25 A.S.R.2d 139.

A person who is not born "on American soil" is eligible for a matai title only if (1) he is born of parents who were inhabitants of American Samoa but temporarily residing outside American Samoa at the child's birth, and (2) as applicable to this case, he has resided in American Samoa for a continuous period of at least ten years prior to filing his claim to a title. A.S.C.A. § 1.0403(b). In re Matai Title Patea, 25 A.S.R.2d 139.

Patea family does not come within the statutory small-family exception. Affidavit stating that clan had fewer than 25 eligible members insufficient in light of contradictory testimony by affiant at trial that family had between 100 and 200 members. In re Matai Title Patea, 25 A.S.R.2d 139.

Matai-title claimants and counter-claimants/objectors are not held to different standards regarding the supporting petitions. In re Matai Title I`aulualo, 25 A.S.R.2d 155.

Eligibility to be a candidate for a matai title is not an incident of one's nationality and therefore A.S.C.A. § 1.0403 does not abridge a constitutionally-guaranteed privilege. In re Matai Title I`aulualo, 25 A.S.R.2d 155.

For a matai title claimant to qualify under A.S.C.A. § 1.0403(b)(2), he still must show both that a parent was an inhabitant of American Samoa, and that the parent's residence outside of the territory was temporary. In Re Matai Title “I`aulualo” of the Village of Afono, 29 A.S.R.2d 128.

An inhabitant is one who resides actually and permanently in a given place, and has his domicile there. In Re Matai Title “I`aulualo” of the Village of Afono, 29 A.S.R.2d 128.

A.S.C.A. § 1.0403(b) is not a prohibited bill of attainder or ex post facto law because it is not a criminal law. In Re Matai Title “Mulitauaopele”, 29 A.S.R.2d 169.

Age groupings have been consistently upheld for regulatory objectives such as voting, jury selection, military service, and receiving Social Security and other benefits. In the context of

matai title eligibility, the distinction between minority and majority is a logical differentiation. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

Eligibility to succeed to a vacant matai title is set forth in A.S.C.A. § 1.0403. Under § 1.0403(b), a person born on foreign soil is eligible to hold an American Samoa matai title only if: (1) that person was born of parents who were inhabitants of American Samoa, but were temporarily residing outside of American Samoa or engaged in foreign travel at the time of his birth; and (2) while later residing in American Samoa that person either (a) renounces, under oath, his allegiance to the foreign country of his birth, within one year after reaching age 18 years, or (b) has continuously resided in American Samoa for at least 10 years prior to claiming registration as a matai titleholder. To be eligible to succeed to a vacant matai title, each requirement of the A.S.C.A. § 1.0403(b) two-pronged test must be satisfied. In Re Matai Title "Mulitauaopele", 29 A.S.R.2d 169.

A person is disqualified from registering a matai title when the person was born in Western Samoa of parents who then had permanent residential ties to that foreign country, despite the fact that the person's mother was a U.S. National. In re Matai Title "Mulitauaopele" of the Village of Laulii, 30 A.S.R.2d 62.

Under A.S.C.A. § 1.0404(a), a person is eligible to claim or object to the succession to a matai title if he has resided in American Samoa for one calendar year immediately preceding the date of objection. In re Matai Title "Tagoilelagi", 2 A.S.R.3d 230 (Land & Titles Div. 1998).

In a matai title case all candidates must first comply with the statutory requirements of A.S.C.A. §8 1.0401- .0414, which include the filing of a petition signed by at least 25 blood members of the title claimed. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

Because a fundamental feature of the customs, culture, and traditional Samoan family organization is that a Samoan family selects its matai, or titular head, resort to the imported procedural framework of the Matai Registration Statute, A.S.C.A. §§ 1.0101 et seq, is to be availed only where the traditional matai selection process has failed to select a new matai in the customary manner. In Re Matai Title Taliaaueafe, 3 A.S.R.3d 225 (Land & Titles Div. 1999).

Where a family meeting has not yet been called, it is premature for family members to file claims under the Matai Registration Statute, A.S.C.A. §§ 1.0101 et seq, with Territorial Registrar's office. In Re Matai Title Taliaaueafe, 3 A.S.R.3d 225 (Land & Titles Div. 1999).

The registration process under the Matai Registration Statute, A.S.C.A. §§ 1.0101 et seq, should not supplant and displace the traditional matai selection process, and the registration process and the Court should be involved only when a family proves unable to reach agreement on a matai after the family has had a meaningful opportunity to thoroughly confront the issue. In Re Matai Title Taliaaueafe, 3 A.S.R.3d 225 (Land & Titles Div. 1999).

There is no matai title dispute for certification to the Land and Titles Division until the Territorial Registrar is first satisfied that a family meeting has been called and held for the purpose of selecting a successor matai according to the traditions of the family and that the family was not able to select a new titleholder. In Re Matai Title Taliaaueafe, 3 A.S.R.3d 225 (Land & Titles Div. 1999).

The premature filing of a claim is not grounds for the extreme action of disenfranchising an eligible heir (even assuming that the claimant had falsely declared that a family meeting had been held for the purpose of selecting a successor to the title in question and that he had been chosen accordingly). In Re Matai Title Taliaaueafe, 3 A.S.R.3d 225 (Land & Titles Div. 1999).

§ 6 Statutory Qualifications

§ 6(1) —General Provisions

Former law that matai be determined on basis of hereditary right has been superceded by legislation stating four considerations for court's determination in selection of title holder. Ioasa v. Aivao, 1 A.S.R. 567.

Former law that matai be determined on basis of hereditary right has been superceded by legislation stating four considerations for court's determination in selection of title holder. Elekana v. Sefe, 1 A.S.R. 573.

Former law that matai be determined on basis of hereditary right has been superceded by legislation stating four considerations for court's determination in selection of title holder. Letomia v. Sekoti, 1 A.S.R. 577.

Codification of regulations provides procedures and considerations for court in determining matai title holder. Lauvai v. Si'itupe, 2 A.S.R. 29.

Former rule that matai should be selected solely on basis of hereditary right has been abolished. Lauvai v. Si'itupe, 2 A.S.R. 29.

Code set forth considerations for court in determination of matai title holder. Tulei v. Valu, 2 A.S.R. 76.

Codification of Regulations sets forth considerations for court in determination of matai title holder. Sueuga v. Laisene, 2 A.S.R. 82.

Codification sets forth considerations for determination of matai title holder. Akeimo v. Mulu, 2 A.S.R. 89.

Former law that matai be determined on basis of hereditary right has been superceded by legislation stating four considerations for court's determination in selection of title holder. Tootoo v. Faaea, 2 A.S.R. 94.

Former law that matai be determined on basis of hereditary right has been superceded by legislation stating four considerations for court's determination in selection of title holder. Taufaasau v. Soloi, 2 A.S.R. 98.

Former law that matai be determined on basis of hereditary right has been superceded by legislation stating four considerations for court's determination in selection of title holder. Aano v. Sitau, 2 A.S.R. 107.

Former law that matai be determined on basis of hereditary right has been superceded by legislation stating four considerations for court's determination in selection of title holder. Tuinei v. Ieliko, 2 A.S.R. 117.

Codification of Regulations established eligibility requirements for matai title. (CAS 81.) Titi v. Suiava, 2 A.S.R. 160.

Codification of Regulations established procedures for determination of matai title holder. (CAS 79.) Titi v. Suiava, 2 A.S.R. 160.

Codification of Regulations provides procedure for selection of matai. (CAS 79.) Simaile v. Lafoa'i, 2 A.S.R. 170.

Court cannot overrule legislative requirement on eligibility of candidate for matai title. Hunkin v. Pio, 2 A.S.R. 233.

Code provides eligibility requirements for matai title holder. (CAS 926.) Hunkin v. Pio, 2 A.S.R. 233.

Code provides for considerations to be made by court in determination of matai title holder. (CAS 933.) Maea v. Alapeti, 2 A.S.R. 255.

Code sets forth considerations for court in determination of matai title holder. Fagafa v. Siuea, 2 A.S.R. 261.

Code sets forth requirements for eligibility to hold matai title. (CAS 926.) Faagata v. Taupo, 2 A.S.R. 271.

Code establishes eligibility requirements for matai title holders. (CAS 926.) Alalamua v. Young, 2 A.S.R. 391.

Code provides requirements for eligibility of candidate for title holder. (CAS 926.) Selusi v. Tasi, 2 A.S.R. 422.

Code provides for considerations to be made by court in determining matai title holder. Selusi v. Tasi, 2 A.S.R. 422.

Code provides eligibility requirements for holding of matai title. (CAS 926.) Sauafea v. Filipo, 2 A.S.R. 477.

Code sets forth considerations to be made by court in determination of matai title holder. (CAS 933.) Sauafea v. Filipo, 2 A.S.R. 477.

Code establishes requirements for registration as matai title holder. (CAS 926.) Stevens v. Tee, 2 A.S.R. 627.

Code prescribes qualifications for holding matai title. (CAS 926.) Siaosi v. Asoau, 3 A.S.R. 293.

Code prescribes law court must follow in determining matai title. (CAS 933.) Siaosi v. Asoau, 3 A.S.R. 293.

Code sets forth considerations for High Court in determination of matai title holder. (CAS 933.) Malaga v. Mase, 3 A.S.R. 518.

Code establishes qualifications and provides procedures for determination of matai title holders. (CAS 933, 926.) Tagoai v. Tuiafono, 4 A.S.R. 252.

Code prescribes qualifications which person must have to be eligible to succeed to matai title. (CAS 6.0101.) Veve v. Faatama, 4 A.S.R. 418.

Code prescribes law which court must follow in determining which one among opposing candidates shall be registered as holder of matai title. (CAS 6.0107.) Veve v. Faatama, 4 A.S.R. 418.

Code sets forth basic qualifications which person must have to be eligible to succeed to matai title. (CAS 6.0101.) Reid v. Talalele, 4 A.S.R. 458.

Code sets forth considerations which shall guide court in determining which of opposing candidates shall be registered as holder of matai title. (CAS 6.0107.) Reid v. Talalele, 4 A.S.R. 458.

Statute sets forth four considerations guiding court in determination of matai title holder. Faagau v. Tulei, 4 A.S.R. 490.

Code establishes eligibility requirements for matai title holders (CAS 6.0101, 6.0107.) Asuega v. Manuma, 4 A.S.R. 616.

Statutory Provision (CAS 6.0104) setting forth requirements for matai title holder applies to every candidate for title—objectors as well as applicant. Asuega v. Manuma, 4 A.S.R. 616.

Code prescribes qualifications of person to be eligible to succeed to matai title. (CAS 6.0101.) Vainini v. Ala, 4 A.S.R. 683.

Code provides four considerations which courts follow in determining who among opposing candidates shall be registered as hilder of matai title. Vainini v. Ala, 4 A.S.R. 683.

In considering statutory criteria for matai titles, court should always be guided by overriding purpose of the statute, which is to preserve Samoan culture. A.S.C.A. § 1.0409. In re Matai Title Ma'ae, 6 A.S.R.2d 75.

Court should interpret statutes dealing with Samoan custom and matai titles so as to minimize the extent to which customary law is modified or overridden by the imported procedural framework. In re Matai Title Ma'ae, 6 A.S.R.2d 75.

Family tradition empowering senior matai to designate holder of a lesser title within the family would, if proven, be relevant to determination by court of whether candidates had hereditary rights to title, family support "as customary in the family," and value of candidates to the family, village, and country. A.S.C.A. § 1.0409. In re Matai Title Ma'ae, 6 A.S.R.2d 75.

The matai-title statute does not give the court the power to retroactively apply the four statutory criteria to events that happened hundreds or thousands of years ago. A.S.C.A. § 1.0409. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

The matai-title statute may not divest any person of a title which was registered before November 1, 1932. A.S.C.A. § 1.0413. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

A family's establishing a "new" matai title for itself was not illegal until 1969, when the matai title registry was closed. A.S.C.A. § 1.0401(b). In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

The High Court will make findings of fact on the statutory criteria in awarding a matai title when the family had an opportunity to reach a consensus but failed to do so. A.S.C.A. § 1.0409. In re Matai Title Atiumaletavai, 21 A.S.R.2d 88.

Although the High Court's matai-title decisions frequently include substantial comparative discussions of title candidates' qualifications under each of the four statutory criteria, the only legal requirement is a written decision containing findings of fact and conclusions of law on each of the four statutory criteria. A.S.C.A. § 1.0409(c); T.C.R.C.P. 52(a). In re Matai Title Atiumaletavai, 22 A.S.R.2d 94.

In a matai-title case, the court is guided by four statutory criteria: (1) best hereditary right; (2) clan support; (3) forcefulness, character and personality, and knowledge of Samoan customs; and (4) value to family, village, and country. A.S.C.A. § 1.0409(c). In re Matai Title Paopaoailua, 24 A.S.R.2d 7.

Matai titles created after the matai-title registration process closed on January 1, 1969, are not legally recognizable. Registration of Matai Title Le'aeno, 24 A.S.R.2d 117.

While some families or matai may still practice the old, autocratic custom, which allows a matai to appoint his own successor, this custom must be viewed under the law as only a relic from a bygone era. In re the Matai Title Iu, 25 A.S.R.2d 127.

Custom in conflict with law must give way. A.S.C.A. § 1.0202; In Re the Matai Title Iu, 25 A.S.R.2d 127.

The language of A.S.C.A. § 1.0409(d) is clear--the trial court shall issue a decision that covers each factor enumerated in A.S.C.A. § 1.0409(c). The word "shall" has traditionally been interpreted as a mandatory direction, inconsistent with the idea of discretion. In re Matai Title Faumuina, 26 A.S.R.2d 1.

Absent any clearly expressed legislative intention to the contrary, the term "shall" is significantly commanding. In re Matai Title Faumuina, 26 A.S.R.2d 1.

A failure to follow the clear meaning of A.S.C.A. § 1.0409(d) results in prejudice to all involved. The legislature has required that the judiciary issue written findings of fact and conclusions of law. The trial court has no discretion to ignore that legislative mandate. In re Matai Title Faumuina, 26 A.S.R.2d 1.

There is nothing in law or custom to prevent reunification of a split matai title; however, reunification is something best left to the evolutionary process of Samoan custom, as opposed to yet another conflicting judicial pronouncement on the issue of split/joint matai titles. Fanene v. Fanene, 26 A.S.R.2d 8.

The matai title Misaalefua is title of paramount stature in the territory. In re Matai Title Misaalefua, 28 A.S.R.2d 106.

There are four criteria to be considered when deciding a matai title: 1) best hereditary right; 2) wish of majority or plurality of the family clans; 3) forcefulness, character, personality and knowledge of Samoan custom; and 4) value of candidate to family, village and country. Lealai v. Aoelua, 1 A.S.R.3d 12 (App. Div. 1997).

The court’s evaluation of the four criteria set forth in A.S.C.A. § 1.0409(c) is decisive in awarding matai titles in contested registration actions. In re Matai Title “Tagoilelagi”, 2 A.S.R.3d 230 (Land & Titles Div. 1998).

A.S.C.A. § 1.0409(c) provides that in a matai title dispute, the criteria to be considered are the best hereditary right; clan

support; forcefulness, character and personality, and knowledge of Samoan customs; and value to family, village, and country. In re Matai Title "I`aulualo", 2 A.S.R.3d 238 (Land & Titles Div. 1998).

Although some matai title controversies have been resolved in favor of the candidate possessing the higher degree of formal education or the greatest disposable income or personal wealth, such cases cannot be interpreted to invariably require the land and titles division to hold that such attributes always outweigh the accomplishments of other candidates, and to establish such broad rules of law would at once frustrate the broad grant of discretion given by the Legislature to the trial court in matai title cases and unduly encroach upon the specific, constitutional powers of the Legislature to preserve and protect the Samoan way of life. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

To determine successor to matai title "Letuli" of Village of Iliili, Court evaluated qualifications of four candidates according to mandated criteria in statutory order of priority: (a) best hereditary right; (b) wish of majority or plurality of family clans; (c) forcefulness, character, and personality, and knowledge of Samoan customs; and (d) value to the family, village and country. In re Matai Title "Letuli", 5 A.S.R.3d 215 (Land & Titles Div. 2001).

Court held that Olo U. Misilagi Letuli should be registered as Letuli of Village of Iliili as he prevailed over other candidates on criterion of personal characteristics and knowledge of Samoan customs, and value of prospective service, while equally entitled by hereditary right along with two other candidates. In re Matai Title "Letuli", 5 A.S.R.3d 215 (Land & Titles Div. 2001).

Under A.S.C.A. § 1.0409(c)(3), evaluation and assessment of candidates is necessarily comparative exercise, varying in emphasis from case to case. Court is statutorily directed to examine personal traits that, in part, appeal to personal observation. However, leadership ability, honesty, education, public service, involvement in church and village affairs, and previous experience as matai are factors which aid in meeting this criterion. In re Matai Title "Mauga", 5 A.S.R.3d 270 (Land & Titles Div. 2001).

In matai title dispute, A.S.C.A. § 1.0409(c) provides that criteria to be considered are best hereditary right; clan support; forcefulness, character and personality, and knowledge of Samoan customs; and value to family, village, and country. In re Matai Title "Manaea", 6 A.S.R.3d 350 (Land & Titles Div. 2002).

As in all matai title succession disputes, court is mandated to follow the four criteria set out in A.S.C.A. § 1.0409(c): (1) best hereditary right; (2) clan support; (3) forcefulness, character and personality, and knowledge of Samoan customs; and (4) value to family, village, and country. In re Matai Title "Puailoa," 7 A.S.R.3d 228 (Land & Titles Div. 2003).

In the trial of *matai* title cases, A.S.C.A. § 1.0409(c) requires the court to be guided by best hereditary right, wish of the clan, forcefulness of character, and value to the family. In re Matai Title "Sialega," 7 A.S.R.3d 238 (Land & Titles Div. 2003).

§ 6(2) —Best Hereditary Right

While court adheres to rule of hereditary right in selection of matai title holder, when two or more candidates have equal rights, court will inquire into general fitness of candidate for title. Malama v. Fepuleai, 1 A.S.R. 560.

Candidate with four times as much family blood as opponent prevails on issue of hereditary right in determination of matai. Sueuga v. Laisene, 2 A.S.R. 82.

Prior decision has established that candidate for matai is descendant of family. Titi v. Suiava, 2 A.S.R. 160.

"Hereditary right" as defined in Sec. 933 of Code means right based on blood relationship and not based on marriage to blood descendant or descent from adopted child. Gagamoe v. Toti, 2 A.S.R. 337.

Although adopted child of matai has legal relation of child to parent, including "rights of inheritance from each other," he does not have hereditary right to title since title belongs to family and not matai. Selusi v. Tasi, 2 A.S.R. 422.

Hereditary right to matai title is based on blood and does not include marriage or adoption. Selusi v. Tasi, 2 A.S.R. 422.

Under Samoan custom, matai will not be selected unless he has some hereditary right to title. Malaeola v. Nu'u, 2 A.S.R. 549.

Right to claim matai title once held by ancestor is sacred. In re Matai Title Salave'a, 4 A.S.R. 44.

Prior holder of matai title does not have 100% hereditary right to title by virtue of this fact alone. Ailua Maga v. Ativalu Tago, 1955, Civil, insofar as it holds to the contrary, is overruled. In re Matai Title Alalamua, 4 A.S.R. 93.

Blood sons of former matai prevail equally over grandson on issue of hereditary right in determination of matai title holder. Veve v. Faatama, 4 A.S.R. 418.

Candidate for matai title with 1/8 blood of previous title holder prevails over candidate with 1/32 blood on issue of hereditary right. Reid v. Talalele, 4 A.S.R. 458.

Blood daughter prevails over grandson on issue of hereditary right to matai title under Samoan custom. (CAS 6.0107.) Tuaolo v. Tutogi, 4 A.S.R. 488.

Person who is grandson of former title holder prevails over person who is great-grandson on issue of hereditary right. Faagau v. Tulei, 4 A.S.R. 490.

Son of former matai title holder prevails over great-grandson in priority consideration of hereditary right for courts in determining matai title holder because son has greater blood relationship. Vainini v. Ala, 4 A.S.R. 683.

A candidate for a matai title, who previously held that title, but was removed by petition of family, has a 100% hereditary right to that title. Fesili v. Ativalu, 4 A.S.R. 688.

Applicant for matai title has no hereditary right to title because his uncle once held title. Reed v. Polone, 4 A.S.R. 726.

The “hereditary right” in a matai case is to be traced back to the original title holder. A “clan” is created by each of the offspring of the original titleholder who marries and has children. In re Matai Title “Sotoa,” 2 A.S.R.2d 15 (Land & Titles Div. 1984).

Where there was insufficient evidence to resolve dispute among candidates for matai title about the identity of the original titleholder, and where recent trial court opinion announcing a rule that ancestry of matai title candidates should be traced to the original titleholder had been criticized in subsequent opinions of appellate court, the trial court in a later case would attempt to calculate each candidate's ancestry both to the nearest titleholder and to the titleholder who was the nearest common ancestor of the candidates. In re Matai Title Fano, 4 A.S.R.2d 148.

Rule of heredity that arose in previous trial court decision was not binding precedent when rule resulted from "judicial notice" of Samoan custom that ignored stark variation among different families' practices, rule was stipulated by the parties rather than briefed, argued, and decided, and the rule had been criticized in subsequent opinions of the appellate court. In re Matai Title Tauaifaiva, 5 A.S.R.2d 13 (Land & Titles Div. 1987).

When different sides of a family reasonably differ on the identity of the original titleholder, court would assess hereditary entitlement of matai title contestants according to each party's closest proven relation to a previous titleholder. A.S.C.A § 1.0409(c). In re Matai Title Tauaifaiva, 5 A.S.R.2d 13 (Land & Titles Div. 1987).

When neither claimant to a contested matai title sustained his burden of proving superior hereditary entitlement, trial court's determination that both were related to the title by heritage but that neither prevailed on that issue was not an abrogation of the court's duty to make "findings." In re Matai Title Tauaisafune, 6 A.S.R.2d 59.

Since a matai title ordinarily has many successive holders, evidence concerning a person known by a particular matai name in 1912 should not be assumed to apply to a person who was called by the same name by a witness testifying in 1987. Satele v. Uiagalelei, 8 A.S.R.2d 97.

A reference to one person as the "sister" of another is not contradicted by evidence that they did not have identical ancestors, since in Samoan custom the terms "brother" and "sister" frequently refer to relatives of the same generation whether or not they are born of the same mother and father. Satele v. Uiagalelei, 8 A.S.R.2d 97.

Candidate for a matai title who best satisfied the statutory criterion of hereditary right to the title did so by showing the shortest route of descent from a past title holder, even though such descent was via an adopted side of the family. A.S.C.A. § 1.0409(c). In re Matai Title Iuli, 14 A.S.R.2d 116.

The "Sotoa Rule," whereby the blood relationship of matai candidates is calculated not to the nearest titleholder in a candidate's genealogy but to the original titleholder, while criticized and not often used, may nevertheless be appropriate in certain cases. In re Matai Title Tuiteleleapaga, 15 A.S.R.2d 90.

A blood right to a matai title is based on direct descent from the title he claims; no decisions of this Court support a blood right to a matai title solely based on "blood descent" from the titleholder's sister, nor is such consistent with any of the Court's formulae employed to determine "hereditary right." A.S.C.A. § 1.0409(c)(1). In re Matai Title Mulitauaopele, 16 A.S.R.2d 63.

In construing the customary and statutory requirement of "hereditary right" to matai titles, courts have generally employed two formulas to calculate such right: direct descent from the original title holder and direct descent from the nearest title holder. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

A statement regarding "hereditary right" in matai-title cases involving one, unrelated branch of a family did not have res judicata effect as to the other branch of the family when the question of the "hereditary right" of the latter was not before the Court and no member of the latter family was a party to the those cases. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

Adoption itself does not confer a hereditary right to a matai title; in tracing a candidate's ancestry to the nearest title holder, the formula applied in the vast majority of cases, only blood relationships count. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

The statutory "best hereditary right" criterion does not require the court to extinguish a family line whenever it appears that a matai obtained his title, prior to the enactment of the statute, for a reason other that blood descent. A.S.C.A. § 1.0409. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

Although the exception, ancient Samoan traditions abound with stories of matai who obtained their titles for reasons other than blood descent from a previous title holder, such as "igagato" (conferral as a reward) and "matu`upalapala" ("commission" to avoid the extinction of the line). In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

Since the statutory adoption of the "hereditary right" criterion, the court is not free to award a disputed matai title to a person who is not descended from a previous titleholder. A.S.C.A. § 1.0409. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

The "Sotoa rule" for determining the best hereditary right of matai candidates may sometimes be appropriate for clans which have not held the title for several generations but whose members, according to the tradition in many families, remain entitled to a fair chance at each new vacancy and perhaps even to some affirmative credit on the theory that each clan should have its turn at the title. In re Matai Title Laie, 18 A.S.R.2d 35.

For the limited purpose of calculating a matai candidate's blood relationship to a title, relation to a former titleholder who never registered the title will be accepted under the limited conditions where: 1) there was no indication that the titleholder was not recognized by the entire family; 2) the titleholder held the title for only three or four years; 3) the idea of title registration was a fairly new practice at the time (1920's or 1930's); 4) transportation between Tutuila (where registration was required to be filed) and Manu`a (where the title was located) was difficult and irregular; and 5) there was no indication of any legal obstacle to his registration of the title. In re Matai Title Laie, 18 A.S.R.2d 35.

A sister of the last titleholder was a generation ahead of his daughter and so prevailed on the hereditary-right criterion under the Sotoa rule. In re Matai Title Fonoti, 21 A.S.R.2d 113.

Determining best hereditary right is traditionally guided by the percentage of matai-title candidates' blood relationship to a former titleholder, though in unusual cases it may be appropriate to calculate blood relationships from the original titleholder or the nearest common ancestor. A.S.C.A. § 1.0409(c)(1). Registration of Matai Title Le'aeno, 24 A.S.R.2d 117.

This factual determination of "Best Hereditary Right" is traditionally guided by the percentage of the candidates' blood relationship to a former holder of the matai title. In re Matai Title Leano, 25 A.S.R.2d 4.

In circumstances in which family history is by and large harmonious, the "Sotoa rule" is the less arbitrary method of assessing hereditary entitlement. In re Matai Title Lolo, 25 A.S.R.2d 175.

The traditional rule determines hereditary rights based on a candidate's direct relationship to his closest ancestor holding the title. In re the Matai Title Tuaolo, 27 A.S.R.2d 97.

The "Sotoa rule" is inappropriate where the candidates do not agree on the identity of the original titleholder or any common ancestor. In re Matai Title Tuaolo, 28 A.S.R.2d 137.

The “Sotoa Rule” determines best hereditary right based upon the blood relationship of the candidates to the original titleholder. Misaalefua v. Hudson, 1 A.S.R.3d 23 (App. Div. 1997).

The “Sotoa Rule” should not always be used, but is appropriate where the family traditionally traces the blood relationship back to the original titleholder, where clans of the family have not held the title for several generations, or where the family history is largely harmonious. Misaalefua v. Hudson, 1 A.S.R.3d 23 (App. Div. 1997).

In case where family history was unanimous as to the original titleholder, use of the “Sotoa Rule” was less arbitrary than other methods and was appropriate. Misaalefua v. Hudson, 1 A.S.R.3d 23 (App. Div. 1997).

There is no bright line rule regarding de minimus blood relationships. A 1/128 blood relationship is not de minimus when the “Sotoa Rule” is used. Misaalefua v. Hudson, 1 A.S.R.3d 23 (App. Div. 1997).

Where candidates for a matai title disagree over the identities of the original titleholder and most of the subsequent titleholders, the court follows the traditional rule for determining the best hereditary right by examining each candidate’s closest relationship to a previous titleholder. In re Matai Title “Tagoilelagi”, 2 A.S.R.3d 230 (Land & Titles Div. 1998).

Where all candidates for a matai title have a harmonious family history, the court applies the Sotoa rule in calculating the best hereditary right and looks to the earliest generation descendant. In re Matai Title “I`aulualo”, 2 A.S.R.3d 238 (Land & Titles Div. 1998).

Where candidates were at odds on family history and unable to agree on identity and lineage or former titleholders, Court properly relied on traditional rule, looking to the candidates’ relationships to the previous titleholder. In Re Matai Title Tagoilelagi, 3 A.S.R.3d 66 (App. Div. 1999).

The traditional rule for judicial determination of hereditary rights mathematically measures candidates' blood connection to a former titleholder. In re Matai Title "Galea`i", 4 A.S.R.3d 284 (Land & Titles Div. 2000).

In determining best hereditary right, the "Sotoa rule" looks at the number of generations candidates are removed from the original holder, or at least from a common ancestral holder, of the title. In re Matai Title "Galea`i", 4 A.S.R.3d 284. (Land & Titles Div. 2000).

A common, customary way of identifying clans among Samoan families is by looking at the children of the original titleholder. In re Matai Title "Galea`i", 4 A.S.R.3d 284 (Land & Titles Div. 2000).

Each candidate is blood member of Letuli family and is therefore qualified under hereditary right criteria to hold "Letuli" title. Nonetheless, to compare relative strength of candidates' blood connection to title at issue, Court has traditionally applied judicial rule that distance of each candidate's relationship is measured from closest preceding titleholder in candidate's lineage. In re Matai Title "Letuli", 5 A.S.R.3d 215 (Land & Titles Div. 2001).

In matai title dispute cases, Sotoa rule (candidate's blood relationship determined by reference to relationship to original titleholder, not by descent to nearest past titleholder) is not of general application, particularly when family genealogical understanding is contentious and when family history suggests contrary tradition and understanding of entitlement. In re Matai Title "Mauga", 5 A.S.R.3d 270 (Land & Titles Div. 2001).

Using traditional formula, hereditary entitlement is determined by percentage of candidate's blood relationship to former titleholder, as opposed to original titleholder. In re Matai Title "Mauga", 5 A.S.R.3d 270 (Land & Titles Div. 2001).

Applying traditional formula for evaluating and measuring heredity, candidate showing shortest descent path to past titleholder prevails. In re Matai Title "Manaea", 6 A.S.R.3d 350 (Land & Titles Div. 2002).

On issue of first criterion (best hereditary right), where court received conflicting testimony as to whether candidate was actually related by blood to previous title holder, court resolved dispute in favor of candidate noting that she was raised as a family member, grew up in family's village, lived on family's property, and participated in family affairs in a manner consistent with family entitlement. In re Matai Title "Ava," 7 A.S.R.3d 211 (Land & Titles Div. 2003).

Court has resorted to one of two formulas to calculate the statutory and customary requirement of "hereditary right": (1) direct descent from the original titleholder which may be used when family history is largely harmonius; and (2) direct descent from the nearest titleholder, which has been used by the vast majority of cases. In re Matai Title "Puailoa," 7 A.S.R.3d 228 (Land & Titles Div. 2003).

Hereditary right, as calculated according to the traditional method, calculates degrees of relationship to the title through the shortest descent route to a past titleholder. In re Matai Title "Sialega," 7 A.S.R.3d 238 (Land & Titles Div. 2003).

The "*Sotoa* rule" which measures entitlement by evaluating descent from the original titleholder, but this rule is only workable under circumstances where family history is by and large harmonious. In re Matai Title "Sialega," 7 A.S.R.3d 238 (Land & Titles Div. 2003).

§ 6(3) —Clan Support

In determining which candidate family wishes to assume matai title, Court will look not only to which candidate has the most names on petition but also to which candidate has been selected at family meetings. Ioasa v. Aivao, 1 A.S.R. 567.

While total number of names on petition is important for purposes of evidencing which matai candidate has wish of family, Court also places significance on number of petitioners who actually live in village to which matai name belongs. Ioasa v. Aivao, 1 A.S.R. 567.

In determining which candidate family wishes to assume matai title, court will look not only to see which candidate has the most names on petition but also to which candidate has been selected at family meetings. Elekana v. Sefe, 1 A.S.R. 573.

Children under eight years old who signed petition expressing preference for candidate for matai title should be discounted. Lauvai v. Si'itupe, 2 A.S.R. 29.

Members of family, who allegedly signed petition expressing preference for candidate for matai title but who are residing in Hawaii and concerning whom there is no proof that signatures were authorized, must be discounted. Lauvai v. Si'itupe, 2 A.S.R. 29.

Child under ten does not have education, experience and mental development to express preference for matai on petition. Tulei v. Valu, 2 A.S.R. 76.

Children eight years of age or under who signed petition expressing preference for candidate for matai title should be discounted. Aano v. Sitau, 2 A.S.R. 107.

Fact that candidate has support of majority of family in bid for title is not alone sufficient as candidate must meet other requirements of the law. Utu v. Tu'itu'I, 2 A.S.R. 184.

Code requirement that applicant, to be eligible for title, must be "chosen by his family for the title" requires that applicant be a direct blood descendant of the family who holds the title sought. Utu v. Tu'itu'I, 2 A.S.R. 184.

Child of fourteen is considered of sufficient age to sign petition selecting candidate for matai. Maea v. Alapeti, 2 A.S.R. 255.

Signers of matai petition must be over fourteen years of age. Kosi v. Viliamu, 2 A.S.R. 349.

"Wish of majority or plurality of family" means just that, and not "wish of majority or plurality of family residing in village to which title is attached." Eneliko v. Mano, 2 A.S.R. 393.

Signatures on petition for matai title holder which represent persons not living in Samoa and are without authorization cannot be considered. Selusi v. Tasi, 2 A.S.R. 422.

Where Samoan family selects matai, it frequently passes title from branch to branch as matter of fairness and to promote harmony in family. Saufea v. Filipo, 2 A.S.R. 477.

Where names on petition for matai title are also on another petition for another candidate, names will not be counted for either candidate. Sauafea v. Filipo, 2 A.S.R. 477.

Where evidence indicates that signatures on petition for selection of matai title holder are in same handwriting, such signatures should not be counted. Sauafea v. Filipo, 2 A.S.R. 477.

Persons related to man who holds matai title, but not related to title nor rendering service to the title, may not be counted in determining wish of family. Gi v. Maaele, 2 A.S.R. 506.

Members of spouse's clan are not members of family for purposes of voting for matai. Mea v. Talio, 2 A.S.R. 528.

Claim of withdrawing candidate for matai title that his supporters favored another candidate is not satisfactory proof thereof. Siaosi v. Asoau, 3 A.S.R. 293.

Contract among family members to alternate matais among various branches of family would not be binding on future generations since title belongs to all of family and not any branch tereof. Tiumalu v. Tiumalu, 3 A.S.R. 502.

Matai title holder need not be blood member of family of which he is matai, but those members of family who indicate their wish must be blood members, and this means that preferences of persons married into family may not be considered by court in determination of which candidate has the majority or plurality of family support. Malaga v. Mase, 3 A.S.R. 518.

Family member may only represent his clan at family meeting to select matai. In re Matai Title Tupua, 4 A.S.R. 53.

All members of Samoan family enjoy equal rights and privileges under clan system—one clan cannot be "favored" over others in selecting matai. R.C.A.S. 6.0107. In re Matai Title Faiivae, 4 A.S.R. 71.

Although R.C.A.S. 6.0104 requires twenty-five (25) family members to sign petition supporting matai title claim, this is not mandatory if affidavit discloses family has less than twenty-five (25) qualified members. R.C.A.S. 6.0104. In re Matai Title Fagaima, 4 A.S.R. 83.

Actual notice of matai title claim to two authentic clans of family and selection of claimant at meetings attended by two clans meets criteria of 1 A.S.C. 751(3) that claimant be selected by family. In re Matai Title Lea'eno, 4 A.S.R. 152.

1 A.S.C. 753 requires that 25 family members, listing names and ages, support matai title application. If list submitted to court meets statutory criteria, it is harmless error that list sent to objector omits ages of signatories. In re Matai Title Lea'eno, 4 A.S.R. 152.

Where there are number of instances where both husband and wife sign petition favoring matai candidate, court will consider it probable that some signers are not blood members of family since under Samoan custom. Person marries outside his clan, and husband and wife should be from different families. Tagoai v. Tuiafono, 4 A.S.R. 252.

Clan is a group of people who are descended from a common ancestor. Filipo v. Maiava, 4 A.S.R. 313.

Samoan custom appears to favor defining clan as all descendants of each of children of first title holder rather than all descendants of each and every title holder. Filipo v. Maiava, 4 A.S.R. 313.

When it becomes necessary, court will give definite interpretation to word "clan" as used in statute until such time as legislature clarifies definition. Reid v. Talalele, 4 A.S.R. 458.

Legislature has not defined "clan" as used in consideration of wish of majority of clans in determination of matai title holder. Reid v. Talalele, 4 A.S.R. 458.

Court will discount of who among candidates for matai title is favored by majority of clans where there is dispute as to definition of clans; where two parties claim there is only one clan; and where court can arrive at definite selection without necessity of defining "clan." Reid v. Talalele, 4 A.S.R. 458.

Where majority of family favor objector as title holder, and only applicant and her children prefer applicant, objector

prevails on issue of wish of majority of family in determination of matai under Samoan custom. (CAS 6.0107.) Tuaolo v. Tutogi, 4 A.S.R. 488.

Under Samoan custom, individual unanimously selected by family to hold matai title is candidate for title. Tuaolo v. Tutogi, 4 A.S.R. 488.

Where there is much contradictory testimony as to wish of majority of clans in family as to who should be matai title holder, court may find candidates rank equally on this issue. Faagau v. Tulei, 4 A.S.R. 490.

Statutory requirement (CAS 6.0107) that Court consider "wish of the majority or plurality of those clans of the family as customary in that family" means that matai candidate must have full support of at least two out of three clans in three clan family. Asuega v. Manuma, 4 A.S.R. 616.

If no candidate has support of majority or plurality of clans in family, Court will disregard this issue in choosing matai. Asuega v. Manuma, 4 A.S.R. 616.

Where court finds clans have selected one candidate as matai title holder, he prevails over opponents with respect to wish of majority of clans. Vainini v. Ala, 4 A.S.R. 683.

If neither candidate for matai title has support of majority or plurality of clans, Court will rank candidates equally and disregard this issue in making decision. Fesili v. Ativalu, 4 A.S.R. 688.

If family chooses one applicant for matai title and presents kava cup to symbolize selection, and only other candidate admits family failed to choose him, former prevails on issue of family preference. Reed v. Polone, 4 A.S.R. 726.

In some villages, the bearer of ava cup for the village council is recognized as a matai. Moea`i v. Te`o, 9 A.S.R.2d 107.

Although designation by a living matai of his successor has its place in the customs of Samoa, it has always been understood that the whole family has the right to decide whether to accept the designee or to choose someone else. In re Matai Title Tauala, 14 A.S.R.2d 83.

Difficulty of assessing family or clan support for candidates for a matai title is compounded by the fact that Samoan families traditionally make decisions not by pure majoritarian democracy but by consensus. A.S.C.A. § 1.0409. In re Matai Title Tauala, 14 A.S.R.2d 83.

Where one of the competing candidates has illegally undergone traditional ceremonies which made him the matai in the eyes of many family members, some of these members might regard themselves as bound to support him whether or not they believe he is or will be a good matai; it is thus practically impossible to make a fair and accurate comparison of his support with that of a candidate who has not illegally seized such a strategic advantage. A.S.C.A. §1.0409. In re Matai Title Tauala, 14 A.S.R.2d 83.

No candidate for a matai title best satisfied the statutory criterion of the support of the clans where the candidates disagreed on the identities of the original and subsequent titleholders and family meetings considering the candidates ended inconclusively. A.S.C.A. § 1.0409(c). In re Matai Title Iuli, 14 A.S.R.2d 116.

The Court must make its assessment of family support for a matai candidate as of the time of trial. In re Matai Title Tauala, 15 A.S.R.2d 65.

When two branches of a family are not related to each other by blood, it would be contrary to Samoan custom for them to meet together as one family to choose a single title holder with pule over both families' lands and internal affairs. In re Matai Title Mulitauaopele, 16 A.S.R.2d 63.

Neither law nor Samoan custom forbids the continued existence of two unrelated families, which came into being after the original line of direct descendants from the first titleholder died out. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

Although having the same surname, families which are unrelated by blood and own separate lands do not have the option of participating in affairs of the other families or contending for their matai titles. In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

The number of individual supporters among a family's clans does not establish a majority or plurality of clan support for a matai-title candidate but is only one factor indicating support in those clans. In re Matai Title Atiumaletavai, 22 A.S.R.2d 94.

Clan support for matai-title candidates is traditionally measured by consensus and not by a mere numerical majority. A.S.C.A. § 1.0409(c)(2). Registration of Matai Title Le'aeno, 24 A.S.R.2d 117.

Clan support for a matai title can not be evaluated by counting heads and is traditionally measured by consensus. In re Matai Title Leano, 25 A.S.R.2d 4.

Presentation of the kava cup by family members, which included all but two of the claimants who sought registration of the title, is significantly indicative of family support favoring presentee. In re Matai Title Lolo, 25 A.S.R.2d 175.

Clans customarily consist of the lineal descendants of the original titleholder's children and take each such child's name. In re the Matai Title Tuaolo, 27 A.S.R.2d 97.

There are four customary clans of the Misaalefua family, namely: Agafala, Vaepala, Tuimalie, and Faliu. In re Matai Title Misaalefua, 28 A.S.R.2d 106.

A tally of signatures does not provide proof of clan support for a matai candidate. In re Matai Title Misaalefua, 28 A.S.R.2d 106.

Trial Court's determination that there was no majority support for any one candidate was not clearly erroneous where there was sufficient evidence to support such conclusion. Misaalefua v. Hudson, 1 A.S.R.3d 23 (App. Div. 1997).

Trial court should follow the traditional rule, and determine clans based upon the children of the original title holder. Tuaolo v. Fruean, 1 A.S.R.3d 33 (App. Div. 1997).

The results of family meetings held to deliberate on and select the successor to a matai Tagoilelagi title are far more important to the clan wish issue under A.S.C.A. § 1.0409(C)(2) than the number and names of the clans. In re Matai Title "Tagoilelagi", 2 A.S.R.3d 230 (Land & Titles Div. 1998).

Where a matai title dispute involves multiple family clans, the support of the majority or plurality of the clans may be considered in evaluating the family support of a candidate. In re Matai Title "Tagoilelagi", 2 A.S.R.3d 230 (Land & Titles Div. 1998).

Where claimants' candidacies in a matai title dispute are not presented to the assembled family for consideration, they can lay no claims to family support, but where a claimant's candidacy is presented to the family and is unanimously endorsed by family consensus, such candidate will prevail on the issue of clan support. In re Matai Title "I`aulualo", 2 A.S.R.3d 238 (Land & Titles Div. 1998).

Where trial court determined that matai candidate prevailed on the "support of the majority or plurality of the family's claims" without addressing the number and identity of the clans in existence, it committed clear error as it was required to determine the "number, identity, and preference of the clans" pursuant to A.S.C.A. § 1.0409(d). In Re Matai Title Tagoilelagi, 3 A.S.R.3d 66 (App. Div. 1999).

To determine clan support, the court does not look to numerical majorities but traditional rules of consensus. In Re Matai Title Tagoilelagi, 3 A.S.R.3d 66 (App. Div. 1999).

Even if there is but one clan in the family, the Court will still not consider majority opinion. In Re Matai Title Tagoilelagi, 3 A.S.R.3d 66 (App. Div. 1999).

If there is no consensus around one candidate, the court should disregard the clan support criterion. In Re Matai Title Tagoilelagi, 3 A.S.R.3d 66 (App. Div. 1999).

The concept of "clans" is not defined in the statutes governing matai titles. In re Matai Title "Tagoilelagi", A.S.C.A. § 1.0404(c)(2). 5 A.S.R.3d 225 (Land & Titles Div. 2001).

Clan identity must be determined by the particular family's current traditions. In re Matai Title "Tagoilelagi", 5 A.S.R.3d 225 (Land & Titles Div. 2001).

Samoan customs are fluid, varying from family to family, and evolving from time to time within each family. In re Matai Title "Tagoilelagi", 5 A.S.R.3d 225 (Land & Titles Div. 2001).

When claim to family support was based on family meetings that were sub-family gatherings, not meetings of whole family, neither candidate enjoyed total support of family's two clans. In re Matai Title "Manaea", 6 A.S.R.3d 350 (Land & Titles Div. 2002).

For purposes of determining the clan's wishes, a "clan" is a group of people descendant from a common ancestor. In re Matai Title "Sialega," 7 A.S.R.3d 238 (Land & Titles Div. 2003).

§ 6(4) —Forcefulness, Character & Personality, Knowledge of Customs

Court takes judicial notice of reputation of candidates for high names as shown by their acts and records. Malama v. Fepuleai, 1 A.S.R. 560.

Age is an important consideration in determining which matai candidate is better qualified from standpoint of character and forcefulness. Ioasa v. Aivao, 1 A.S.R. 567.

Cutting copra, collecting tapa cloths for sale and experience in building houses are items tending to show forcefulness, character and personality by way of industry. Elekana v. Sefe, 1 A.S.R. 573.

Candidate with superior education has greater leadership capacity and thus better qualified on grounds of character, forcefulness and personality. Elekana v. Sefe, 1 A.S.R. 573.

Fact person had difficulties when Samoa was first ceded to United States should not be judged by standards of Western Civilization in consideration of character of candidate for matai title. Tulei v. Valu, 2 A.S.R. 76.

Matai who does not pay taxes on time and has to be brought in court is not setting right example for other taxpayers in family. Tulei v. Valu, 2 A.S.R. 76.

Court will consider whether any candidate has been convicted of a crime in determining prevailing candidate with regard to character, forcefulness, personality and leadership. Tootoo v. Faaea, 2 A.S.R. 94.

Candidate who has lived more years is a more experienced man and for this reason may prevail on the issue of forcefulness, character, personality and leadership. Taufaasau v. Soloi, 2 A.S.R. 98.

Candidate who lives with family is more familiar with family needs and members and is thus better qualified to assume leadership of family. Aano v. Sitau, 2 A.S.R. 107.

Candidate who has committed crime and has troublesome character cannot command respect of family and consequently his capacity for leadership will be limited. Tuinei v. Ieliko, 2 A.S.R. 117.

Candidate who has greatest income is in better position financially to assist family in times of difficulty or disaster and therefore more able to provide family leadership. Tuinei v. Ieliko, 2 A.S.R. 117.

Candidate whose family support comes from members who do not live in village to which name belongs and who does not live in such village and who is unfamiliar with family affairs is not in good position to assume leadership of family. Tuinei v. Ieliko, 2 A.S.R. 117.

From leadership standpoint, candidate in prime of life and good health is preferable to older candidate whose health is poor. Tuinei v. Ieliko, 2 A.S.R. 117.

"Character" of applicant for matai title means character at time of hearing and not character hoped for but by no means assured at some indefinite future time. Kosi v. Viliamu, 2 A.S.R. 349.

Candidate with superior practical experience may prevail over younger candidate with greater formal education. Atoa v. Meredith, 3 A.S.R. 159.

Character, forcefulness, personality, knowledge of Samoan customs, demeanor and happy personality make matai candidate more forceful with family than dour personality and is thus preferable. Scanlan v. Tuiasosopo, 4 A.S.R. 156.

Matai title applicant who on witness stand had chief in audience signal answers to him showed weakness and lack of character. Filipo v. Maiava, 4 A.S.R. 313.

In determining which candidate for matai title has greatest forcefulness, character, personality and knowledge of Samoan custom, court will consider demeanor, personality, presence of mind, clarity, speed and correctness with which answers are given, self-confidence, and other qualities reflected from speech and behavior of candidate. Reid v. Talalele, 4 A.S.R. 458.

Knowledge of English, education, kind of employment and responsibility, criminal record and familiarity with Samoan customs are considerations for court in determining matai title holder. Faagau v. Tulei, 4 A.S.R. 490.

Observation of personality in court of candidate for matai title holder is method of determining forcefulness, character, personality and knowledge of Samoan customs. Faagau v. Tulei, 4 A.S.R. 490.

In choosing matai candidate, Court will consider under third and fourth issues of CAS 6.0107: forcefulness, character, personality, knowledge of Samoan customs, value to family, village and country, personal demeanor, presence of mind, clarity, speed and correctness of answers, candidness, ability to withstand cross-examination, education, self-confidence, speech and behavior. Asuega v. Manuma, 4 A.S.R. 616.

Hearing testimony on character and background and observing personalities in court room enables court to select who of competing candidates for matai title holder has greatest forcefulness, personality and knowledge of Samona customs. Vainini v. Ala, 4 A.S.R. 683.

Candidate for matai title who lied under oath about his convictions by military tribunals, and who had deliberately violated numerous court orders, would not prevail on the statutory criterion of forcefulness, character, personality, and knowledge of Samoan custom. A.S.C.A. § 1.0409. In re Matai Title Tauala, 14 A.S.R.2d 83.

Candidate for a matai title who best satisfied the statutory criterion of forcefulness, character, personality, and knowledge of Samoan custom did so based on his longterm experience as a comparably ranked titleholder and administrator, which familiarized him with Samoan custom and enhanced his administrative and leadership skills and his ability to fulfill the responsibilities and duties of the title. A.S.C.A. § 1.0409(c). In re Matai Title Iuli, 14 A.S.R.2d 116.

Regarding the criterion of the forcefulness, character, and personality of a matai-title candidate and his knowledge of Samoan customs, factors considered include leadership ability, honesty, education, public service, involvement in church and village affairs, and previous experience as a matai. A.S.C.A. § 1.0409(c)(3). Registration of Matai Title Le'aeno, 24 A.S.R.2d 117.

Leadership ability, honesty, education, public service, involvement in church and village affairs, and previous experience as a matai are some of the factors which aid in meeting the criterion of "Forcefulness, Character, and Personality; Knowledge of Samoan Customs." In re Matai Title Leaeno, 25 A.S.R.2d 4.

Such qualities as "demeanor, personality, presence of mind, the clarity speed and correctness with which the answers were given, the self-confidence and other qualities reflected from speech and behavior," which go towards the issue of forcefulness and personality. In re Matai Title Te'o, 25 A.S.R.2d 101.

Poor health and advanced age weigh against a candidate on the consideration of forcefulness and personality. In re Matai Title Te`o, 26 A.S.R.2d 101.

Age is a factor to consider in determining knowledge of Samoan customs but is no guarantee of supremacy. In re Matai Title Tualolo, 28 A.S.R.2d 137.

In evaluating forcefulness, character and personality, and knowledge of Samoan customs in a matai title dispute, the court will consider a candidate's age, work history, prominence in the community, personality, leadership ability, and health. In re Matai Title "I`aulualo", 2 A.S.R.3d 238 (Land & Titles Div. 1998).

That a paramount chief breaks the law by bestowing an unregistered matai title within his family does not legally excuse the person using that prohibited title from the application of A.S.C.A. § 1.0414 which makes certain conduct in the use of such a title a misdemeanor. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

A prior criminal conviction, especially an infamous one or one involving moral turpitude, would likely prove fatal to a candidate's favorable assessment as to character, but prior statutes which automatically disqualified certain convicted felons from registering matai titles have been repealed and not reenacted, and this statutory history must be construed as reflecting the Legislature's intent to allow the panel of associate judges in matai title cases broad discretion to weigh all attributes—both positive and negative--in evaluating each candidate's character. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

Where matai candidate received favorable decision from family, but sought reconciliation with other candidate before offering title for registration, such actions illustrated conciliatory character of candidate and personal trait valuable under third prong of statutory test. In re Matai Title "Utofili", 6 A.S.R.3d 347 (Land & Titles Div. 2002).

Court may look to demeanor; personality; presence of mind; the clarity, speed and correctness with which answers were given; and self-confidence and other qualities reflected from speech and behavior in assessing personal attributes. In re Matai Title "Manaea", 6 A.S.R.3d 350 (Land & Titles Div. 2002).

When evaluating forcefulness of character, court compares personal attributes and achievements demonstrating these attributes, in part, on personal observation of each candidate while on the witness stand. In re Matai Title "Puailoa," 7 A.S.R.3d 228 (Land & Titles Div. 2003).

When evaluating forcefulness of character, the court can look to personal demeanor, presence of mind, the clarity, speed, and correctness with which answers were given, candidness, the ability to stand up to rigorous cross-examination, the education, the self-confidence, and other qualities which are reflected from the speech and behavior of the candidates, matters which can be assessed only from the personal observation of each individual candidate. At the same time, the court will also look to objective indices such as leadership ability, honesty, education, public service, and involvement in church and village affairs. In re Matai Title "Sialega," 7 A.S.R.3d 238 (Land & Titles Div. 2003).

Where candidate demonstrated humility, maturity, thoughtfulness and respect for the family, and did not pursue his own personal ambitions or employ maneuvering, tactics, or strategy to attain matai title, but rather concentrated on advancing the family's perceived desires, candidate was most deserving with regard to the character and personality aspects of the third criterion. In re Matai Title "Le'i," 7 A.S.R.3d 244 (Land & Titles Div. 2003).

§ 6(5) —Value to Family, Village and Country

Candidate for matai who spends half of time in village probably is better acquainted with members of family, their affairs and their needs than candidate who rarely visits village. Tulei v. Valu, 2 A.S.R. 76.

Court considers industry in making copra and exporting Samoan curios in consideration of value to government in determination of matai title holder. Tulei v. Valu, 2 A.S.R. 76.

Candidate for title who lives in village of family is more familiar with needs and affairs of family members than candidate who has never lived in village. Sueuga v. Laisene, 2 A.S.R. 82.

In consideration of value of matai to government, court looks for ability to handle family affairs. Sueuga v. Laisene, 2 A.S.R. 82.

Candidate who produces more wealth and possesses special skills such as carpentry is a good matai for a large family and therefore an asset to the Government. Tootoo v. Faaea, 2 A.S.R. 94.

A more experienced candidate is better qualified to handle family affairs and the better a matai handles family affairs, the

more valuable he is to the Government. Taufaasau v. Soloi, 2 A.S.R. 98.

Candidate who lives with family is more familiar with family needs and members and is thus better qualified to assume leadership of family. Aano v. Sitau, 2 A.S.R. 107.

Matai who lives with family is able to see that family plantations are kept up and that family members live in peace and is thus more valuable to the Government. Aano v. Sitau, 2 A.S.R. 107.

Fact that candidate wears European clothing while working does not count against him in selection of matai. Tuinei v. Ieliko, 2 A.S.R. 117.

Candidate who has support of most family members is more able to unite family and prevent dissension and thus is more valuable to family and Government. Tuinei v. Ieliko, 2 A.S.R. 117.

Candidate who speaks English is more valuable to Government for purposes of Government dealings with family. Tuinei v. Ieliko, 2 A.S.R. 117.

Candidate who brings in most money from sources outside Samoa is more valuable to Government. Tuinei v. Ieliko, 2 A.S.R. 117.

Candidate skilled in trade is more valuable to Government. Tuinei v. Ieliko, 2 A.S.R. 117.

Consideration by court as to which candidate for matai title is of greatest value to government includes his ability to handle affairs of family, approval of family as determined by number petitioning for matai, quality of goods produced by him, and lack of criminal record. Maea v. Alapeti, 2 A.S.R. 255.

Matai who lives away from family cannot look after family affairs as well as if he lived with family, and this is important consideration in determining which candidate has greatest capacity for leadership. Fagafa v. Siuea, 2 A.S.R. 261.

Value of matai to Government may be measured to considerable extent by quantity of goods produced by him. Fagafa v. Siuea, 2 A.S.R. 261.

Candidate for matai title who is of most value to Government is one who will be able to weld family into peaceable and happy unit, who is good leader, who is respected by members of family, and who has good character. Kosi v. Viliamu, 2 A.S.R. 349.

Matai title candidate who works for Government in responsible position is of more value to Government than candidate who works for trader in responsible position. Aigamaua v. Malama, 3 A.S.R. 414.

In determination of value of candidate to government, court will consider Samoan custom of alternating matais among branches of family, and may find that because it is turn of certain branch that their candidate would be more successful in unifying family even though his character and capacity for leadership are slightly less than opponent. Tiumalu v. Tiumalu, 3 A.S.R. 502.

In determination of value of candidate for matai title to government, court will consider that age and ability do not necessarily go together, and that younger man may be more capable than older candidate. Tiumalu v. Tiumalu, 3 A.S.R. 502.

It is of more value to government to have matai who can serve for many years than one who can serve only few years. Tiumalu v. Tiumalu, 3 A.S.R. 502.

Value of matai title holder to government depends upon his ability to handle affairs of family and that depends upon his forcefulness, character, personality and capacity for leadership. Betham v. Faumuina, 3 A.S.R. 537.

In selection of matai title holder college graduation is no guarantee of capacity for leadership, and demonstrated capacity is preferable to potential capacity. Betham v. Faumuina, 3 A.S.R. 537.

"The value of the holder of the matai title to the family, the village and the country" means the future value of matai title claimant. (CAS 6.0107.) In re Matai Title Sala, 4 A.S.R. 21.

Older candidate (65) who has led family for years in absence of matai is of more value to family than younger candidate who has not lived with the family. In re Matai Title Alalamua, 4 A.S.R. 93.

Value of matai to family, village and government depends on forcefulness, character, personality and knowledge of Samoan customs. In re Matai Title Maiava, 4 A.S.R. 116.

Mere fact candidate prevails on issue of forcefulness, character, personality and knowledge of Samoan customs does not mandate that this candidate is automatically of more "value to family, village and country". Scanlan v. Tuiasosopo, 4 A.S.R. 156.

Candidate who is self-employed is favored over higher paid Governor's aide who may lose job with change in administration. Scanlan v. Tuiasosopo, 4 A.S.R. 156.

Candidate who does not own home, despite high income, and who does not live in traditional Samoan manner, is disfavored as matai. Scanlan v. Tuiasosopo, 4 A.S.R. 156.

Value of matai title holder to government depends upon capacity for leadership. Tagoai v. Tuiafono, 4 A.S.R. 252.

Applicant who earns larger income is in better financial position to support matai title and hence of more value to family. Filipo v. Maiava, 4 A.S.R. 313.

Matai title holder who lives on another island 60 miles from family and has done so for 31 years would be of little value to family and village. Veve v. Faatama, 4 A.S.R. 418.

A candidate who denies existence of one of major clans of his family, insults traditions of family and could not make peace with family is of little value to family, village or country. Asuega v. Manuma, 4 A.S.R. 616.

Record of living with family and career as junior high school teacher enable candidate to prevail in determination of matai title holder consideration as to value of holder to his family. Vainini v. Ala, 4 A.S.R. 683.

In selection of matai title holder, college education does not guarantee capacity for leadership, but is valuable indicator of such capacity. Tuliau v. Sunia, 4 A.S.R. 858.

Candidate for matai title who had been using the title illegally for several years while objections to his candidacy were pending, would ordinarily not prevail on statutory criterion of value to family, village, and country. A.S.C.A. §§ 1.0409, 1.0414. In re Matai Title Muagututi`a, 14 A.S.R.2d 67.

Candidate for a matai title who best satisfied the statutory criterion of value to family, village, and country did so based on his familiarity with the demands of office gained by long tenure as a comparably ranked titleholder; his rapport and standing with fellow matai; his credibility; his seniority; his singular commitment to the educational needs of the community as evinced by his long career in education and government; and his ability to settle familial dissension. A.S.C.A. § 1.0409(c). In re Matai Title Iuli, 14 A.S.R.2d 116.

A title candidate prevailed on the criterion of value to family, village, and country when he had first-hand experience with family affairs and broad rapport with other families on village affairs, as well as leadership ability demonstrated by overwhelming familial support. In re Matai Title Tela, 22 A.S.R.2d 45.

The matai-title criterion of value to family, village, and country seeks to evaluate a candidate's prospective value to his family, village, and American Samoa as holder of the title, in light of the first three statutory criteria and his leadership potential and plans. A.S.C.A. § 1.0409(c)(4). Registration of Matai Title Le'aeno, 24 A.S.R.2d 117.

The consideration of "Value to Family, Village, and Country" seeks to evaluate a candidates' prospective value to his family, village, and American Samoa as holder of the title, in light of the first three criteria, and the candidate's leadership potential and plans. In re Matai Title Leaeno, 25 A.S.R.2d 4.

Under the fourth category of A.S.C.A. § 1.0409(c) the court evaluates each candidate's prospective value to his family, village, and American Samoa as the titleholder. In re the Matai Title Tuaolo, 27 A.S.R.2d 97.

Where the achievements and leadership abilities of candidates for a matai title are comparable, the candidate who has more intimate daily contacts with the family and the village has the advantage in the category of value to family, village, and country. In re Matai Title "Tagoilelagi", 2 A.S.R.3d 230 (Land & Titles Div. 1998).

In evaluating value to family, village, and country in a matai title dispute, the court will consider a candidate's ability to make peace, connection to the community, service to the family by contribution to fa`alavelave and village obligations, and family following. In re Matai Title "I`aulualo", 2 A.S.R.3d 238 (Land & Titles Div. 1998).

Retirement income is relevant factor in assessing value to family. In re Matai Title "Manaea", 6 A.S.R.3d 350 (Land & Titles Div. 2002).

Candidate who has lived with family in village and actively participated in family and village affairs shows greater awareness of family matters and has fostered better rapport with village council. In re Matai Title "Manaea", 6 A.S.R.3d 350 (Land & Titles Div. 2002).

On issue of fourth criterion (value to country, family and village), court found in favor of candidate who had actively participated in family affairs, and who had rendered *tautua* to the family, previous matai and relevant village for all of her life; despite other candidate's superior service to territorial government. In re Matai Title "Ava," 7 A.S.R.3d 211 (Land & Titles Div 2003).

A candidate who is more intimately familiar with family members and assets is in a better position to serve the family as matai. In re Matai Title "Le'i," 7 A.S.R.3d 244 (Land & Titles Div. 2003).

§ 7 —Priority of Statutory Criteria

Court must give more weight to wish of majority of family than to hereditary right in determination of matai title holder. Letomia v. Sekoti, 1 A.S.R. 577.

Primary consideration for court in determination of matai title is wish of majority of family. Lauvai v. Si'itupe, 2 A.S.R. 29.

Wish of majority of family is to be given more weight than other considerations in determination of matai title holder. Tulesi v. Valu, 2 A.S.R. 76.

In selection of matai, wish of majority of family should be given more weight by court than hereditary right, and character, forcefulness, personality, and leadership should be given more weight than value of holder to government. Sueuga v. Laisene, 2 A.S.R. 82.

Court will give more weight to wish of majority or plurality of family in selection of matai title holder than to personality and character, and will give more weight to hereditary right than to value of holder to Government. (CAS 933.) Selusi v. Tasi, 2 A.S.R. 422.

Code requires that Court give more weight to hereditary right than to wish of majority or plurality of members of family; and more weight to wish of majority or plurality than to forcefulness, character, personality and value of the holder to the government. (CAS 933.) Siaosi v. Asoau, 3 A.S.R. 293.

Code provides priorities for consideration by court in determination of matai title holder. (CAS 933.) Kosi v. Viliamu, 2 A.S.R. 349.

Code of American Samoa sets forth priority of considerations to be made by trial court in trial of matai title cases. (CAS 6.0107.) Utu v. Aumoeualogo, 4 A.S.R. 906.

In holding that combined third and fourth considerations of statute on determining of matai title holder are entitled to more weight than first consideration, court does not go against prior rulings. Utu v. Aumoeualogo, 4 A.S.R. 906.

Samoan statute provides for priority of considerations to be made by High Court in determining right to hold matai title. (CAS 6.0107.) Taufaasau v. Manuma, 4 A.S.R. 947.

Statute which lists the priority of criteria with which the Court is to evaluate matai candidates requires only that the Court give more weight to each criterion than to each of those which follow it; some consideration should also be given to the relative margins by which various candidates prevail on each of the four criteria. A.S.C.A. § 1.0409. In re Matai Title Tauala, 15 A.S.R.2d 65.

A.S.C.A. § 1.0409(b) gives statutory priority to the four considerations in the order listed. More weight is given to each criterion than to those following it, taking into account the relative margins by which the candidates may win on each of the four categories. In re Matai Title Leano, 25 A.S.R.2d 4.

In matai title disputes, the court shall be guided by the four considerations set out in A.S.C.A. § 1.0409(c), in the priority listed. These are (1) the best hereditary right to the title; (2) the "wish of the majority or plurality of those clans of the family as customary in that family"; (3) forcefulness, character, personality, and knowledge of Samoan custom; and (4) value to the family, village, and country. In re Matai Title Te`o, 26 A.S.R.2d 101.

A.S.C.A. § 1.0409(b) gives priority to the four considerations in the order listed. More weight is given to each criterion than to those following it, taking into account the relative margins by which the candidates may win on each of the four categories. In re the Matai Title Tuaolo, 27 A.S.R.2d 97.

The comparative evaluation of the four statutory criteria is not, and cannot be, measured by mathematical exactness. In re Matai Title Tuaolo, 28 A.S.R.2d 137.

In deciding a matai title dispute, the court gives greater weight to each criterion in their statutory order in accordance with A.S.C.A. § 1.0409(c), and it assesses the candidates' relative advantage in each criterion, and stronger rankings in certain criteria may outweigh a better hereditary right. In re Matai Title "Tagoilelagi", 2 A.S.R.3d 230 (Land & Titles Div. 1998).

§ 8 —Determination of Prevailing Candidate

Where evidence shows that each of two parties seeking "matai" title are equally qualified under Samoan law and custom, Court will consider evidence as to which party is better fitted to hold title. Faga v. Moso'oi, 1 A.S.R. 375.

Where one matai candidate has an equal or perhaps even stronger hereditary claim to a title, Court may still award the title to another candidate who is better suited by virtue of his age and respect in the family. Galu v. Mariota, 1 A.S.R. 461.

Where candidate for matai title prevails on first two issues for consideration and stands on equal footing with opponent on fourth, first candidate should be selected as matai regardless of who has greater hereditary right. Letomia v. Sekoti, 1 A.S.R. 577.

Where candidate for matai title prevails on three issues and is equal to opponent on fourth, court will award him title. Lauvai v. Si'itupe, 2 A.S.R. 29.

Where candidate for matai title prevails on first, second and fourth considerations for court and stands equally with another on third, he should be awarded title. Tulei v. Valu, 2 A.S.R. 76.

Court may determine that two candidates are eligible and meet legislative requirements to hold matai title and award title to either of them. Simaile v. Lafoa'i, 2 A.S.R. 170.

Where candidate for matai prevails on first, second and fourth issues, he should be awarded title. Maea v. Alapeti, 2 A.S.R. 255.

Candidate for matai title who prevails on three of four issues and is on par with another on fourth should be awarded title. Kosi v. Viliamu, 2 A.S.R. 349.

Where one candidate for matai prevails on first and third issues and is on par with the opponent on fourth, he should be selected as matai. Selusi v. Tasi, 2 A.S.R. 422.

Where candidate for matai title prevails on first and fourth issues and is on parity with other candidate with respect to second and third issues, he should be matai. Saufea v. Filipo, 2 A.S.R. 477.

A title never registered in 49 years of registration system is not likely to be legitimate. Lagafuaina v. Gatai, 2 A.S.R. 520.

Fact so-called matai name has not been used for hundreds of years is strong indication there is no such name. Lagafuaina v. Gatai, 2 A.S.R. 520.

Court may take note of books on Samoan titles in determining if unregistered title is mere honorific title of another title. Manuma v. Faafeu, 3 A.S.R. 151.

Certificate signed by 27 chiefs of village that purported title in an old matai name is persuasive that title is more than mere honorific title. Manuma v. Faafeu, 3 A.S.R. 151.

Where one candidate ranks first on second, third and fourth issues for consideration by court, he should be matai title holder. Malaga v. Mase, 3 A.S.R. 518.

Two (2) candidates equal on all statutory criteria may be awarded matai title jointly with right of survivorship. In re Matai Title Maiava, 4 A.S.R. 116.

Evidence shows title is not split if title has but one guest-house, ‘Ava cup title, Taupou title attached to it. In re High Chief Title Mauga, 4 A.S.R. 132.

If neither candidate for matai title meets statutory criteria, court will dismiss case and forbid use of title by ineligible applicants. In re Matai Title Afoafouvale, 4 A.S.R. 145.

Candidate who possesses greater forcefulness, character, personality and knowledge of Samoan custom as required by 1 A.S.C. 757(3), is choice of both clans of family as required by 1 A.S.C. 757(2), has better hereditary right as required by 1 A.S.C. 757(1) and is of greater value to family, village and country as required by 1 A.S.C. 757(4), will be selected as matai. In re Matai Title Lea’eno, 4 A.S.R. 152.

Candidate for matai title who prevails over another on three of four issues which law requires court to consider should be selected as matai. Tagoai v. Tuiafono, 4 A.S.R. 252.

Where objector to applicant for matai title holder ranks ahead of applicant on first, second, and fourth issues for court to consider and ahead of other objector on second, third, and fourth issues, he should be registered as title holder. Veve v. Faatama, 4 A.S.R. 418.

In determination of matai title holder, where all candidates rank equally on issue of clan favorite and one objector ranks first on issue of character and value to family and second on issue of heredity, that objector is entitled to matai title. Reid v. Talalele, 4 A.S.R. 458.

Where objector prevails in three out of four considerations in determination of matai title holder, he is entitled to matai title. Tuaolo v. Tutogi, 4 A.S.R. 488.

Where candidate for matai title holder prevails on first, third and fourth issues and stands equally on second, he is entitled to be matai. Faagau v. Tulei, 4 A.S.R. 490.

Under statute which provides four considerations for Court in determining matai title holder, and provides for priority among these considerations, person who prevails under both third and fourth priority has greater right than person who prevails only on first consideration. Asuega v. Manuma, 4 A.S.R. 616.

Where one candidate prevails in first consideration to be made by High Court in determining matai title holder, but other candidate prevails on remaining three, candidate prevailing on three is entitled to be registered as holder. Vainini v. Ala, 4 A.S.R. 683.

Under statute which provides four considerations for court in determining matai title holder, and states that order of four is one of priority, person who prevails under both third and fourth priority has greater right than person who prevails only on first consideration. Utu v. Aumoeualogo, 4 A.S.R. 906.

Where one candidate for matai title proved his fitness to hold the title under three of the four statutory criteria, and the only other candidate knew of the trial date but failed to appear, the candidate who did appear would be held best qualified to hold the title. A.S.C.A. § 1.0409. In re Matai Title Muagututi`a, 14 A.S.R.2d 67.

Where no candidate for a matai title had best satisfied one of the four statutory criteria for choosing a matai, the title was registered in the name of the candidate best satisfying two of the remaining three criteria. In re Matai Title Iuli, 14 A.S.R.2d 116.

When a matai title decree has been vacated and the case remanded, the vacation of the judgment inures to the benefit of all of the losing parties, whether they perfected their appeal or not, because it vacated the underlying judgment and granted all parties rights to a new trial on their interest in the title. Faumuina v. Vaouli, 31 A.S.R.2d 2.

§ 9 Enforcement of Matai Title Decision

High Court erred in previous decision barring descendants of Salave'a Malua from holding Salave'a title. In re Matai Title Salave'a, 4 A.S.R. 44.

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.

Territorial statute makes it a crime to claim a matai title lawfully registered in the name of another person. A.S.C.A. § 1.0414. Togiola v. Tafesilafa'i, 4 A.S.R.2d 54.

Losing contestants in matai title dispute and their supporters who subsequently participated in a ceremony purporting to bestow the title on someone other than the person in whose name it was lawfully registered, who disrupted a meeting, and who proclaimed their intention to interfere with the decisions and acts of the lawfully registered matai had transgressed the rights of the lawful matai and would be enjoined from further transgressions. Togiola v. Tafesilafa'i, 4 A.S.R.2d 54.

Losing candidate for matai title and his supporters, who from the time of the adverse judgment had attempted to prevent the reunification of the family and compliance by the prevailing candidate with the traditional prerequisites for formal ceremonial assumption of the title, would not prevail in a subsequent suit seeking removal of the prevailing candidate on the ground that he had not undergone such a ceremony. In re Matai Title Sotoa, 6 A.S.R.2d 91.

Losing candidate for matai title and his supporters could not prevail in their contention that a single title could be held by a "court-selected matai" and a rival "family-selected matai"; territorial statutes prohibit anyone but the legally registered matai from disposing of communal lands or authorizing improvements on such lands. In re Matai Title Sotoa, 6 A.S.R.2d 91.

Court could not find that family members had wilfully disobeyed its prior order enjoining them to cooperate with matai where that order had not been clearly explained to them. In re Matai Title Sotoa, 8 A.S.R.2d 10.

Where a matai title has been registered as such for over eighty years, its holder is listed as a matai of the village in a forty-year-old document signed by various other matai of the village, and the leading matai of the village testifies that the holder of the title in question is regarded as a matai within the village and sits in the village council, court will conclude that the title is a matai title whose holder can own communal land. Moea`i v. Te`o, 9 A.S.R.2d 107.

Territorial statute prohibits anyone from using a matai title before title has been registered in accordance with provisions of statute. A.S.C.A. §§ 1.401 et seq., 1.0414. I`aulualo v. Siofaga, 10 A.S.R.2d 26.

Where family had agreed that two persons would jointly hold matai title, and one of the two co-holders registered the title in accordance with statutory provisions, territorial statute required that the other co-holder be enjoined from using the title. A.S.C.A. §§ 1.0401 et seq., 1.0414. I`aulualo v. Siofaga, 10 A.S.R.2d 26.

Candidate for matai title who had been enjoined from holding himself out as the title holder, and from asserting any authority or doing anything the title holder would do, committed contempt of court by performing a role in a village function which was ordinarily performed by the matai whose title he claimed and which was absolutely inconsistent with his status as an untitled man, notwithstanding the claim that he had received a "special dispensation" from the village council to allow him to perform this role as an untitled man, where such dispensation was a smokescreen designed to insulate him from the consequences of violating the court order. In re Matai Title Tauala (Mem.), 13 A.S.R.2d 19.

Having two or more persons serve as joint holders of the same matai title is consistent with the law and custom of American Samoa. In re Matai Title Mulitauaopele, 16 A.S.R.2d 63.

A matai title bestowed contrary to statute cannot be registered or otherwise recognized; and use of an unregistered matai title is a criminal act. A.S.C.A. §§ 1.0401-1.0414. Toilolo v. Poti, 23 A.S.R.2d 130.

Registration of matai names was first decreed in 1906 by Regulation No. 8.1906, but the regulation did not contain a prohibition against using an unregistered matai name. Section 79.8 of the 1937 Code, which prohibited the use of an unregistered matai name, only provided criminal sanctions. Peni v. Lutali, 30 A.S.R.2d 68.

While judicially ordered consequences might be in order in some situations, it would be inappropriate to vitiate 73 years later a legal document executed by parties who, in the absence of contrary evidence, apparently acted in good-faith belief in each other's authority. Peni v. Lutali, 30 A.S.R.2d 68.

§ 10 Removal of Matai

Historically, a Samoan family or members thereof, could forcibly remove matai on their own volition and appoint another member of the family as matai. Tiumalu v. Fuimaono, 1 A.S.R. 17.

In modern times, matai may be forcibly removed only by application to the court and improper deprivation of title and vested rights of matai will subject wrongdoers to punishment. Tiumalu v. Fuimaono, 1 A.S.R. 17.

Where it is proved that matai has threatended to burn a fale of sister, has stated that it would be a good thing if all children of member of family were dead, has demonstrated pride which has resulted in difficulties for family in village, has told members of family that they could quarrel as long as they liked, has made native beer in violation of laws, has made girls of his family engage in immoral practice with and before strangers, has claimed al family lands for himself and his immediate family, and has misused church funds, then he should be removed as matai. Asuega Family v. Asuega, 1 A.S.R. 581.

Petition for removal of matai is equitable in nature, and principles of equity apply to such proceedings. Mauga Family v. Mauga, 1 A.S.R. 587.

Petitioners to remove matai from title cannot bring such petition where they have failed to follow custom by attempting reconciliation with matai and where they have prevented family unity and failed to abide by decision of court. Mauga Family v. Mauga, 1 A.S.R. 587.

Reasons for removal of matai must be substantial and not inconsequential or trifling. Fano Family v. Faatiliga, 2 A.S.R. 125.

Where matai and members of family petitioning for his removal are from different families, petition is improperly brought. Fano Family v. Faatiliga, 2 A.S.R. 125.

Gambling is a misdemeanor and does not render matai ineligible to hold title, and where there has been no prosecution or conviction for gambling, there are no grounds for removal. Mauga Family v. Mauga, 2 A.S.R. 213.

Code provides for procedures for removal of matai title holder. CAS 79. Mauga Family v. Mauga, 2 A.S.R. 213.

Card indicating matai was unsatisfactory employee is not evidence of embezzlement. Mauga Family v. Mauga, 2 A.S.R. 213.

Codification sets forth procedures and requirements for removal of matai title holder. Fano Family v. Faatiliga, 2 A.S.R. 125.

Burden of proving that three-fourths of adult members of family desire removal of matai is upon those who file petition asking for removal, and where they fail to meet his burden, petition will be denied. Tupuola v. Tupuola, 2 A.S.R. 188

Matai convicted of disorderly conduct and/or assault three time in four years is not a good leader, has brought disgrace to family, and may be removed as matai. Faagata Family v. Faagata, 2 A.S.R. 273.

Code provides procedures for removal of matai title holder. CAS 934. Fao Family v. Fao, 2 A.S.R. 299.

When asserting grounds for removal of matai, equity jurisdiction of court is invoked and court will not consider grounds where party asserting them has shown unreasonable delay and lack of vigilance. Fao Family v. Fao, 2 A.S.R. 299.

Where three-fourths of family members have not signed petition for removal of matai, court will not consider action for removal. Fao Family v. Fao, 2 A.S.R. 299.

Code provides that three-fourths of family may petition for removal of matai title holder, and that matai may have hearing before High Court. CAS 934. Asuega v. Mauga, 3 A.S.R. 70.

Where three-fourths of adult members of family do not sign petition for removal of matai title holder, court must dismiss petition. Asuega v. Mauga, 3 A.S.R. 70.

Persons who may petition for removal of matai title holder are blood members of family, those married to blood members of family living with family and persons living with family who render service to matai. Asuega v. Mauga, 3 A.S.R. 70.

Age of majority in American Samoa is eighteen, and person under eighteen may not sign petition for removal of matai title holder. Asuega v. Mauga, 3 A.S.R. 70.

Matai who, in nine years, has failed to get family to live in peace and harmony and hwo has been ousted from village council, is failure as matai and should be removed for benefit of family. Fanene Family v. Penirosa, 3 A.S.R. 425.

Persons of higher matai title within family are required to serve lesser matai titles, and hence are included among those in “family actively serving the matai” for purposes of CAS 6.0110(1). Tuiteleleapaga Family v. Filioali’i, 4 A.S.R. 24.

Where court removes matai, family shall select replacement under Samoa custom. Ativalu v. Mana, 4 A.S.R. 518.

Where evidence justifies it, court will remove title from matai. Ativalu v. Mana, 4 A.S.R. 518.

Where evidence in case involving petition for removal of a matai showed that the matai had served well for twenty-six years and retained the active support of some family members and the affection of almost all, court would not order his removal but would order him to meet with petitioners and make every effort to become reconciled with them. Tavai v. Pone, 3 A.S.R.2d 9.

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.

Copy of petition for matai removal without accompanying certificate of irreconcilable dispute from Secretary of Samoan Affairs must be referred to Secretary for resolution. Land & Titles Rule 4(a). Members of the Taufi Family v. Taufi (Mem.), 12 A.S.R.2d 6.

High Court may remove a titleholder from a matai title upon a petition by any member of his family if the court finds the titleholder has been absent from American Samoa for more than one year. A.S.C.A. § 1.0412. Alai`asa v. Seigafo, 17 A.S.R.2d 3.

Court may consider the family's wishes and the reasons for the matai's absence when deciding whether to remove a titleholder from a matai title. Alai`asa v. Seigafo, 17 A.S.R.2d 3.

High Court may remove a title from a matai upon a petition by any member of his family if the court finds the matai has been absent from American Samoa for more than one year. A.S.C.A. § 1.0412(a). Aoelua Family v. Aoelua, 17 A.S.R.2d 88.

Absence from American Samoa for purposes of statute allowing the court to remove a titleholder absent from territory for more than one year from his matai title is a different question from whether one is a bona fide resident of the territory for purposes of the voting statute. A.S.C.A. § 1.0412(a). Aoelua Family v. Aoelua, 17 A.S.R.2d 88.

Court may consider the family's wishes and the reasons for the matai's absence when deciding whether to remove titleholder from a matai title. Aoelua Family v. Aoelua, 17 A.S.R.2d 88.

Petition of family members to remove titleholder absent from American Samoa for more than one year from his matai title was granted where titleholder planned to be absent indefinitely, petitioner and many signatories to the petition actively participated in family affairs, considerable family support favored the petition, and titleholder's continued absence would encourage usurpers to the title. Aoelua Family v. Aoelua, 17 A.S.R.2d 88.

An matai absent from American Samoa may be removed through a petition process. A.S.C.A. § 1.0412. Leapagatele v. Nyel, 17 A.S.R.2d 201.

Having the discretion to permit an absent matai to retain his title, a court may, but is not required to, consider the wishes of family members actively serving the matai. A.S.C.A. § 1.0412. Aoelua v. Aoelua Family, 21 A.S.R.2d 1.

A matai who has been away from American Samoa for than one year is an absent matai, and is subject to removal from office pursuant to A.S.C.A. § 1.0412(a). Infrequent, irregular, and brief returns do not toll a matai's absent status. Randall v. Leapaga, 25 A.S.R.2d 90.

The court's discretion to remove a matai may be influenced, but not fettered, by the health of matai and his spouse, and by his support from family members willing to actively serve him. Randall v. Leapaga, 25 A.S.R.2d 90.

The interests of a family cannot be well served by a matai who does not live in the family village. Randall v. Leapaga, 25 A.S.R.2d 90.

It is self-evident that a matai's place is with his family, and that the meaningful excursus of his duties demands his continuing presence in the territory. Randall v. Leapaga, 25 A.S.R.2d 90.

REAL PROPERTY

§ 1 Public Lands
1(1) —Generally
1(2) —Cession
1(3) —Eminent Domain
1(3)(a) —Generally
1(3)(b) —Notice and Hearing
1(3)(c) —Arbitrated Condemnation Proceedings
1(4) —Leases
2 Communal Lands
2(1) —Generally
2(2) —Evidence of Communal Ownership
2(3) —Role of Matai
2(4) —Rights & Obligations of Family Members
2(4)(a) —Generally
2(4)(b) —Occupation, Cultivation & Use
2(4)(c) —Evictions & Revocation of Assignments
2(4)(d) —Registration Rights
2(4)(e) —Injunctions
2(5) —Separation-of-Structure Agreement
2(6) —Leases
2(7) —Conveyance
2(8) —Relinquishment of Land
2(9) —Certificates of Irreconcilable Dispute
3 Individually Owned Land
4 Evidence of Ownership
4(1) —Generally
4(2) —First Occupancy Claims
4(3) —Clearing and Planting
4(4) —Possession and Use
4(5) —Family Tradition and Reputation
4(6) —Records and Documents
4(7) —Hearsay
5 Adverse Possession
5(1) —General Provisions
5(2) —Elements
2(2)(a) —Generally
2(2)(b) —Actual Possession
2(2)(c) —Open & Notorious Possession
2(2)(d) —Exclusive Possession
2(2)(e) —Hostile Possession
2(2)(f) —Duration Requirement
2(2)(g) —Continuous & Uninterrupted Possession
5(3) —Tacking
6 Quieting Title
6(1) —Generally

6(2) —Burden of Proof
7 Alienation of Land
7(1) —Protective Policy
7(2) —Relation to Mortgages & Creditors
7(3) —Oral Conveyances
7(4) —Void Conveyances
7(5) —Dedication of Land
7(6) —Gifts
7(7) —Requirement of a Writing
8 Registration of Land
8(1) —General Provisions
8(2) —Land & Titles Division
8(3) —Statutory Requirements - Announcements and Notice
8(4) —Burden of Proof
8(5) —Survey and Description Requirements
8(6) —Objection to Registration
8(7) —Finality of Judgments
9 License to Use Land
9(1) —Generally
9(2) —Creation of License
9(3) —Rights Created by License
9(4) —Mortgages
9(5) —Termination
10 Easements
10(1) —General Provisions
10(2) —Prescriptive Easements
10(3) —Implied Easements
10(4) —Servitudes
11 Covenants
12 Encroachments & Encumbrances
13 Boundaries
13(1) —Monuments and Markers
13(2) —Boundary Disputes
13(3) —Evidence
13(4) —Ambiguous Deeds
14 Property Torts
14(1) —Trespass
14(2) —Negligence
14(3) —Damages for Property Torts
15 Equitable Claims
15(1) —Equitable Title
15(2) —Injunctions
15(3) —Good Faith Possessor/Improvements
15(4) —Estoppel
15(5) —Constructive Trusts
16 Rights of Co-Owners
16(1) —Possession and Use of Common Estate
16(2) —Partition

17 Landlord-Tenant
17(1) —Generally
17(2) —Terms and Conditions of Lease
17(3) —Modification of Lease
17(4) —Assignment of Lease
17(5) —Responsibilities of Landlord
17(6) —Responsibilities of Tenant
17(7) —Rescission or Cancellation
17(8) —Eviction
17(9) —Authority to Lease
17(10) —Damages for Breach
17(11) —Tenants at Will
17(12) —Improvements
17(13) —Abandonment
17(14) —Fixtures
18 Zoning
18(1) —Zoning Variance
18(2) —Zoning Board
19 Riparian Rights
20 National Park of American Samoa

§ 1 Public Lands

§ 1(1) —Generally

Land below high-water mark belongs to Government. Foster v. Olotoa, 3 A.S.R. 76.

Government is entitled to injunction restraining defendants from erecting building on land between sea and Pago Pago highway since this is government land. Luce v. Pila, 3 A.S.R. 127.

Village malae is public land for use of entire village and cannot be claimed as individual or communal land. Lefao v. Malepeai, 4 A.S.R. 111.

Fact Governor advised alleged owner not to build fale on land is evidence of government's claim of ownership. Lago v. Mageo, 4 A.S.R. 287.

Fales constructed illegally on government property may be property of person building them, and if they are destroyed by Marines, War Damage Claim Commission may recognize claims on destroyed fales without recognizing any claim to land. Lago v. Mageo, 4 A.S.R. 287.

Decision of trial court in awarding land to Government is not against interest of Samoan people since property held by Government is for use and benefit of all people of Samoa. Mageo v. Government, 4 A.S.R. 874.

Freehold land is all those lands included in court grants prior to 1900. A.S.C.A. § 37.0201(b). Vaivao v. Craddick, 14 A.S.R.2d 108.

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.

American Samoa's "coastal zone management area" is defined as including the entire island of Tutuila, along with all the other islands and all coastal waters and submerged lands for a distance of three nautical miles seaward. A.S.A.C. § 26.0207. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

American Samoa's submerged and tidal lands, which are those permanently or periodically covered by tidal waters, belong to the territorial government. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

A person cannot convert public land into his own private property by unilaterally and artificially changing its character, nor can he acquire title by offering for registration property legally incapable of private ownership. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

A person who does not own the land for which a land-use permit was denied has no standing to raise the question as to

whether special enabling legislation was necessary to allow the Governor to promulgate the coastal zone management regulations affecting the rights of private property owners. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

The executive branch has the statutory authority to preserve and administer government lands. Solomona v. Governor of American Samoa, 17 A.S.R.2d 186.

§ 1(2) —Cession

At time of cession of Samoa to United States, public property passed to United States Government and not Government of Samoa. Mulu v. Taliutafa, 3 A.S.R. 82.

When Kingdom of Tuimanua came to an end and sovereignty of King passed to United States, pursuant to principles of international law, property owned by King in his capacity as King became, as result of cession, property of United States Government. Mulu v. Taliutafa, 3 A.S.R. 82.

Court has held that land owned by king in capacity as king became property of United States when island was ceded to United States. Lago v. Mageo, 4 A.S.R. 287.

The court is bound by statute and treaty to recognize freehold grants made by the Land Commission of Samoa, which operated in Apia under the supervision of the then-Supreme Court of Samoa, prior to the United States-established government. Willis v. Fai`ivae, 17 A.S.R.2d 38.

§ 1(3) —Eminent Domain

SEE CONSTITUTIONAL LAW § 7(4) – TAKINGS AND JUST COMPENSATION

§ 1(3)(a) —Generally

Where Government condemned land to seaward side of highway, highway marks boundary of Government land. Teo v. Totoa, 2 A.S.R. 243.

Land taken for public highway and earth taken in repairing public highway are for public use and benefit, and taking of land in American Samoa for purpose of securing rock therefrom for use in highway construction and repair is taking for public purposes and when such taking is for just compensation, it does not violate due process of law. Government v. Soliai, 2 A.S.R. 600.

Where there is full hearing on question of value and qualified witnesses testify, court will uphold determination of Board of Arbitrators as to just compensation for condemnation of property. Government v. Soliai, 2 A.S.R. 600.

Government condemned and paid for use of land between highway and Pago Pago Bay by regulation in 1900, and such condemnation vested title in government. Luce v. Pila, 3 A.S.R. 127.

Generally, collateral attack on condemnation judgment is only allowed if judgment is alleged to be void and not merely technically defective. Government v. Isumu, 4 A.S.R. 141.

Abandonment of condemned land requires both intent to abandon and act effecting abandonment—mere non-use or misuse of properly condemned land does not create abandonment. Government v. Isumu, 4 A.S.R. 141.

While person can lawfully erect building on his own land, he cannot erect building on land of government without permission, and ordinance forbidding erection of structure on seaward side of public highway indicates land was taken by government at time public highway was condemned. Lago v. Mageo, 4 A.S.R. 287.

Navy commander condemned lands for public highway by issuance of an ordinance in 1900. Lago v. Mageo, 4 A.S.R. 287.

Finding by trial court that Government owned land condemned and appropriated for public use by ordinance was not erroneous. Mageo v. Government, 4 A.S.R. 874.

Where ordinance states land is condemned, land is condemned and appropriated as of date of publication of ordinance. Mageo v. Government, 4 A.S.R. 874.

Safety, economic development, and esthetics are valid public purposes justifying the purchase of communal land by the government. Restrictions on alienation run with the land and must revert to the family when use is no longer for a public purpose. Burns Philip (South Seas) Co. v. Mageo, 1 A.S.R.2d 95 (App. Div. 1983).

Once land is condemned for a public purpose, title vests in the government in fee simple. Atualevao v. Am. Samoa Gov't, 2 A.S.R.2d 66 (Land & Titles Div. 1985).

The usual rules pertaining to eminent domain prevail in American Samoa. Atualevao v. Am. Samoa Gov't, 2 A.S.R.2d 66 (Land & Titles Div. 1985).

A change in the use of condemned land does not vest title back in the original owner. Atualevao v. Am. Samoa Gov't, 2 A.S.R.2d 66 (Land & Titles Div. 1985).

48 U.S.C. § 1661(b) excepting American Samoa from the application of United States public land laws does not restrict acquisition by eminent domain. Atualevao v. Am. Samoa Gov't, 2 A.S.R.2d 66 (Land & Titles Div. 1985).

The original matais who ceded American Samoa to the United States specifically recognized the right of eminent domain and

that right is not impaired by the communal land system. Atualevao v. Am. Samoa Gov't, 2 A.S.R.2d 66 (Land & Titles Div. 1985).

The clarity of hindsight does not render prior government takings excessive. Atualevao v. Am. Samoa Gov't, 2 A.S.R.101 (Land & Titles Div. 1985).

Where a statute states that the government appropriated a uniform fifteen feet inland from shore for public uses, since such a taking is not overbroad because public uses include utility poles and seawalls as well as roads, the statute should not be narrowly construed to entitle government only to land underlying road since to do so would interfere with government's power of eminent domain as well as ignore the clear language of the statute. Vaivao v. Craddick, 14 A.S.R.2d 108.

Subject to several exceptions, filled-in and submerged coastal lands were transferred for the United States Government to ASG, to be administered in trust for the territory's people. 48 U.S.C. § 1705(a). Anderson v. Vaivao, 21 A.S.R.2d 95.

An action challenging ordinances condemning land for the coastal road was barred by laches when the plaintiff did not file suit until 90 years after the ordinances were enacted. A.S.C.A. § 37.2050. Anderson v. Vaivao, 21 A.S.R.2d 95.

A.S.C.A. § 37.2001(b) does not have retrospective effect. American Samoa Gov't v. Meredith, 28 A.S.R.2d 10.

The plain language of A.S.C.A. § 37.2001(b) restricts it from applying to a condemnation proceeding that occurred before its passage into law. American Samoa Gov't v. Meredith, 28 A.S.R.2d 92.

A.S.C.A. § 37.2001(b), which requires the government to return condemned land if not used for its stated purpose within five years after condemnation, does not have retrospective effect. American Samoa Gov't v. Estate of Fuimaono Tuinanau, 28 A.S.R.2d 187.

§ 1(3)(b) —Notice and Hearing

Due Process does not require actual notice to person actually present on condemned land, but only notice reasonably calculated, under all of the circumstances, to apprise interested parties of pendency of action and afford them opportunity to be heard. Government v. Isumu, 4 A.S.R. 141.

§ 1(3)(c) —Arbitrated Condemnation Proceedings

A.S.C.A. § 43.1011 does not provide a clear standard of review of arbitrated condemnation proceedings. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

Where case involved condemnation of right of way for a sewer line, the appropriate written findings required inclusion of a determination as to the placement of the sewer line through the property, use and building restrictions applicable to the easement, government access requirements, and conclusions as to the effects of such encumbrances upon the market value of the parcel. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

A.S.C.A. § 4.1044 provides for a remand where substantial rights of the petitioner have been prejudiced because the arbitrators' decision violates of applicable constitutional or statutory provisions, or if it is made upon unlawful procedure. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

In reviewing an arbitration award, the reviewing Court need not determine the applicable standard of review where it is apparent that the arbitrators failed to follow the specific statutory procedures. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

A.S.C.A. § 43.1010 requires that the arbitration award contain findings or conclusions of the panel; reflecting how the award was determined. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

Where an award does not contain specific, written findings or conclusions of the panel, but merely arrives at amount, the award should be remanded. American Samoa Gov't v. Annandale, 1 A.S.R.3d 19 (App. Div. 1997).

§ 1(5) —Leases

Fact lease to Church of private land also included Government land does not deprive Government of its property. Teo v. Totoa, 2 A.S.R. 243.

Fact Government considered paying rents to private person for warehouse on government land does not transfer title to private person. Lago v. Mageo, 4 A.S.R. 287.

While Government can complain if house of pastor is not within dimension required by statute, private party cannot if house is built within land given for this purpose. C.A.S. 17.0106. Muasau v. Pita, 4 A.S.R. 337.

Territorial statute providing for a "legislative veto" of leases of government land did not violate American Samoa Constitution. A.S.C.A. § 37.2030; Rev. Const'n of Am. Samoa art. II §§ 9 & 10. Tuika Tuika v. Governor of American Samoa, 4 A.S.R.2d 85.

A lease between the American Samoa Government and a private party must be in accordance with certain statutory requirements. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 28 A.S.R.2d 74.

Any renewal or extension of a lease for a term 10 years or more requires Fono approval. A.S.C.A. § 37.2030. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 28 A.S.R.2d 74.

In light of its constitutional authority to "protect the lands," the Legislature has a legitimate interest in the oversight and regulation of any land development projects by non-Samoans. This interest is legitimately furthered by requiring that detailed plans be submitted and approved by the Governor before a lease arrangement can go forward. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

To become valid, a lease of native land must be approved by the Governor. A.S.C.A. § 37.0221(a). Before the Governor approves any document affecting title to land, it must be reviewed by the Land Commission for recommendations. A.S.C.A. § 37.0203(a). Moetoto v. Tauileva, 28 A.S.R.2d 144.

The Legislature of American Samoa must by statute be given the opportunity to disapprove any lease of the ASG's land for a period of 10 years or longer. A.S.C.A. § 37.2030. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

The Legislature has 30 days after it receives a lease of ASG land for a period of 10 years or longer to adopt a disapproval resolution under § 37.2030. Any lease subject to legislative review becomes effective only after this 30-day period passes without negative action. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

For the purposes of A.S.C.A. § 37.2030, the formal distinction between a lease “extension,” which continue an existing lease, and a lease “renewal,” which create an entirely new lease is irrelevant when a lessee has unilateral power to continue the leasehold. Unilateral options can give a lessee complete and exclusive control over the use of land, whether they are "extensions" or "renewals," for prolonged periods without legislative review, something that § 37.2030 is designed to prevent. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

Where, in addition to entry into possession under an invalid lease, rent is paid and accepted under the lease, a periodic tenancy is created. By the payment and acceptance of such rent, the parties have given further indication of their intention to be bound by the invalid lease, and the periodic tenancy provides a measure of security of their expectations. A periodic tenancy was terminable at the will of either the lessor or the lessee with one month’s notice. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

Even if lease options are not explicitly mentioned in A.S.C.A. § 37.2030, the legislature’s mandatory review of leases of government land which go beyond 10 years include leases established for nine years with successive unilateral options for additional nine year terms. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 183.

§ 2 Communal Lands

§ 2(1) —Generally

Court favors distribution of land equally among matais rather than having large tracts of land owned by individual Samoans. Satele v. Afoa, 1 A.S.R. 467.

Court recognizes Samoan custom that lands occupied by matai are held for benefit of family and that war damage claim brought by matai on lands is for benefit of family. Leasiolagi v. Fao, 2 A.S.R. 451.

It has been uninterrupted policy of Untied States Government since beginning of administration to protect Samoan communal lands for benefit of Samoans. Haleck v. Lee, 4 A.S.R. 519.

Constitution of 1960 shall not be construed to limit power of Government to provide for general welfare of people, including power of Governor to approve leases regarding the alienation of lands. (Const., Art. V, Sec. 8) Haleck v. Lee, 4 A.S.R. 519.

Law dealing with alienation of communal or native lands in American Samoa is constitutional and law requiring approval of Governor on recommendation of Land Commission for alienation of leases of lands is constitutional and was in effect at time of execution of lease agreement in dispute. Haleck v. Lee, 4 A.S.R. 519.

Diminution of family land base by parceling out communal lands to individuals is not keeping with Samoan custom of retention of land in family for support and maintenance of family under control of family head. Aumoeualogo v. Mamoe, 4 A.S.R. 742.

Constitution forbids statute that restricts access to court in matters involving communal land to senior matai where disputed issue involves only a particular parcel assigned to plaintiff and matter cannot be otherwise resolved. Fairholt v. Mua’au, 1 A.S.R.2d 73 (Land & Titles Div. 1983).

Samoan land concepts, not common law property rules, determine the outcome of disputes over the use of communal land. Assignees of communal land must render service to the matai. Tavai v. Silao, 2 A.S.R.2d 1 (Land & Titles Div. 1983).

A Samoan family can own communal land even though they choose to bear the surname of a European ancestor. Willis v. Willis, 2 A.S.R.2d 102 (App. Div. 1986).

There is a strong presumption that land in American Samoa is communal rather than individual property. Leota v. Faumuina, 4 A.S.R.2d 11.

Where a matai title has been registered as such for over eighty years, its holder is listed as a matai of the village in a forty-year-old document signed by various other matai of the village, and the leading matai of the village testifies that the holder of the title in question is regarded as a matai within the village and sits in the village council, court will conclude that the title is a matai title whose holder can own communal land. Avegalio v. Leatumauga, 9 A.S.R.2d 96.

The only ways communal land can become individual land are by adverse possession for thirty years or by compliance with the statutory procedures for alienation of communal land, including the approval of the Land Commission and the Governor. A.S.C.A. §§ 37.0120, 37.0201 et seq. Ava v. Logoai, 19 A.S.R.2d 75.

Although land use regulations impact activities on land and the manner in which an owner or possessor deals with land, they do not divest title interests within the meaning of Article I, § 3, the Bill of Rights of the American Samoa Revised Constitution of 1967, and therefore, are not subject to the double enactment requirement of Article I, § 3. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

Article I, section 3, of the Revised Constitution of American Samoa, which shields Samoans from "alienation of their land and destruction of the Samoan way of life and language," does not prohibit the alienation of communal land to other Samoans, nor does it limit the categories of Samoan land ownership. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

Article I, section 3, of the Revised Constitution of American Samoa does not require the burden of persuasion to be shifted to those parties with claims of individual ownership. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

Where defendant had failed to have senior matai request survey of land at issue, where defendant had failed to file application for separation of communal land with Secretary of Land Commission, and where defendant had failed to obtain written consent from Governor for alienation of the communal land, the matter (objection to registration of land) was not a justiciable case or controversy, and was properly dismissed without prejudice and transferred to the Secretary of the Land Commission/Territoria1 Registrar of American Samoa for any necessary further proceedings. Vaotu`ua v. Poloa, 4 A.S.R.3d 312 (Land & Titles Div. 2000).

Where two unrelated families had lived together on land peacefully and harmoniously over significant period of time, interspersing their own improvements upon the land without any logical pattern of present control, court would not declare land to be sole communal land of either family, nor would it create a new form of communal land ownership, but instead ruled that each was entitled to continue, indefinitely, such joint occupancy and use. Faumuina v. Tautolo, 5 A.S.R.3d 262 (Land & Titles Div. 2001).

American Samoa statutes unequivocally exclude communal land from testamentary devise, intestate succession, and estate administration. Estate of Rose Turner, 6 A.S.R.3d 272 (Trial Div. 2002).

Communal land is the land ownership concept at the very core of the Samoan land tenure system. Estate of Rose Turner, 6 A.S.R.3d 272 (Trial Div. 2002).

Communal land tenure precludes fee simple ownership in favor of extended family control over land, under the occupancy and use directions of the family's sa`o. Estate of Rose Turner, 6 A.S.R.3d 272 (Trial Div. 2002).

The American Samoa Government's constitutional duty to protect communal lands from alienation pertains to alienation from American Samoans to foreigners. Estate of Rose Turner, 6 A.S.R.3d 272 (Trial Div. 2002).

The hierarchial matai title and communal land systems, along with the Samoan language, are pillars of fa`a Samoa. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

In American Samoa there is a presumption favoring communal ownership of land. Tiapula v. Isumu Leapagatele's Children, 6 A.S.R.3d 324 (Land & Titles Div. 2002).

The Samoan way of life has twin cornerstones, the matai system and communal land tenure. Fanene v. Fanene, 6 A.S.R.3d 333 (Land & Titles Div. 2002).

Where court decisions recognized split title in family but awarded land solely to one of the titleholders, resulting in disenfranchisement of one branch of family and requiring said branch to render tautua to other family branch, such decision was wrongly decided, inconsistent with Samoan custom and contrary to the Treaties of Cession. Fanene v. Fanene, 6 A.S.R.3d 333 (Land & Titles Div. 2002).

The Treaties of Cession require respect and protection of the people to their lands and the recognition of property rights according to Samoan custom. Fanene v. Fanene, 6 A.S.R.3d 333 (Land & Titles Div. 2002).

A family's entitlement to communal land is a proprietary right within the due process clause of the territorial constitution. Fanene v. Fanene, 6 A.S.R.3d 333 (Land & Titles Div. 2002).

A family member cannot sell communal family land and a house upon it, nor only the house, there being no agreement to

separate the existence of house from the land. Fanene v. Vaona, 7 A.S.R.3d 285 (Land & Titles Div. 2003).

§ 2(2) —Evidence of Communal Ownership

The best evidence of communal ownership of land is shown by family exercising acts of authority over the land such as clearing, planting, cultivating and building upon the land. Tiumalu v. Mailo, 1 A.S.R. 434.

Where two families have buried their members on same piece of land, court will award that land to them in common and each will have equal right to use land without interference from the other. Samia v. Tapuitea, 1 A.S.R. 552.

Fact persons from another family are buried on land may not be evidence of ownership since they may have married into family possessing land. Salavea L. v. Ilaoa, 2 A.S.R. 15.

Where communal land is offered for registration, registrant has burden of proving he has title to land. Liu v. Fao, 2 A.S.R. 41.

Evidence supports fact that disputed lands were jointly owned by two families at time of cession. Leapaga v. Taumua L., 2 A.S.R. 56.

Evidence sustains that clearing of land from bush and cultivation established ownership of land in family and not in individual, who occupied it with permission of matai. Fiailoa v. Meredith, 2 A.S.R. 129.

Evidence supports finding that disputed land is communal family land, that land as assigned to talking chief for use in accordance with Samoan custom and that objector was given possessory right in land. Faataliga v. Fano, 2 A.S.R. 376.

Evidence supports that land is communally owned by family who first occupied it and claimed ownership. Amituanai v. Sauitufuga, 2 A.S.R. 485

In absence of any satisfactory evidence as to whether person claimed land on behalf of himself or his family, court must be guided by presumption that she claimed it as family land on behalf of her clan. Toomata v. Vea, 2 A.S.R. 564.

Under Samoan custom, matai is buried on family lands, and burial of matai is evidence of ownership. Togia'i v. Aumua, 3 A.S.R. 3.

Deed to Government of portion of land in question, by grantors "for members of their families" is an admission by grantors that land is communal and not individually owned. Ene v. Moega, 3 A.S.R. 451.

Where matai filed war damage claim describing himself as owner in capacity as matai, evidence supports that land, regarding which claim was filed, is communally owned and not individually owned by matai. Muagututia v. Faimalo, 4 A.S.R. 237.

Court finds weight of evidence indicates that applicant as a family member cleared land, occupied it, put in plantations and claimed it as communal family land. Fe'a v. Sisipeni, 4 A.S.R. 320.

Fact objector to registration of family land got coconuts from land is not inconsistent with communal ownership where objector is member of family. Fe'a v Sisipeni, 4 A.S.R. 320.

Where only person from claimant family to live on land is one to whose presence possessors objected on several occasions, family has no evidence to substantiate claim of communal ownership. Soliai v. Apelu, 4 A.S.R. 349.

Greater weight of evidence indicates land was cleared and owned by family as communal land. Tuanaitua v. Paogofie, 4 A.S.R. 375.

Person claiming to have cleared and planted land may have done so as son of mother who is member of family which owns land, rather than as individual owner of land. Tuanaitau v. Paogofie, 4 A.S.R. 375.

Where notice is given to objectors at time of survey of land and they do not object, this is evidence of ownership in family obtaining survey. Mageo v. Fuga, 4 A.S.R. 426.

Where evidence substantiates that lands have been under use, control and cultivation of family for long time, court will order registration as communal land. Mageo v. Fuga, 4 A.S.R. 426.

Land registered as the property of an individual rather than of a communal family does not become communal property merely because relatives of the owner have occupied it in accordance with customs governing communal property. Roberts v. Sesepasara, 7 A.S.R.2d 139.

Defendant's motion for a new trial, made on the ground that the judgment awarding plaintiff communal land was inconsistent with plaintiff's original claim of individual land, was denied where plaintiff's complaint prayed for an adjudication of communal ownership, the evidence showed the land was communal, and defendants were not prejudiced by the court's conforming of its findings to the evidence. Ava v. Moe, 8 A.S.R.2d 95.

In deciding between competing claims to ownership of communal land the Court must look primarily to facts such as the record of occupation and cultivation, rather than to claims based upon family history. Afualo v. Fanene, Pualioa v. Afualo, 15 A.S.R.2d 48.

In determining whether land is communally or individually owned, the court will consider whether the land has been considered and used as communal or individual land over time. Schuster v. Lutu, 30 A.S.R.2d 51.

Village of Tafeta belongs to the people of Faleniu who cleared and took possession of the area in 1922. Seva'aetasi v. Moi, 1 A.S.R.3d 232 (Land & Titles Div. 1997).

Where the evidence is conflicting as to a party's right to occupy and use the land by virtue of a customary assignment of a family's communal land, that fact issue must be determined by trial. Taylor v. Solaita, 3 A.S.R.3d 218 (Land & Titles Div. 1999).

Where ownership of land was disputed by opposing families, Court found it significant that cemetery on land contained graves of the members of only one family and opposing family's previous attempt to bury family member there was met with objection and abandoned. Tupuola v. Williams, 4 A.S.R.3d 300 (Land & Titles Div. 2000).

Where case involves the same parties and issue regarding land ownership and court has previously adjudicated the land at issue to be communal land of a certain family, court will recognize the res judicata effect of the previous decision to reinforce the holding that the land at issue is that family's communal land. Tuigamoa v. Tu`ugaolo, 5 A.S.R.3d 239 (Land & Titles Div. 2001).

Presence of family graves tends to indicate communal ownership of burial site. Williams v. Tupuola, 6 A.S.R.3d 44 (App. Div. 2002).

The best evidence of land ownership in American Samoa is actual occupation with a claim of ownership. Liufau v. Tufaga, 7 A.S.R.3d 394 (Land & Titles Div. 2003).

Possession of real property is the best evidence of ownership and carries with it the presumption of ownership. Liufau v. Tufaga, 7 A.S.R.3d 394 (Land & Titles Div. 2003).

A mere claim to land without accompanied use or occupation is insufficient to acquire title thereof. Liufau v. Tufaga, 7 A.S.R.3d 394 (Land & Titles Div. 2003).

Where testimony of village elders clearly demonstrated use and occupation of property, historically, by one family over that of rival family, court found that land should be registered in name of family with such occupation and usage. Liufau v. Tufaga, 7 A.S.R.3d 394 (Land & Titles Div. 2003).

§ 2(3) —Role of Matai

SEE ALSO SAMOAN CUSTOMS § 8(2) – GENERAL PULE OR AUTHORITY

Matai may use produce, profits and rents from land in which he has an interest by virtue of his title in any manner he wishes and the members of a family may not claim an interest in property purchased with such profits. Aumavae v. Moefaaui, 1 A.S.R. 38.

Matai may give land to other members of the family who may use the land but not dispose of it without the consent of the matai and if members abdandon land, land reverts to matai who may apportion it out to other family members. Mailo v. Fanene, 1 A.S.R. 191.

Fact members of family did not object to taking of lands by matai is evidence that they considered matai had pule over lands. Mailo v. Fuamaila, 1 A.S.R. 449.

Where greater matai gives lands to lesser matai as nofofanu, greater matai retains pule over lands, and where family of lesser matai deserts lands, greater matai may recover possession of it. Mailo v. Fuamaila, 1 A.S.R. 449.

Matai may parcel out communal land to those who serve him but such parceling out does not terminate matai's pule over the property. Pisa v. Solaita, 1 A.S.R. 520.

Matai does not own family lands but is trustee for benefit of family so that land and fruits therefrom continue in family and their descendants. Satele v. Faga, 2 A.S.R. 26.

Fact claimant is son of former matai of family lands does not give him claim to lands since he may hae married into another family, and right to possession is determined by succeeding matais. Talo v. Tavi, 2 A.S.R. 63.

Common law of England applies to permission by matai to use and occupy family lands, since there is no United States law or Government of Samoa regulation applicable. Fiailoa v. Meredith, 2 A.S.R. 129.

Matai cannot convey land unless he complies with legislation on alienation of native lands. Tuafili v. Taape, 2 A.S.R. 155.

Matai cannot, either by law or pursuant to Samoan customs, convert communal family land into his own individually owned land upon his own authority. Teo v. Totoa, 2 A.S.R. 243.

Matai does not own family lands absolutely, but hold them as trustee for benefit of family. American Samoa v. Iose, 2 A.S.R. 638.

Under Samoan custom family member makes plantations on family land either at direction of or with consent of matai. American Samoa v. Iose, 2 A.S.R. 638.

Under Samoan custom, matai has particular land for his residential fale which passes to succeeding matais. Mulitauaopele v. Paleafei, 3 A.S.R. 93.

Matai cannot mortgage communal land to secure his individual debt without approval of family, and such attempted mortgage is nullity. Mauga v. Soliai, 3 A.S.R. 108.

Where matai states that he is unwilling to accept service from family member, failure to render service is not grounds for eviction. Vaotuua Family v. Puletele, 3 A.S.R. 145.

Where matai has right to evict person from family lands, but such eviction would result in much hardship and would be unfair to person because he put much time and labor into land in reliance upon assignment to him of land by former matai, court will permit a period of continued occupancy in order to permit person to derive some profit from land and to remove personal property from land. Fano v. Teleuli, 3 A.S.R. 154.

Matai has duty to decide boundary between portions of communal land allocated to various members of his family. Malaetia v. Velega, 3 A.S.R. 265.

Court takes judicial notice of fact that matai sometimes consult with family before entering into leases and sometimes do not, but are not obligated to under custom. Haleck v. Tiumalu, 3 A.S.R. 380.

Express or implied assignment of communal house does not give family member right to remove, replace or enlarge house without matai's approval. Coffin v. Mageo, 4 A.S.R. 14.

Express or implied assignment of communal house and appurtenant land continues for life of family member, unless there is voluntary removal or matai orders removal after family meeting with all parties represented or reasonable decision by matai tha removal is for important family purpose if provision is made for specific alternate land, or other suitable arrangement made with sufficient time for family member to comply. Coffin v. Mageo, 4 A.S.R. 14.

Occupancy of land for substantial period by family member with implied consent of family matais, is construed as an assignment of land by implication. Coffin v. Mageo, 4 A.S.R. 14.

Communal law concept to surrender applies to relationship between matai with pule over land and assignee of family land – matai is ultimate reversioner of all assigned communal land. Talagu v. Te'o, 4 A.S.R. 121.

Code of American Samoa provides that customs of Samoa not in conflict with laws of Samoa or laws of United States concerning Samoa shall be preserved and there is not law which conflicts with matai's authority to control family lands, as long as his pule is exercised fairly and justly. Tiumalu v. Scanlan, 4 A.S.R. 194.

Court takes judicial notice of Samoan custom that matai has control over family lands, that he has authority to assign piece of family land to member of family, and that it is not necessary to have family meeting to discuss assignment. Tiumalu v. Scanlan, 4 A.S.R. 194.

Matai has pule over family lands, but pule may be used only for benefit of family members and justly and fairly, and matai cannot throw family member off land unreasonably when he is mad at family member. Tali v. Tupeona, 4 A.S.R. 199.

Claim of person ownership of communal land by individual chief, involved in person dispute with family, has no basis. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Under Samoan custom, matai of family has jurisdiction over land of his family. Lutu v. Fuimaono, 4 A.S.R. 450.

Under Samoan custom, family lands are under jurisdiction of matai and young man in family has no authority to permit strangers to live on communal lands. Lolo v. Heirs of Sekio, 4 A.S.R. 477.

Under Samoan custom, matai may assign member of his family portion of communally owned land upon which to build house. Atualevao v. Masaniai, 4 A.S.R. 664.

Under Samoan custom, matai, as head of family, has always had pule over land of family, and he customarily assigns certain piece of land to individual member by showing him certain area in village and permitting him to build his fale thereon. Leapaga v. Masalosalo, 4 A.S.R. 868.

Only the senior matai of the family may order a survey and he may not delegate that authority. Galea'i v. Ma'ae, 2 A.S.R.2d 4 (App. Div. 1984).

A matai is not bound by his predecessor's decisions regarding family members' use of communal land. Nauma v. Fau, 2 A.S.R.2d 27 (Land & Titles Div. 1984).

A non-matai family member cannot defend against a claim of ownership of land based on the ground that it is the family's communal land. Tiumalu v. Craddick, 2 A.S.R.2d 50 (App. Div. 1985).

Senior matai of Samoan family should not take major steps with regard to family land without prior consultation of family, and particularly of family members directly affected. Talili v. Satele, 4 A.S.R.2d 23.

Right of Samoan family member to occupy a particular piece of land is not absolute; senior matai of family may reallocate land within family by providing displaced family members with equivalent land. Talili v. Satele, 4 A.S.R.2d 23.

Court would not issue preliminary injunction forbidding senior matai of family to interfere with ongoing construction on family land, since to do so would invade the traditional decision making powers of the matai and effect a change in the status quo in advance of trial on the merits. Mailo v. Nua, 5 A.S.R.2d 59.

The authority of a matai over Samoan communal land is not terminated by designation of the land to the use of particular family members. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

Generally, pule is the authority vested in the matai to protect and conserve the family's assets, and includes the power to divide and allocate land to individual members for their use. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

Under Samoan custom, the matai has the duty to exercise his pule over communal property for the benefit of the family. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

When a matai undermines the rights of a family member to use communal property in order to favor a non-family member, the matai acts inconsistently with his duty to exercise his pule for the benefit of family members. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

An assignment of land to a family member by a previous matai cannot be revoked by a new matai after it has been relied upon, except for good cause. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

Pule of a matai over family land may not be exercised without limitation. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

Unilateral and secret attempt by matai to give his daughter sole authority over family land to the exclusion of his successors in matai title would be inconsistent with Samoan tradition and contrary to territorial statutes regulating alienation of family land. A.S.C.A. §§ 37.0201 et seq. Gi v. Temu, 11 A.S.R.2d 137.

Matai should ordinarily consult with family, including especially those family members directly affected, before taking land assigned to a family member in order to use the land for some other family purpose. Gi v. Temu, 11 A.S.R.2d 137.

Matai cannot seize on minor disagreements as a pretext for expulsion of family members who have rendered long and loyal service. Gi v. Temu, 11 A.S.R.2d 137.

Despite exceptions, the general rule is that senior matai has the authority to make decisions about family land. Gi v. Temu, 11 A.S.R.2d 137.

Courts will not interfere with decisions of senior matai regarding family land unless they are arbitrary, capricious, illegal, or abusive of discretion. Gi v. Temu, 11 A.S.R.2d 137.

Sa`o of Samoan family should, in accordance with Samoan custom, have consulted family members before alienating family land. Vaimaona v. Tuitasi, 12 A.S.R.2d 68.

Custom that major family decisions should be made in consultation with the whole family is not among those incorporated into statutory restrictions on the otherwise plenary powers of a sa`o over family lands. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Sa`o could not avoid his contract for the sale of land on the ground of his own violation of custom, and other family members' remedies were against the sa`o, not the purchaser. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Matai assigning or designating family land for the use of a particular member does not lose pule (authority) over such land. Lutu v. Semeatu, 13 A.S.R.2d 88.

Matai assigning or designating family land for the use of a particular member does not lose pule (authority) over such land. Sivia v. Alaimalo, 13 A.S.R.2d 95.

Although the power of a matai over Samoan family land is substantial, it is not absolute. I`aulualo v. Siofaga (Mem.), 14 A.S.R.2d 26.

Notwithstanding the pre-eminent role of the matai in Samoan family land decisions, some situations arise in which the matai's power is subject to traditional limitations in favor of other family members, and on some of these occasions these limitations are enforceable in judicial proceedings. Talili v. Satele, 15 A.S.R.2d 5.

Judicial enforcement of traditional limitations on a matai's power over family land decisions is particularly appropriate when a matai begins an ambitious program of reallocation of family land to members of his own branch of a family at the expense of more distant relatives. Talili v. Satele, 15 A.S.R.2d 5.

A matai's assignment or designation of family land for a family member's use does not divest the matai of his authority over the land. Alaimalo v. Sivia, 17 A.S.R.2d 25.

During the vacancy of the family's matai title, no one family member or faction has the power to effect a radical transformation of the family's property without a clear consensus of the entire family. Fagasoaia v. Fanene, 17 A.S.R.2d 91.

While it was undoubtedly true before the coming of the present government that some matais, on some occasions,

wielded the power to dispossess family members, at will, of lands they had long occupied and cultivated, their authority to do so was strictly limited by customary law. Talili v. Williams, 18 A.S.R.2d 23.

The matai alone has "pule" (authority) over family lands, and an individual family member simply cannot help himself to family lands in derogation of that authority. Leapagatele v. Malauulu, 19 A.S.R.2d 109.

A senior matai may assign a piece of family land for the use of individual family members, but such assignment does not terminate his control over the land. Sagapolutele v. Tala'i, 20 A.S.R.2d 16.

A matai may not revoke a previous matai's assignment of communal land without cause. Utu v. Alaimalo, 22 A.S.R.2d 92.

A matai does not lose pule over land assigned to family members, as an outright assignment of communal land is contrary to law and custom. Seventh Day Adventist Church of American Samoa v. Maneafaiga, 23 A.S.R.2d 150.

Under Samoan custom, the sa`o has pule (authority) to make decisions about family lands, including assignments of family land for the use of individual family members. Seventh Day Adventist Church of American Samoa v. Maneafaiga, 23 A.S.R.2d 150.

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.

A matai's authority or pule over family lands is not unfettered when it comes to dealing with the rights of family members; rather, it must be used for the benefit of family members and justly and fairly. It must not be used unreasonably and unjustly. Pen v. Lavata`i, 25 A.S.R.2d 164.

Having the general ability to administer the family lands but at the same time he has no authority to alienate land in his own right, a matai's authority is like that of a trustee in that he is to act for the benefit of the family. When a matai undermines the rights of a family member (a beneficiary of family property) to favor a non-family member, he acts inconsistent with, and is in breach of, that duty to exercise his pule for the benefit of the family members. Pen v. Lavata`i, 25 A.S.R.2d 164.

The senior matai responsible for resolving intra-family disputes involving the use of family land, must have been bestowed the matai title in compliance with, among other things, the requirements of Title 1, Chapter 4, American Samoa Code Annotated, A.S.C.A. § 1.0401 et seq. Pene v. Salualo, 31 A.S.R.2d 58.

Only the sa`o is authorized in matters concerning separation agreements for communal land. In Re Estate of Makerita Shimasaki, 31 A.S.R.2d 195.

The sa`o of a family need not personally appear in order for the family to defend claims made against its communal land. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

Although titleholder was paramount chief of county, he did not acquire pule over all communal lands in county simply by virtue of his status as paramount chief. Titleholder's pule was instead limited to the family's communal lands. Faumuina v. Tautolo, 4 A.S.R.3d 305 (Land & Titles Div. 2000).

Only the senior matai of a Samoan family has the authority to request a survey of communal property of that family. Vaotu`ua v. Poloa, 4 A.S.R.3d 312 (Land & Titles Div. 2000).

The sa`o has pule or the authority to make decisions about family lands, whereas an untitled family member has no pule or authority to unilaterally deal in family property. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

Under Samoan custom, family lands are under the jurisdiction of the matai. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

A unilateral and secret attempt by a matai to give his daughter sole authority over family land to the exclusion of his successors in title is inconsistent with Samoan tradition, and is contrary to statutory law of American Samoa with regard to the alienation of family land. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

The sa`o of a family is entrusted with grave responsibilities for the protection and management of the family's communally-owned lands and the family's affairs. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

A *sa`o* is like a trustee of a family's communal land, and in that capacity he should ordinarily consult with the family, particularly with those members affected, before making any major decision impacting communal land uses. McMoore v. Matu'u, 7 A.S.R.3d 214 (Land & Titles Div. 2003).

A *sa`o* has authority to make decisions regarding family land, and the court will not interfere with a decision unless it is illegal, arbitrary, capricious, or an abuse of discretion. McMoore v. Matu'u, 7 A.S.R.3d 214 (Land & Titles Div. 2003).

A Samoan family's *sa`o* controls the occupancy and use of the family's communal land, in a manner similar to a trustee for the benefit of the family's members as a whole. Reavis v. Leleua, 7 A.S.R.3d 220 (Land & Titles Div. 2003).

The *sa`o*'s authority extends to making customary assignments of the occupancy and use of portions the family's communal lands, usually to family members. His decisions on customary assignments of the family's communal lands are final, subject only to judicial review for arbitrary and capricious actions. Reavis v. Leleua, 7 A.S.R.3d 220 (Land & Titles Div. 2003).

The court will not substitute its judgment for that of the senior matai, absent a clear abuse of discretion. Pulu v. Talalotu, 7 A.S.R.3d 289 (Land & Titles Div. 2003).

The general rule is that a *sa`o* has the authority to make decisions about family land. Pulu v. Talalotu, 7 A.S.R.3d 289 (Land & Titles Div. 2003).

§ 2(4) —Assignment of Land to Family Members

§ 2(4)(a)—Generally

Where matai succeeding to control of lands is from another family, this does not divest family which selects him as matai and of which he is member by marriage, of family land, since matai does not have own land but merely holds it for benefit of family. Salavea L. v. Ilaoa, 2 A.S.R. 15.

Rights of family members in land continue after death of matai. Satele v. Faga, 2 A.S.R. 26.

Under Samoan custom, matai upon death of member of family, assigns communal land occupied by deceased to another member of family, and there is not inheritance right in family lands in heirs of deceased occupant, nor can other members of family maintain action as tenants in common, which they are not. Fanene Family v. Brown, 3 A.S.R. 260.

Where matai has authorized family member to construct fence on land, court must recognize this authority under Samoan custom, and where party damages fence, he must compensate family member who erected it. Yuhashi v. Lopeti, 3 A.S.R. 322.

If matai neglects duties, and is not recognized by village or county as matai, branches of family may give valid consent to family member for use of communal land without matai's approval. Siu v. Maisu, 3 A.S.R. 336.

Under Samoan custom, family members will visit matai who is sick in hospital and court finds it improbable that they would not inform him of building of houses on lands. Aumavae v. Tuitele, 3 A.S.R. 342.

Express or implied assignment of communal house does not give family member right to remove, replace or enlarge house without matai's approval. Coffin v. Mageo, 4 A.S.R. 14.

Express or implied assignment of communal house and appurtenant land continues for life of family member, unless there is voluntary removal or matai orders removal after family meeting with all parties represented or reasonable decision by matai tha removal is for important family purpose if provision is made for specific alternate land, or other suitable arrangement made with sufficient time for family member to comply. Coffin v. Mageo, 4 A.S.R. 14.

In accordance with Samoan custom, matai has pule or jurisdiction over family lands, and where there is no assignment of land to person, than matai is entitled to order restraining such person from constructing house on land and evicting him from land. Masalosalo v. Isumu, 4 A.S.R. 309.

Senior matai of Samoan family should not take major steps with regard to family land without prior consultation of family, and particularly of family members directly affected. Talili v. Satele, 4 A.S.R.2d 23.

Judgment that disputed tract was "communal land" of a family that was not a traditional Samoan family with a matai left open the question how family was to exercise rights of ownership under land statutes presuming the existence of a senior matai, since family was prohibited by statute from creating a new matai title. A.S.C.A. §§ 1.0401, 37.1502-03. Willis v. Willis, 4 A.S.R.2d 144.

Family member must plead and prove good faith effort was made to settle disagreements with senior matai and within the family as condition precedent to bringing suit against matai or other family members. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

Family member's good faith efforts to settle land dispute within the family were questionable where prayer for relief seeks damages in amounts disproportionate to those suffered and where matai's offer to furnish family lands upon family member's return to the territory was refused. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

Dower rights do not exist in Samoan communal lands. A.S.C.A. § 40.0106. Tufele v. Mose, 7 A.S.R.2d 157.

A person who has married into a Samoan family ordinarily has no say with regard to that family's communal property. Tufele v. Mose, 7 A.S.R.2d 157.

The rights of individual occupants of land held in trust for the people of Manu'a are no greater than those of others from Manu'a; occupants do not have right or power of appointment to pass their possessory rights to others. Tufele v. Mose, 7 A.S.R.2d 157.

Samoan communal land belongs to families rather than individuals, and a judgment against the family is binding on the family despite the succession of matai-title holders through time. Taulaga v. Patea, 17 A.S.R.2d 34.

During the vacancy of the family's matai title, no one family member or faction has the power to effect a radical transformation of the family's property without a clear consensus of the entire family. Fagasoaia v. Fanene, 17 A.S.R.2d 91.

Family members do not waive the right to claim land as individually owned land or as the family's communal land through adverse possession simply because the senior matai of the family refuses to take appropriate action to defend the family's claim to the land. However, family members do waive the right to claim an interest in land when they fail to take appropriate action to prosecute or defend the family's claim to the land according to land registration statutes. Savane v. Lafi, 31 A.S.R.2d 87.

Where defendants unilaterally build structure on family land, such actions are tantamount to an unlawful assertion of pule, as well as an unauthorized assignment of family land. Pagofie v. Matagi, 1 A.S.R.3d 227 (Land & Titles Div. 1997).

Although sa`o is only authorized person under A.S.C.A. § 43.1309(b) to bring an action regarding disputes over communal land, where plaintiffs, not sa`o, brought action, the early posture of the case together with the fact that the sa`o was not adverse to plaintiffs' claim mandated against dismissal. Sasa v. Levu, 2 A.S.R.3d 225 (Land & Titles Div. 1998).

§ 2(4)(b)—Occupation, Cultivation & Use

Cultivation and continued use of lands vest right in family to continue to use lands subject to pule of matai. Levu v. Maluia, 1 A.S.R. 197.

Family who cultivates section of family lands has right to produce thereof so long as they retain possession, but upon abandonment of any section, disposition of that section is in discretion of matai. Levu v. Maluia, 1 A.S.R. 197.

Under Samoan custom, family who used and occupied land had title thereto. Siva v. Asoaua, 2 A.S.R. 113.

Right to use and occupy family lands by family member is governed by codification of laws, which states that laws of United States concerning Samoa and common law of England, which are suitable to conditions of Samoa, shall be applied. Fiailoa v. Meredith, 2 A.S.R. 129.

Permission to use family lands given to family members by matai continues as long as family member lives on and uses land, subject to change by succeeding matai. Fiailoa v. Meredith, 2 A.S.R. 129.

Oral gift of interest in land by matai to family member which is relied upon by construction of fale and plantations on land cannot be terminated by mere whim of matai, but continues as long as donee abides by terms of gift and continues to live on and use land, or until death of present matai, who did not intend to bind successors, but in event of death of matai, occupant shall have reasonable time to remove fale and plantations from land. Fiailoa v. Meredith, 2 A.S.R. 129.

There is no legal obligation for Samoan brothers and sisters to permit their half-European half-sister to occupy lands, but there may be moral obligation. Willis v. Willis, 2 A.S.R. 276.

Member of Samoan clan has right to live on clan lands and cannot be deprived of right by other members of clan. Leasiolagi v. Fao, 2 A.S.R. 451.

Where family members render service to matai and land has been rightfully assigned to them, they have right to continue to use and occupy land in accordance with custom. Ifopo v. Vaiao, 2 A.S.R. 472.

Plantations on communal land and fruit therefrom are property of man who grows them, subject to duty of service to matai. American Samoa v. Iose, 2 A.S.R. 638.

Fact that husband lives on communal land of wife's family, assigned by wife's matai, does not make land communal land of husband's family. Lualemana v. Tago, 3 A.S.R. 43.

Where person enters upon land with consent of matai and with knowledge of family, even though such consent is unlawful, and puts up houses on land, and plants land, he has right to retain possession of it for period of time in order to compensate him for improvements thereon. Mauga v. Soliai, 3 A.S.R. 108.

Rights of family member to land assigned to him by former matai are subject to senior right of family to use lands as family burial ground and may be taken for such purpose if family member has first been assigned other land. Tiumalu v. Lio, 3 A.S.R. 176.

Court will issue restraining order preventing family member from constructing house on land which family would rather use for burial ground until such time as new matai is chosen who may determine whether land shall be used for such purpose. Tiumalu v. Lio, 3 A.S.R. 176.

Under Samoan custom, matai upon death of member of family, assigns communal land occupied by deceased to another member of family, and there is not inheritance right in family lands in heirs of deceased occupant, nor can other

members of family maintain action as tenants in common, which they are not. Fanene Family v. Brown, 3 A.S.R. 260.

Persons who are not members of family have no right to use family lands without permission. Faamuli v. Leiato, 3 A.S.R. 308.

If matai neglects duties, and is not recognized by village or county as matai, branches of family may give valid consent to family member for use of communal land without matai's approval. Siu v. Maisu, 3 A.S.R. 336.

Possession of communal lands is property right of family subject to assignment by matai, in accordance with Samoan custom, to specific member of family. Taesali v. Samuela, 3 A.S.R. 359.

Death of grantee of communal land does not end right of grantee's surviving children and their immediate families to occupy land if they continue service to granting matai. Foster v. Fa'amuli, 4 A.S.R. 3.

Appurtenant to the right to occupy house on communal land are rights to repair house, use of adjoining yard, and have access to highway. Coffin v. Mageo, 4 A.S.R. 14.

Occupancy of land for substantial period by family member with implied consent of family matais, is construed as an assignment of land by implication. Coffin v. Mageo, 4 A.S.R. 14.

If two branches of family have each had houses on disputed communal land for some years, there must be express or implied agreement for division of disputed land as tenants in common. Liufau v. Unutoa, 4 A.S.R. 230.

If two branches of family own disputed communal land as tenants in common, one branch cannot prevent other from erecting guest house on communal land. Liufau v. Unutoa, 4 A.S.R. 230.

Under Samoan custom, communal family land is owned by Samoan family and each member has right to use portion. Tuanaitau v. Paogofie, 4 A.S.R. 375.

Under Samoan custom, members of family own land in way analogous to cotenants. Tuanaitau v. Paogofie, 4 A.S.R. 375.

Absent special circumstances, senior matai of a Samoan family must respect the right of family members who have long resided on family land to continue residing on family land. Talili v. Satele, 4 A.S.R.2d 23.

Right of Samoan family member to occupy a particular piece of land is not absolute; senior matai of family may reallocate land within family by providing displaced family members with equivalent land. Talili v. Satele, 4 A.S.R.2d 23.

Right of Samoan family member to use family land for economic purposes is subject to the right of family to contributions in proportion to the value of the fruits of occupancy. Talili v. Satele, 4 A.S.R.2d 23.

A family member's right to use Samoan communal lands is conditional; the family member must render tautua to the matai in accordance with custom and must use and occupy the lands. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

When an occupant of land held in trust for the people of Manu'a voluntarily departs the land or abandons his possessory rights the land reverts to the trustee and the people of Manu'a. Tufele v. Mose, 7 A.S.R.2d 157.

Defendant's use of land held in trust for use and benefit of the people of Manu'a exceeded scope of trust where defendant held possessory interests in three buildings which were leased to commercial businesses, and the trustee had power to require defendant to surrender one of the business sites to establish an administrative office for the general use of the Manu'a District. Tufele v. Mose, 7 A.S.R.2d 157.

Under Samoan custom a widow who has had no children by her deceased husband has no right to remain on the communal land of husband's family unless the family invites her to remain. Tuiteleleapaga v. King, 8 A.S.R.2d 49.

Widow who was entitled to one-third of deceased husband's interest in individually owned property could not be evicted by husband's relatives from possession of a small part of such property. A.S.C.A. § 40.0103. Tuiteleleapaga v. King, 8 A.S.R.2d 49.

A widow without children has no right to remain on communal land of her husband's family after his death. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

Under Samoan custom, communal family land is owned by the Samoan family as such and each member of the family has a right to use a portion of the communal land. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

The right of a family member to use communal land is a proprietary right within the due process clause of the territorial constitution. Rev'd Const. of Am. Samoa I § 2. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

Family member's continued right to use and occupy communal land is conditional upon his providing tautua to the matai. Lutu v. Semeatu, 13 A.S.R.2d 88.

A family member's continued right to use and occupy communal land is conditioned upon his providing service to the matai. Alaimalo v. Sivia, 17 A.S.R.2d 25.

The right of a family member to use land owned by a Samoan communal family is a property right protected by the territorial constitution's due process clause. Rev. Const. Am. Samoa Art. I, § 2. Seventh Day Adventist Church of American Samoa v. Maneafaiga, 23 A.S.R.2d 150.

The unquestioned right of a family member to use communal land is a property right under the due process clause of either the U.S. or Samoan constitutions. A non-family member, by definition, has no such right. Pen v. Lavata`i, 25 A.S.R.2d 164.

A family member is ordinarily entitled to possess land assigned to him for his lifetime. Pen v. Lavata`i, 25 A.S.R.2d 164.

Land ownership and easement rights extend to those uses that are incidental or necessary to the reasonable use of the land. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

Where two unrelated families had lived together on land peacefully and harmoniously over significant period of time, interspersing their own improvements upon the land without any logical pattern of present control, court would not declare land to be sole communal land of either family, nor would it create a new form of communal land ownership, but instead ruled that each was entitled to continue, indefinitely, such joint occupancy and use. Faumuina v. Tautolo, 5 A.S.R.3d 262 (Land & Titles Div. 2001).

Where land was found to be neither the exclusive communal land of either of two family-parties, court apportioned rents owed by government for use of such land based on the extent of occupancy and use by each family. Faumuina v. Tautolo, 5 A.S.R.3d 262 (Land & Titles Div. 2001).

A *sa`o* is obligated to respect long-term occupancy based on a customary assignment of communal land to a family member. McMoore v. Matu'u, 7 A.S.R.3d 214 (Land & Titles Div. 2003).

The right of occupancy, flowing from an assignment of communal land, is not absolute. McMoore v. Matu'u, 7 A.S.R.3d 214 (Land & Titles Div. 2003).

The *sa`o* also retains authority to reassign the portion to another in the event of the assignee's prolonged nonuse of the premises. Reavis v. Leleua, 7 A.S.R.3d 220 (Land & Titles Div. 2003).

§ 2(4)(c)—Evictions & Revocation of Assignments

Under Samoan custom, family members may not be put out of their house in order that other family members may occupy it. Malaea v. Fiapapalagi, 2 A.S.R. 651.

Where matai states that he is unwilling to accept service from family member, failure to render service is not grounds for eviction. Vaotuua Family v. Puletele, 3 A.S.R. 145.

Where matai has right to evict person from family lands, but such eviction would result in much hardship and would be unfair to person because he put much time and labor into land in reliance upon assignment to him of land by former matai, court will permit a period of continued occupancy in order to permit person to derive some profit from land and to remove personal property from land. Fano v. Teleuli, 3 A.S.R. 154.
Matai has duty to decide boundary between portions of communal land allocated to various members of his family. Malaetia v. Velega, 3 A.S.R. 265.

Assignment of land to family member by former matai cannot be revoked by subsequent matai after family member has relied thereon and commenced erection of building. Taesali v. Samuela, 3 A.S.R. 359.

Matai cannot evict family member from land he has pule over because member cut one coconut tree and rebuilt and improved house without matai's permission. In light of substantial service rendered matai, eviction over small disagreements is unjust and unreasonable. Tago v. Faleulu, 3 A.S.R. 370.

Matai may evict family member from communal land for failure to render service, if matai protects family member against wrongdoing by other family members. Coffin v. Mageo, 4 A.S.R. 14.

Under Samoan custom, at least majority of family must maintain petition for eviction of person from family lands, and where there is not majority, petition must be dismissed. Fanene Family v. Brown, 3 A.S.R. 260.

Nineteen members of family who petition for eviction of occupant from family lands represent themselves only and not family, where they are small minority of family, cannot show authorization of family to bring suit and there is evidence of opposition to suit by other family members. Fanene Family v. Brown, 3 A.S.R. 260.

Matai has pule over family lands, but pule may be used only for benefit of family members and justly and fairly, and matai cannot throw family member off land unreasonably when he is mad at family member. Tali v. Tupeona, 4 A.S.R. 199.

Court is not authorized under Samoan custom to order family member off land upon petition of matai where family member has rendered service for many years, except that matai has rejected service for past two years and where family member built house with own money and made improvements on it, which were not approved by matai. Tali v. Tupeona, 4 A.S.R. 199.

Where person has been given permission by deceased matai and present talking chief to occupy family lands, he should not be required to vacate lands by talking chief. Fuga v. Olive, 4 A.S.R. 283.

Where person fails to render service to talking chief as representative of deceased matai to whom he previously rendered services because he did not believe custom required him to do so and because deceased matai had relieved him of such obligation, he cannot be forced to vacate premises by talking chief if he, upon learning of obligation, renders service to talking chief. Fuga v. Olive, 4 A.S.R. 283.

Person married into family cannot complain of order of matai evicting him from land where he has been assigned other land. Masalosalo v. Isumu, 4 A.S.R. 309.

Only matai has power to assign occupancy rights in communal land; thus only matai has power to terminate those rights. If matai title is vacant, other family members lack pule to evict family member. Malaga v. Alaga, 4 A.S.R. 735.

Fact man has lived on land for thirty years does not relieve him of obligation under Samoan custom of rendering services to matai, and matai has right to evict man married into his family or blood relative from land if such person refuses to render customary services. Leapaga v. Masalosalo, 4 A.S.R. 868.

When senior matai of a family brought action to evict family members from communal land after they had insulted and threatened him, but family members had formerly rendered service to him for many years and had given their labor and money to build family guest house, court would not order eviction but would order them to show respect for matai and refrain from disrupting peace and harmony of the family and village. Tavai v. Pone, 3 A.S.R.2d 9.

Absent special circumstances, senior matai of a Samoan family must respect the right of family members who have long resided on family land to continue residing on family land. Talili v. Satele, 4 A.S.R.2d 23.

Right of Samoan family member to occupy a particular piece of land is not absolute; senior matai of family may reallocate land within family by providing displaced family members with equivalent land. Talili v. Satele, 4 A.S.R.2d 23.

Claimant family judicially determined to be communal owners of disputed tract could not banish other claimant who had long been assigned use of it without the extensive consultation and just compensation which are an essential part of the relationship between sa'o and members of his family. Tuileata v. Amituana'i, 4 A.S.R.2d 168.

Where land assigned to family member by previous matai had not been surrendered or abandoned, family member continued to serve the matai, and there was no showing of cause for revocation of the family member's assignment to land, matai could not revoke the assignment in order to allow use of the land by another person who was not a family member. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

An assignment of land to a family member by a previous matai cannot be revoked by a new matai after it has been relied upon, except for good cause. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

A matai may evict a family member from communal lands for refusal to serve the matai. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

Ordinarily an assignment of land by the matai to a family member is for the latter's lifetime, and it cannot be revoked and the family member deprived of its possession except for good cause. Gi v. Temu, 11 A.S.R.2d 137.

Matai cannot seize on minor disagreements as a pretext for expulsion of family members who have rendered long and loyal service. Gi v. Temu, 11 A.S.R.2d 137.

Although persons living with a family who are not blood members cannot always be expelled at the whim of the senior matai, non-members do not enjoy the benefit of the strong presumption that a family member may live on family land. Gi v. Temu, 11 A.S.R.2d 137.

Where matai attempted to solve a dispute between two groups of people living on his family land, there was no evidence that he was motivated other than by a desire to preserve peace within the family, and defendants responded by ignoring and disobeying his directives, threatening him with a knife, and inviting people with guns onto the land, court could not say that matai acted without good cause in ordering defendants to leave the land or that the order was illegal, arbitrary, capricious, or abusive of discretion. Gi v. Temu, 11 A.S.R.2d 137.

In those rare cases when some important family purpose has been held to justify eviction of a family member who has done no wrong from family lands he has been occupying, it is essential that the family member be compensated by the assignment of equivalent lands. I`aulualo v. Siofaga (Mem.), 14 A.S.R.2d 26.

General assurance by matai that family member would be free to build another house on family land was insufficient compensation for proposed eviction of the family member from a finished Western-style house in which he had long resided. I`aulualo v. Siofaga (Mem.), 14 A.S.R.2d 26.

Matai may not evict family member without cause from a house on family land which the family member himself has built or substantially improved with permission of the matai or

his predecessor in title. I`aulualo v. Siofaga (Mem.), 14 A.S.R.2d 26.

Judicial enforcement of traditional limitations on a matai's power over family land decisions is particularly appropriate when a matai begins an ambitious program of reallocation of family land to members of his own branch of a family at the expense of more distant relatives. Talili v. Satele, 15 A.S.R.2d 5.

While it was undoubtedly true before the coming of the present government that some matais, on some occasions, wielded the power to dispossess family members, at will, of lands they had long occupied and cultivated, their authority to do so was strictly limited by customary law. Talili v. Williams, 18 A.S.R.2d 23.

Whether a particular matai has the power to evict people living on communal land depends on many facts and circumstances and is generally not a question for summary judgment. T.C.R.C.P. 56. Fanene v. Fanene, 19 A.S.R.2d 69.

A matai may not revoke a previous matai's assignment of communal land without cause. Utu v. Alaimalo, 22 A.S.R.2d 92.

A matai can only revoke an assignment of land, and thereby deprive a family member of its possession, for good cause. Pen v. Lavata`i, 25 A.S.R.2d 164.

A matai can, for a family purpose, order a person's removal from land if he meets certain requirements. Pen v. Lavata`i, 25 A.S.R.2d 164.

Eviction of a family from family land is a matter properly within the senior matai's competence; it is the matai who has primary jurisdiction over intra-family disputes involving use of family land. Pene v. Salualo, 31 A.S.R.2d 58.

Regardless of whether a matai is required to consult his family before he enters a lease, certain circumstances demand that he do so when revoking an assignment of communal land to a family member. Pen v. Lavata`i, 30 A.S.R.2d 10.

An assignment of communal land may only be revoked for an overriding family purpose if the family meets, the matai reasonably decides the revocation is for an overriding family purpose, and alternate land or another reasonable arrangement is made. Pen v. Lavata`i, 30 A.S.R.2d 10.

Family consultation is required when revoking a land assignment to a family member so that the land may be leased to non-family members. Pen v. Lavata`i, 30 A.S.R.2d 10.

A matai must arrive at consensus in the traditional Samoan way before revoking an assignment of communal land based on the family purpose doctrine. Pen v. Lavata`i, 30 A.S.R.2d 10.

A matai may create an assignment without the prior consent of his family, but may not unilaterally act to revoke an assignment. An assignment of communal land may be revoked only with consensus support of the family. Fanene v. Malauulu, 30 A.S.R.2d 45.

Under Samoan custom, family lands are under the jurisdiction of the matai. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

Ordinarily, the assignment of communal land is not revocable absent good cause. McMoore v. Matu'u, 7 A.S.R.3d 214 (Land & Titles Div. 2003).

Ordinarily, so long as the customary assignee of a portion of the family's communal land provides *tautua* ("customary service") to the *sa`o*, the assignment endures for the assignee's lifetime. Reavis v. Leleua, 7 A.S.R.3d 220 (Land & Titles Div. 2003).

The *sa`o* also retains authority to reassign the portion to another in the event of the assignee's prolonged nonuse of the premises. Reavis v. Leleua, 7 A.S.R.3d 220 (Land & Titles Div. 2003).

In action for eviction and damages for trespass, plaintiff has a superior claim of entitlement to the disputed land where plaintiff's family had exclusive use and occupation of the land for generations, graves of family members and remnants of the homestead are on the land, and plaintiff currently receives rents on leases of the land. Stevens v. Tagisiaali'i, 7 A.S.R.3d 235 (Land & Titles Div. 2003).

Plaintiff seeks eviction, but injunctive relief is more appropriate in action for eviction and damages for trespass. Stevens v. Tagisiaali'i, 7 A.S.R.3d 235 (Land & Titles Div. 2003).

§ 2(4)(d)—Registration Rights

Family members have no right to register title to communal in their individual names. Tapuni v. Satele, 2 A.S.R. 210.

Land owned communally by extended family may not be registered by single clan of family as clan's communal land. Magalei v. Siufanua, 4 A.S.R. 101.

Family members do not waive the right to claim land as individually owned land or as the family's communal land through adverse possession simply because the senior matai of the family refuses to take appropriate action to defend the family's claim to the land. However, family members do waive the right to claim an interest in land when they fail to take appropriate action to prosecute or defend the family's

claim to the land according to land registration statutes. Savane v. Lafi, 31 A.S.R.2d 87.

§ 2(4)(e)—Injunctions

Court would not issue preliminary injunction forbidding senior matai of family to interfere with ongoing construction on family land, since to do so would invade the traditional decision making powers of the matai and effect a change in the status quo in advance of trial on the merits. Mailo v. Nua, 5 A.S.R.2d 59.

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.

Preliminary injunction restraining defendants from further construction on specified lands until land use and building permit applications are approved by plaintiff was appropriate where (1) the plaintiff objected to the construction only because the defendants had undermined his authority as senior matai by holding themselves out on the permits as owners of the land; (2) plaintiff's claim was supported by the preponderance of the evidence at the preliminary hearing; and (3) the injunction would not prevent defendants from completing their construction, since plaintiff had given his word that he would approve the permits if they were submitted to him. Sotoa v. Togotogo, 7 A.S.R.2d 93.

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.

A family member may, in certain circumstances, seek judicial review of matai action, and the court will enjoin arbitrary, capricious, or illegal actions or those in which there has been an abuse of discretion on the part of the of the matai. Pen v. Lavata`i, 25 A.S.R.2d 146.

Ordinarily, the sa`o must bring actions for injunctive relief in matters pertaining to his family's communal land under A.S.C.A. § 43.1309(b). If the matai title of the sa`o is vacant, or if he is incapacitated, at least two blood male matai members of the family over age 18 must band to initiate such actions. If the sa`o is effectively absent and the family does not have two adult blood male matai members, adult blood non-matai members of the family, again a minimum of two persons, can sue for injunctive relief. Maiava v. Tufele, 30 A.S.R.2d 31.

To bring an action for injunctive relief when the title of sa`o is vacant, the two blood matai members of the family must have their matai titles in the family seeking the injunction. Maiava v. Tufele, 30 A.S.R.2d 31.

Where defendants unilaterally build structure on family land, such actions are tantamount to an unlawful assertion of pule, as well as an unauthorized assignment of family land. Pagofie v. Matagi, 1 A.S.R.3d 227 (Land & Titles Div. 1997).

Where circumstances indicate that family members are exercising unauthorized pule, great or irreparable injury can be shown. Pagofie v. Matagi, 1 A.S.R.3d 227 (Land & Titles Div. 1997).

A.S.C.A. § 43.0304 authorizes the court to prohibit the parties from taking any action that would be tantamount to exercising pule. Pagofie v. Matagi, 1 A.S.R.3d 227 (Land & Titles Div. 1997).

A.S.C.A. § 43.1309(b) is not unconstitutional in all circumstances, but only when it prevents a family member from seeking an injunction against his sa`o under circumstances where the sa`o jeopardizes that person's constitutionally protected property rights. Sasa v. Levu, 2 A.S.R.3d 225 (Land & Titles Div. 1998).

A.S.C.A. § 43.1309(b) allows an application for an injunction with regard to actions on communal land to be brought by two blood male matai members of the family, instead of the sa`o, if the sa`o title is vacant. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

When the sa`o's position is vacant, an action for injunctive relief concerning communal land must be brought by at least two blood male matai members of the family, over age 18, or if the family does not have such members, by at least two blood members, over age 18. Fiame v. Tuiolemotu Family, 6 A.S.R.3d 310 (Land & Titles Div. 2002).

Where there has been a lengthy history of violence, threatened violence, harassment, and annoyance by one party toward another, the Court found that money damages were inadequate and a permanent injunction was the most suitable legal remedy. Reavis v. Leleua, 7 A.S.R.3d 220 (Land & Titles Div. 2003).

Plaintiff seeks eviction, but injunctive relief is more appropriate in action for eviction and damages for trespass. Stevens v. Tagisiaali'i, 7 A.S.R.3d 235 (Land & Titles Div. 2003).

§ 2(4)(f)—Tautua (service) Obligation

SEE ALSO SAMOAN CUSTOMS §8(4) FAMILY'S OBLIGATION OF SERVICE

Where matai states that he is unwilling to accept service from family member, failure to render service is not grounds for eviction. Vaotuua Family v. Puletele, 3 A.S.R. 145.

Under Samoan custom, when person of one family occupies lands of another family, he should render service to matai of other family. Fano v. Teleuli, 3 A.S.R. 154.

Widow living on communal land of deceased husband has duty to render service to family matai and behave as if she were a blood member of family. Vaimaona Family v. Meafou, 3 A.S.R. 228.

Court is not authorized under Samoan custom to order family member off land upon petition of matai where family member has rendered service for many years except that matai has rejected service for past two years and where family member built house with own money and made improvements on it, which were not approved by matai. Tali v. Tupeona, 4 A.S.R. 199.

Where person fails to render service to talking chief as representative of deceased matai to whom he previously rendered services because he did not believe custom required him to do so and because deceased matai had relieved him of such obligation, he cannot be forced to vacate premises by talking chief if he, upon learning of obligation, renders service to talking chief. Fuga v. Olive, 4 A.S.R. 283.

Member of matai family living on communal land should serve matai of family pursuant to Samoan custom. Leapaga v. Westbrook, 4 A.S.R. 748.

Assignees of communal land must render service to the matai. Tavai v. Silao, 2 A.S.R.2d 1 (Land & Titles Div. 1983).

The subservient obligation of tautua normally runs from a family member to the family sa`o or senior matai. Fanene v. Fanene, 6 A.S.R.3d 333 (Land & Titles Div. 2002).

A family member's right to use Samoan communal lands is conditional; the family member must render tautua to the matai in accordance with custom and must use and occupy the lands. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

The concept of tautua (service) varies from family to family and is best defined by the family rather than the court. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

Tautua is an enforceable obligation only against family members who occupy and use communal family lands. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

A family member's continued right to use and occupy communal land is conditioned upon his providing service to the matai. Alaimalo v. Sivia, 17 A.S.R.2d 25.

The right of a family member to use land owned by a Samoan communal family is conditioned on reciprocal obligations towards the sa`o and family, including the obligation to perform tautua (traditional service); and failure to render tautua is grounds for eviction. Seventh Day Adventist Church of American Samoa v. Maneafaiga, 23 A.S.R.2d 150.

Even family members cannot insist on using family property without the requisite tautua to the senior matai of the family. Afoa v. Taaifili, 26 A.S.R.2d 49.

Where possession of land is pursuant to a traditional assignment of a family's communal land by the family's sa`o, the family member in possession of the land is obligated to render tautua to the sa`o in order to protect and preserve the family member's right to occupy and use the land at issue. Tuigamoa v. Tu`ugaolo, 5 A.S.R.3d 239 (Land & Titles Div. 2001).

§ 2(5) —Separation-of-Structure Agreement

Person assigned portion of communally owned lands under Samoan custom may enter into separation-of-structure-from-communal-land agreement in order to procure loan for construction of house. Atualevao v. Masaniai, 4 A.S.R. 664.

Where matai enters into separation-of-structure-from-communal-land agreement with member of family, this is clear indication that family member was assigned communal land. Atualevao v. Masaniai, 4 A.S.R. 664.

Where a party to separation-of-structure agreement recorded pursuant to provision of code is one of number of owners and not sole owner, court will not enforce agreement. Meredith v. Aumavae, 4 A.S.R. 680.

Where separation-of-structure agreement recorded pursuant to provision of code contains statement that land is communal and court finds it individually owned, court will not order agreement executed. CAS 12.0204. Meredith v. Aumavae, 4 A.S.R. 680.

A document captioned "Lease" does not thereby become a lease; and can be construed as a separation-of-structure agreement coupled with a conditional chattel mortgage. Paopaoailua v. Betham, 4 A.S.R. 705.

Matai may sign, on behalf of family, separation-of-structure agreement without consulting other members of family first. Paopaoailua v. Betham, 4 A.S.R. 705.

House built on communal land solely by member of family and husband is individually owned house of builders. Leapaga v. Westbrook, 4 A.S.R. 748.

In a case arising under the issue of the validity of a separation agreement involving communal land, the Court is free to look beyond that issue to the ultimate question of the ownership of the land. Fa'atupu v. Malepeai, 2 A.S.R.2d 58 App. Div. 1985).

Separation agreement, by which landowner agreed that another person could build a building on her land which would remain legally separate from the land, did not convey to the building owner and his heirs and assigns a perpetual and irrevocable right to build, occupy, and rent out further structures on the land. Roberts v. Sesepasara, 7 A.S.R.2d 139.

Separation agreement, by which landowner allowed another person to build a structure on her individually owned land, may be evidence of the conveyance of some right to remain on the land other than a license revocable at will by the landowner. Roberts v. Sesepasara, 7 A.S.R.2d 139.

Matai's signature is required on separation agreements by family members to build homes on communal land. A.S.C.A. § 37.1503(a). Utu v. Fuata, 17 A.S.R.2d 104.

Separation agreements by family members to build homes on certain land which were signed by claimant as matai corroborated his claim that he exercised authority (pule) over such land. Utu v. Fuata, 17 A.S.R.2d 104.

Claimant's assertion that lesser matai in his family habitually signed separation agreements by family members to build homes on communal land was rejected, since it did not explain why his family did not object to such recurring usurpations of his pule. Utu v. Fuata, 17 A.S.R.2d 104.

With respect to land, a separation agreement splits a particular structure from the land on which it is built or is to be built, so that the structure will be the property of the person building it rather than the landowner. A.S.C.A. § 37.1501 et seq. Fagasoaia v. Fanene, 18 A.S.R.2d 72.

A traditional assignment of land from the matai to a family member does not imply permission to build new structures or materially change the character of the property. Fagasoaia v. Fanene, 18 A.S.R.2d 72.

A material failure to accurately describe land or parties is sufficient to render a separation agreement invalid. Leomiti v. Pu'efa, 27 A.S.R.2d 150.

Only the sa`o is authorized in matters concerning separation agreements for communal land. In Re Estate of Makerita Shimasaki, 31 A.S.R.2d 195.

Communal land on which a structure is located is necessarily encumbered. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

The Separation of Structures from Communal Land Act, A.S.C.A. §§ 37.1501 et seq., provides a vehicle for treating what would otherwise be realty into personalty for the sole statutory aim of facilitating secured financing for family members who build on communal land. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

Only the *sa`o* of the family owning communal land has the *pule* to enter an agreement pertaining to ownership of a structure on and separated from such land. McMoore v. Matu'u, 7 A.S.R.3d 214 (Land & Titles Div. 2003).

Where matai title of greater family was vacant, branch of family's titleholder had unquestionable *pule* over land at issue and had *pule* to create separation agreement respecting such land. McMoore v. Matu'u, 7 A.S.R.3d 214 (Land & Titles Div. 2003).

A family member cannot sell communal family land and a house upon it, nor only the house, there being no agreement to separate the existence of house from the land. Fanene v. Vaona, 7 A.S.R.3d 285 (Land & Titles Div. 2003).

§ 2(6) —Leases

In exercise of police power, Government may see that lease provides adequate and reasonable rental under existing conditions or prohibit the making of the lease unless it provides sufficient rental so as not to make transaction improvident with respect to owner. Haleck v. Tiumalu, 3 A.S.R. 380.

Law creating duties of Land Commission to recommend to Governor on leases was passed subsequent to time when lease in dispute was executed but prior to time it was assigned to plaintiff. Haleck v. Tiumalu, 3 A.S.R. 380.

Renewal lease may be executed and then presented to Land Commission for its recommendation to the Governor for approval pursuant to law. CAS 1281. Haleck v. Tiumalu, 3 A.S.R. 380.

Power of the Governor under law to consider terms and conditions of instruments seeking to alienate land including leases, and to invalidate such transactions until they receive his approval, cannot be questioned. Haleck v. Lee, 4 A.S.R. 519.

In absence of proof to contrary, court will assume that Governor is exercising his discretionary power in approving or disapproving leases within legal limits of his legislative prerogative. Haleck v. Lee, 4 A.S.R. 519.

Prior court enforced renewal clause of lease while holding that such renewal was subject to approval by Governor. Haleck v. Lee, 4 A.S.R. 519.

Exercise of Governor's power to approve new lease pursuant to renewal clause is not retroactive law impairing obligation of contract. Const., Art. I, Sec. 13. Haleck v. Lee, 4 A.S.R. 519.

Fact former Governor approved lease with renewal clause does not mean that he approved lease through period of renewal. Haleck v. Lee, 4 A.S.R. 519.

Fact prior court enforced renewal clause in lease against lessor by specific performance does not deprive Governor of power to approve renegotiated new lease. Haleck v. Lee, 4 A.S.R. 519.

Lease approved by Governor in 1938 for 20-year period with 20-year option, can't be negated by subsequent Governor without evidence of fraud or mistake. Haleck v. Governor, 4 A.S.R. 968.

Lease from 1910 through 1958, being renewed through valid extension clause, does not become, upon exercise of renewal option, new lease subject to Governor's approval. Haleck v. Governor, 4 A.S.R. 968.

Leasehold interest in communal land did not "merge" into an assignment of communal land, whose terms would have been different and virtually antithetical to those clearly set forth in the lease agreement itself. Hunkin v. Grisard (Mem.), 13 A.S.R.2d 38.

A lease that was not recorded or registered pursuant to the statutory requirements is invalid and ineffectual. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 28 A.S.R.2d 170.

The mere fact of the Governor's approving signature does not render a flawed lease impervious to legal challenge any more than it could transform a bill into law without constitutionally proper legislative approval. Pen v. Lavata`i, 30 A.S.R.2d 10.

The function of the Land Commission and the Governor in the approval of leases of communal land is to provide a check against improvident leases, which would be harmful to the Samoan land tenure system, not to sit in judgment on land title issues. Pen v. Lavata`i, 30 A.S.R.2d 10.

The statute requiring the Governor's approval on certain land transfers, A.S.C.A. § 37.0221, does not devise a system where the Governor effectively has the right to reallocate property without regard to the preexisting rights of others in that property, and then to have those decisions immune from judicial review. The Governor's statutory authority to approve a lease between private parties presupposes that the lessee actually has the authority to enter into the lease in the first place. Pen v. Lavata`i, 30 A.S.R.2d 10.

An administrative decision does not concern a contested case under A.S.C.A § 4.1040 when a party was not represented at Land Commission hearings and could not contest the lease. Pen v. Lavata`i, 30 A.S.R.2d 10.

Separation of powers principles do not prevent the judicial branch from voiding a lease approved by the Governor in violation of due process rights. Pen v. Lavata`i, 30 A.S.R.2d 10.

Customary family consultation in regards to dealing with communal land can continue in a system where the approval of the governor is also required for the leasing of native land. Pen v. Lavata`i, 30 A.S.R.2d 10.

A customary assignment of communal land does not change the character of the land from communal land to individually owned land. Laie v. Estate of Tuiveta, 3 A.S.R.3d 200 (Land & Titles Div. 1999).

In the Samoan communal land system, typically only the sa`o has the right to lease his family's communal lands to non-family members. Laie v. Estate of Tuiveta, 3 A.S.R.3d 200 (Land & Titles Div. 1999).

Where individual, in possession of assigned family communal land, took the time and effort necessary to negotiate terms of lease of land with government, was responsible for facilitating the lease transactions, and where lease of land to government was inevitable and resulted in displacement of individual, and where individual's actions were not an attempt to exploit family's communal land, individual was entitled to compensation. Laie v. Estate of Tuiveta, 3 A.S.R.3d 200 (Land & Titles Div. 1999).

Although sa`o of family normally determines equitable distribution of monies, including compensation to displaced assignee family members, where history of acrimony existed between party family members, and traditional intrafamily processes would likely be frustrated, it was proper for Court to determine distribution of monies. Laie v. Estate of Tuiveta, 3 A.S.R.3d 200 (Land & Titles Div. 1999).

Where a lease concerns a building or a portion of a building, and does not include communal land, it is not subject to the requirement that leases of communal land be approved by the Governor under A.S.C.A. § 37.0221, and is not invalidated because the Governor's approval was not obtained. Tiumalu v. Levi, 4 A.S.R.3d 291 (Land & Titles Div. 2000).

Leases of communal land may not wholly conform to the traditional occupancy and use of communal land. However, they are statutorily authorized. Estate of Rose Turner, 6 A.S.R.3d 272 (Trial Div. 2002).

Under the provisions of A.S.C.A. § 37.0221(a) and (b), native or communal land may, with the approval of the Governor, be leased to any person for any term not exceeding 55 years for any purpose, except for the mining of minerals and cutting of timber. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

The term "native proprietor" as used in A.S.C.A. § 37.0221 means the family sa`o or senior matai. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

Even if a building located on communal land is considered separate property, the owner of said building must still satisfy the requirements of the Alienation of Land Act in order to lease it. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

Under the Alienation of Land Act, the Land Commission is required to meet periodically and make recommendations regarding instruments affecting possession of communal land, including leases. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

The Separation of Structures from Communal Land Act does not repeal the mandates of the Alienation of Land Act with regard to the leasing of native land. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

Samoan custom recognizes that an untitled person does not have the right to permit strangers to live on communal land. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

The Alienation of Land Act limits the leasing of communal land to terms of 55 years. A.S.C.A. § 37.0221(a). Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

The 55 year term limitation on leases, included in the Alienation of Land Act, does not have a "house-lease" exception. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

Civil penalties assessed pursuant to A.S.C.A. § 37.0230 apply equally to private individuals and public officials whose acts thwart the Governor's statutory duties. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

Leases and subleases in violation of the Alienation of Land Act are mere nullities and where concluded between competent contracting parties, neither can be heard to complain. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

§ 2(7) —Conveyance

In order to sell communal land, matai must have consent of the family and the sale must be approved by proper authorities within the Government. Satele v. Afoa, 1 A.S.R. 424.

Matai has no legal right to convey family lands without approval of Governor. Pulu v. Te'o, 2 A.S.R. 201.

Matai is not authorized under Samoan custom to give away family land to person not member of family, and such attempted gift is void. Atofau v. Tuufuli, 2 A.S.R. 414.

Widow of matai or family member cannot sell family lands, and attempt to do so is void. Atofau v. Tuufuli, 2 A.S.R. 414.

Where person pays widow of matai for purchase of land and money is used for benefit of family, such purchase is void since widow may not sell family lands, but clan must, as matter of equity, pay back purchase price. Atofau v. Tuufuli, 2 A.S.R. 414.

Matai is not authorized under Samoan custom to give away family land to person not member of family. Ifopo v. Vaiao, 2 A.S.R. 472.

Where sale of land is invalid, because vendor has no authority to sell family lands, equity demands that vendor return purchase price to vendee before title can be registered in family of vendor. Ifopo v. Vaiao, 2 A.S.R. 472.

Gift of communal land to individual, not approved by Governor, is void and does not pass title to land. Lualemana v. Tago, 3 A.S.R. 43.

Matai cannot convey family lands without consent of family, and therefore attempted conveyance is invalid. Sione v. Tiualii, 3 A.S.R. 66.

Matai does not have authority to give family lands to church without approval of majority of family members. Mulitauaopele v. Paleafei, 3 A.S.R. 93.

Matai cannot deed land to person outside of family without consent of family and approval of Governor. Mauga v. Soliai, 3 A.S.R. 108.

While matai has control over family lands and is trustee of lands for family, he cannot mortgage or deed away land without consent of family, and mere consent of lesser matais does not constitute consent of family. Mauga v. Soliai, 3 A.S.R. 108.

If family is divided into four clans and each clan is assigned portion of communal land, matai of each clan has pule only over his portion and cannot interfere with use of another clan's portion of communal land. Taesalialii v. Tuloto, 3 A.S.R. 133.

Code prohibited matai from alienating family land without approval of Governor. CAS 1282. Tuileata v. Talivaa, 3 A.S.R. 201.

Matai in control of communal land cannot alienate land without approval of Governor, but can grant oral license to use land. Aumavae v. Tuitele, 3 A.S.R. 342.

Statutes relating to alienation of native lands are proper exercise of police power of Government to protect owners of communal lands from improvident dispositions of their property by lease or otherwise. Haleck v. Tiumalu, 3 A.S.R. 380.

Senior matai who lives outside American Samoa for substantial period, forfeits power over family land to next senior matai, until senior matai returns and resumes duties as high chief. Decisions made during absence are not subject to review by senior matai. Heirs of Sagiao v. Mamae, 4 A.S.R. 64.

Where member of family has been assigned land for bakery by matai, leader of clan of which assignee is member cannot bring action to prevent construction of bakery since sole authority for control over family land rests with matai. Tuimalu v. Scanlan, 4 A.S.R. 194.

Daughter of former title holder has not authority to transfer family land in fee simple to anyone, especially to one not family member, but may give license to live on land. Nua v. Leomiti, 4 A.S.R. 404.

Matai is in control of family lands and may not alienate such lands without written approval of Governor. Fau v. Wilson, 4 A.S.R. 443.

Oral conveyance of land is void where it is not approved in writing by Governor. Fau v. Wilson, 4 A.S.R. 443.

In exercising its police power, the Government of American Samoa may protect Samoan people against improvident transactions such as dispensing of their property for less than it is worth. Haleck v. Lee, 4 A.S.R. 519.

Grant of portion of communal land for church purposes may not be enforced against a succeeding matai where the land no longer bears ties to a religious program. Mageo v. Viena, 1 A.S.R.2d 83 (App. Div. 1983).

Communal land given in atonement for an offense committed by a family member is presumed to become the communal property of the victim's family rather than the victim's individual property. Leota v. Faumuina, 4 A.S.R.2d 11.

Communal land may not become individual property except in accordance with statutory procedures for alienation of communal lands. A.S.C.A. §§ 37.0201 et seq. Faleafine v. Suapilimai, 7 A.S.R.2d 108.

Court should construe and enforce conveyance in accordance with the apparent intent of the conveyor despite technical flaws in the conveyancing documents. Roberts v. Sesepasara, 7 A.S.R.2d 139.

Common law rule against perpetuities is designed to protect the free alienability of land and therefore has no application to Samoan communal property, which are not freely alienable. A.S.C.A. § 37.0204. Tufele v. Mose, 7 A.S.R.2d 157.

Warranty deed creating trust in land conveyed in favor of the people of the islands of Manu'a, naming a matai of Manu'a and the successors to his matai title as trustees, does not violate the rule against perpetuities. Tufele v. Mose, 7 A.S.R.2d 157.

Title to communal lands may pass from one family to another by conveyance or adverse possession. Tufele v. Mose, 7 A.S.R.2d 157.

Estate transferred by one Samoan communal family to another vests immediately in the transferee. Tufele v. Mose, 7 A.S.R.2d 157.

Language in warranty deed conveying land to a matai of the islands of Manu'a and to "his successors or assigns" in trust for the people of Manu'a causes the trusteeship to devolve upon the successive holders of the matai title, not to the personal estate of the matai. Tufele v. Mose, 7 A.S.R.2d 157.

Communal land of Samoan family automatically passes from one generation to another without the necessity of probate. Tuiteleleapaga v. King, 8 A.S.R.2d 49.

In the context of Samoa in 1911, it would have been inconceivable that the term "and his successors or assignees" in a grant of land from one ranking chief to another was intended to give subject possessory rights to the control of an untitled heir of the grantee. Mose v. Tufele, 12 A.S.R.2d 31.

Family members who had not been consulted by sa`o who alienated family land might, in an action against the sa`o, prove their entitlement to an accounting, to compensation for any alienated lands previously assigned to them, and possibly even to removal of the sa`o from his matai title. Vaimaona v. Tuitasi, 12 A.S.R.2d 68.

Where sa`o had failed to consult with family members before alienating communal land, but had followed all statutory procedures for alienation of communal land including approval of the land commission and the governor, aggrieved family members could not secure the invalidation of the record title to the land in the new owner. Vaimaona v. Tuitasi, 12 A.S.R.2d 68.

Custom that major family decisions should be made in consultation with the whole family is not among those incorporated into statutory restrictions on the otherwise plenary powers of a sa`o over family lands. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Sa`o could not avoid his contract for the sale of land on the ground of his own violation of custom, and other family members' remedies were against the sa`o, not the purchaser. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Matai cannot alienate land without complying with certain statutory procedures, including the approval of the Governor of American Samoa. A.S.C.A. §§ 37.0201 et seq. Lutu v. Semeatu, 13 A.S.R.2d 88.

A matai's alienation of land must comply with certain statutory procedures, including the approval of the Governor of American Samoa. A.S.C.A § 37.0204. Alaimalo v. Sivia, 17 A.S.R.2d 25.

Party permitting one who renders him tautua to occupy certain land has no donative intent to grant title to such land to the permittee. Utu v. Fuata, 17 A.S.R.2d 104.

Although Samoan custom requires family consultation before a sa`o conveys communal land, the court cannot impose this as an additional condition to such a conveyance absent statutory direction from the Fono. A.S.C.A. §§ 1.0202, 37.0201 et seq. Vaimaona v. Tuitasi, 18 A.S.R.2d 88.

The Governor and the Land Commission must approve conveyances of communal land. A.S.C.A. §§ 37.0203-37.0204. Magalei v. Atualevao, 19 A.S.R.2d 86.

A registration of title to land as individually-owned land was invalid and so cancelled by the court when that land was assigned for use of defendant and her immediate family but remained communal land, and when such registration was not authorized by a matai having authority over the land. Ava v. Logoai, 22 A.S.R.2d 65.

The custom of "igagato," a special reward for extraordinary service performed for a Samoan family, may be given to a person who is not related by blood to the family; but a reward of a parcel of communal land for such service is proper only with the entire family's concurrence. Fanene v. Taaseu, 23 A.S.R.2d 1.

An interest in land is a license and not an "igagato" assignment when permission to use a parcel of land may be terminated by a permanent departure from American Samoa or at will by the sa'o. Fanene v. Taaseu, 23 A.S.R.2d 1.

Unlike its forerunner enacted in 1900, Regulation 5-1913, when in force, prohibited transfers of Samoan owned land to non-Samoans, but did not restrict transfers between Samoans. This is essentially the state of the law today, with the added requirement that the Governor must consent to conveyances of communal land. Lua v. Uti, 25 A.S.R.2d 71.

As a matter of due process of law, the Land Commission must hold public hearings on proposed transfers of land, and give reasonable notice to interested parties. Pen v. Lavata`i, 30 A.S.R.2d 10.

Samoan realities of the time are considered in determining whether a deed is an interfamily conveyance. Schuster v. Lutu, 30 A.S.R.2d 51.

Despite language in a deed that contains stock conveyancing language to an individual, the court will interpret the deed as conveying land to a family as communal land if that was the intention of the original parties. Schuster v. Lutu, 30 A.S.R.2d 51.

Although a matai has no inherent legal authority to convey another family's communal land, the court will enforce a conveyance when ASG, under the former U.S. Navy administration, dealt with a leading matai of a village when acquiring land for public use. Peni v. Lutali, 30 A.S.R.2d 87.

The administrative procedures to validate transfers of title to communal land include: 1) the Land Commission must study the proposed transaction and make recommendations to the Governor about it, A.S.C.A. § 37.0203(a) - (c); 2) next, the Governor must approve the transaction, A.S.C.A. § 37.0204(a); 3) then, and only then, the Territorial Registrar registers the transfer instrument to effect passing of title. A.S.C.A. § 37.0210. Uiliata v. Puailoa, 31 A.S.R.2d 35.

A complaint in a contested land case that the Governor failed to provide the affected plaintiff with notice of the Governor's decision concerning alienation of communal property is not subject to dismissal for failure to state a claim. Ah Soon v. Tafa'ifa, 1 A.S.R.3d 236 (Land & Titles Div. 1997).

Notwithstanding the fact that a family matai followed the statutory requisites for transferring communal land, the matai may still be liable for breach of a fiduciary duty. Ah Soon v. Tafa'ifa, 1 A.S.R.3d 236 (Land & Titles Div. 1997).

An application for alienation of communal land requires not only the approval of the senior matai, but also submission of appropriate documents to the Secretary of the Land Commission for the Commission's study and recommendations and, ultimately, the Governor's written approval. Vaotu`ua v. Poloa, 4 A.S.R.3d 312 (Land & Titles Div. 2000).

Where defendant had failed to have senior matai request survey of land at issue, where defendant had failed to file application for separation of communal land with Secretary of Land Commission, and where defendant had failed to obtain

written consent from Governor for alienation of the communal land, the matter (objection to registration of land) was not a justiciable case or controversy, and was properly dismissed without prejudice and transferred to the Secretary of the Land Commission/Territoria1 Registrar of American Samoa for any necessary further proceedings. Vaotu`ua v. Poloa, 4 A.S.R.3d 312 (Land & Titles Div. 2000).

A unilateral and secret attempt by a matai to give his daughter sole authority over family land to the exclusion of his successors in title is inconsistent with Samoan tradition, and is contrary to statutory law of American Samoa with regard to the alienation of family land. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

§ 2(8) —Relinquishment of Assigned Communal Land

Returning assigned communal land to matai after one (1) year and abandoning land for nine (9) years thereafter constitutes surrender of assignee's interest in land to matai. Talagu v. Te'o, 4 A.S.R. 121.

Although succeeding matai may not revoke assignment of communal land, if grantee continues to serve matai, he may reassign land if previous assignee surrenders his estate in land. Talagu v. Te'o, 4 A.S.R. 121.

Reassignment of surrendered communal land by matai to different assignee evidences effectuation of surrender and estops first assignee and matai from later challenging surrender. Talagu v. Te'o, 4 A.S.R. 121.

Communal law concept to surrender applies to relationship between matai with pule over land and assignee of family land – matai is ultimate reversioner of all assigned communal land. Talagu v. Te'o, 4 A.S.R. 121.

Relinquishment of possession of communal land by voluntary surrender or abandonment causes the land to revert to the matai and family. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

Whether relinquishment of possession has occurred causing reversion of land to the matai and family is not determined solely by the intent of the relinquishing family member, but is a question of fact. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

When family member relinquishes possession of communal land, it reverts to the matai and family. Tufele v. Mose, 7 A.S.R.2d 157.

While family member may not have intended to relinquish possession of communal lands, the question whether relinquishment has occurred is one of fact. Tufele v. Mose, 7 A.S.R.2d 157.

No relinquishment of possession occurred where defendant vacated building for two years while deciding what new business to establish there, later established a business in the building, and during the same two year period occupied another building located on the same land. Tufele v. Mose, 7 A.S.R.2d 157.

When a family member surrenders his entitlement to use of a particular portion of family land, that estate reverts to the matai for the benefit of the family and is therefore available for reassignment. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

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.

Relinquishment of possession of Samoan communal land by a member of the communal family causes a reversion of the land back to the matai and family. Toleafoa v. Tiapula, 12 A.S.R.2d 56.

Relinquishment of possession of Samoan communal land by a member of the communal family may be either by voluntary surrender or by abandonment by the family member. Toleafoa v. Tiapula, 12 A.S.R.2d 56.

While a family member's intentions may not have been to abandon family land so as to cause a reversion to the matai and family, the issue of whether relinquishment has arisen is one of fact. Toleafoa v. Tiapula, 12 A.S.R.2d 56.

Family member may not avoid reversion of communal land to the matai and family by having a long-abandoned residence "looked after" by other family members who live elsewhere, or by executing sub-assignments to persons who are not family members. Toleafoa v. Tiapula, 12 A.S.R.2d 56.

Where house abandoned by appellant family member and later disassembled by order of the senior matai of the family was a fale constructed ten years earlier at a cost of $600, the land was unattended and overgrown, and one of appellant's own witnesses testified that the clearing of the "crops" on the land might have been done "as part of the ongoing beautification program," the trial court was justified in declining to award compensation to the appellant family member for the value of the house and crops. Toleafoa v. Tiapula, 12 A.S.R.2d 56.

§ 2(9) —Certificates of Irreconcilable Dispute

A.S.C.A. § 43.0302, requiring the filing of a certificate from the Office of Samoan Affairs affirming that attempts to resolve the controversies over communal land or matai titles have been made and that the controversy could not be resolved, prior to the commencement of any action in the Land

& Titles Division, can be applied with some flexibility. Fa'atupu v. Malepeai, 2 A.S.R.2d 58 App. Div. 1985).

Family member must plead and prove good faith effort was made to settle disagreements with senior matai and within the family as condition precedent to bringing suit against matai or other family members. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

Under A.S.C.A. § 43.0302 (a), mediation proceedings and the issuance of a certificate of irreconcilable dispute are jurisdictional prerequisites to judicial determination of controversies relating to communal land. Save Family v. Leone Catholic Parish, 4 A.S.R.3d 265 (Land & Titles Div. 2000).

Filing a certificate of irreconcilable dispute upon the failure of dispute resolution proceedings before the Secretary is a jurisdictional prerequisite to hearing a controversy involving communal land. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

Where action involves a dispute over communal land, but no certificate of irreconcilable dispute has been filed, the court may nonetheless issue appropriate preliminary orders and stay proceedings, rather than dismissing the action, until the certificate is filed. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

The Secretary of Samoan Affairs must issue a certificate of irreconcilable dispute, following at least two appearances by the parties for dispute resolution proceedings, before the High Court has jurisdiction to judicially determine an action relating to a controversy over communal land. Fiame v. Tuiolemotu Family, 6 A.S.R.3d 310 (Land & Titles Div. 2002).

Where party on contested activities on disputed communal land, Court could issue interim order, including preliminary injunction, and stay further proceedings despite the fact that jurisdictional certificate of irreconcilable dispute had not yet been issued. Fiame v. Tuiolemotu Family, 6 A.S.R.3d 310 (Land & Titles Div. 2002).

Dissident family members are ordinarily required to allege and prove that a good faith effort to settle a family problem with the *sa`o* and family was made as a condition precedent to bringing an action against the *sa`o*. McMoore v. Matu'u, 7 A.S.R.3d 214 (Land & Titles Div. 2003).

Lack of prior consultation with *sa`o*, or a dissenter's good faith efforts at settlement may be excused, and an action against the *sa`o* may therefore be brought, if constructive dialogue would be a useless gesture. McMoore v. Matu'u, 7 A.S.R.3d 214 (Land & Titles Div. 2003).

§ 3 Individually Owned Land

SEE WILLS, TRUSTS & ESTATES § 8 – INDIVIDUALLY OWNED PROPERTY

Samoan Lands Commission provided redress to authority for land claimants prior to cession of Samoa to United States, so that claim by alleged owners that they had no remedy prior to United States administration is erroneous. Tufaga v. Mativa, 1 A.S.R. 184.

Where individual has occupied land without objection by others and there is no evidence that land is communally owned, court will find that land is individually, as opposed to communally, owned. Tiumalu v. Lutu, 2 A.S.R. 222.

Court takes judicial notice that some matais have, with consent of their family members, given communal land outright to certain family members. Gi v. Taetafea, 2 A.S.R. 401.

In denying application to register individual land, court may find communal ownership of particular family. Nua v. Leomiti, 4 A.S.R. 404.

Where court has determined that disputed land is individually owned and subsequent transfers of land are recorded in Registrer, court will find individually owned land even though land is referred to in separation-of-structure agreement as communal land. Meredith v. Aumavae, 4 A.S.R. 680.

Code requires grantee of individually owned land to be of at least one-half (1/2) Samoan blood. 27 A.S.C. § 204(b). Moon v. Falemalama, 4 A.S.R. 836.

Western Samoan has one-half Samoan blood for purposes of holding title to individually owned land. 27 A.S.C. § 201. Moon v. Falemalama, 4 A.S.R. 836.

Legislature clearly defined difference between "Samoan" and "American Samoan" for purposes of holding title to real property. 27 A.S.C. §§ 204(b), 401. Moon v. Falamalama, 4 A.S.R. 836.

In order to maintain an action claiming individual title to real property based upon original occupancy and use, there must be present use of the land. Leuma v. Willis, 1 A.S.R.2d 48 (Land & Titles Div. 1980).

Restriction whereby native land may not be held by persons who have not fifty percent or greater Samoan blood is racial classification which must be afforded strict scrutiny in constitutional challenge. Preservation of Samoan lands for Samoans, as guaranteed by treaty and American Samoan constitution, is compelling interest justifying invidious discrimination. Notwithstanding that decision is based upon invalid statute, majority has taken judicial notice that racial classification survives strict scrutiny analysis despite the fact that government has neither alleged nor presented evidence of

a compelling interest. Craddick v. Territorial Registrar, 1 A.S.R.2d 10 (App. Div. 1980).

Common law property rules are applicable to freehold land. Craddick v. Olotoa, 2 A.S.R.2d 29 (Land & Titles Div. 1984).

Land registered by its owner as her individual property was subject to laws of inheritance and passed to the individual heirs of the owner. Tuiteleleapaga v. King, 8 A.S.R.2d 49.

If one co-owner of individually owned land were occupying an unduly large part of the property, court could issue a temporary order apportioning the use of the property pending an action for partition. Tuiteleleapaga v. King, 8 A.S.R.2d 49.

In order to establish a claim to individually owned land, a party must show that the land was (1) cleared in its entirety or substantially so from the virgin bush by an individual through his own initiative and not by, for, or under the direction of his aiga or its senior matai; (2) cultivated entirely or substantially so by him; and (3) occupied by him or his family or his agents continuously from the time of the clearing of the bush. Lealaimatafao v. Lautele, 9 A.S.R.2d 39.

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.

Widow who signed document conveying house belonging to her late husband had no power to convey the interest of the surviving children of the deceased. Gi v. Temu, 11 A.S.R.2d 137.

Because statute permits freehold land to revert to communal status at the request of the owner, it follows a fortiori that the same process is available for individual land. A.S.C.A. § 37.0201(b). Fauolo v. Satele, 15 A.S.R.2d 141.

Entering land through permission of a family matai is hardly consistent with individual ownership. Talauega v. Mulipola, 22 A.S.R.2d 7.

While section 37.0205 allows trusts for individually owned land, a Samoan proprietor must create the trust for the benefit of a son or daughter married to a nonnative, or for grandchildren arising from the mixed-race marriage. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

A grantor cannot deed land he or she does not own, the deed for which is entirely outside the grantor's individually owned land. Mailo v. Aumavae, 30 A.S.R.2d 175.

Generally speaking, at common law and in jurisdictions which still follow the common-law rule, a conveyance to husband and wife during coverture ordinarily creates an estate by the entireties and not a joint tenancy or tenancy in common. Development Bank of Am. Samoa v. Attorney General of Am. Samoa, 31 A.S.R.2d 103.

Although a grantor can expressly grant some other form of tenancy to a husband and wife, the intention on the part of the grantor to create a tenancy by the entireties is presumed in the absence of such express language to the contrary. Development Bank of Am. Samoa v. Attorney General of Am. Samoa, 31 A.S.R.2d 103.

Once land is registered as individually owned land, the court cannot treat the land as communal land simply because the family group associated with the land occupies the land communally. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

Heirs of individually owned land, own the land as tenants in common. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

With regard to individually-owned land, a person may not register the title of others nor may he or she register any interest less than clear title to land. Tulifua v. Tuitele, 3 A.S.R.3d 54 (App. Div. 1999).

Where one co-tenant conveys title to part of the co-owned land without authorization of the other co-tenants, title to tract conveyed may still inure to the grantee of the unauthorized conveyance where the tract is partitioned to the grantor in subsequent proceedings and if recognition of the prior conveyance can be done without prejudice to the other co-tenants. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

Where portion of property had been previously transferred, without recording, to third-party, and subsequent transferals of property were rescinded, court nonetheless found it equitable to relocate portion of property previously transferred due to construction that had already taken place on land. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

§ 4 Evidence of Ownership

§ 4(1) —General Provisions

Where land owner cultivates land but is not vocal about claims of ownership due to Samoan custom of being subject to will of others, such submission will not bar subsequent claims of ownership. Maloata v. Leoso, 1 A.S.R. 134.

Evidence of structures on land, plantations, burials, claim of ownership and continuous possession established title of disputed land in family, dating prior to cession of Samoa to United States, and said title was not affected by cession. Magalei v. Maea, 2 A.S.R. 35.

Fact that person failed to object to occupancy of other of land for nineteen years is evidence that such person does not own property. Siva v. Asoau, 2 A.S.R. 113.

In determination of lawful owner of tract of land, court will consider custom of American Samoa, claim of title, natural boundary lines, names given to certain tracts, and interrelationships between families. Fanene v. Mauga, 2 A.S.R. 144.

Where there is no objection for long period of time by family claiming lands which are cultivated and possessed by another family, court cannot find that first family is lawful owner. Fanene v. Mauga, 2 A.S.R. 144.

Where person requests permission to bury another on land, this request is implied recognition of ownership. Teo v. Totoa, 2 A.S.R. 243.

Fact man asks permission of another to take things from land is indication that man does not consider himself owner. Tago v. Sami, 2 A.S.R. 285.

Before government was established, there was no place in Tutuila where written transactions relating to land could be filed. Ofoia v. Pritchard, 4 A.S.R. 326.

Claimant proved ownership by cultivating land, granting permission to marines to use land, filing war damage claims on land, and granting authority for establishment of prison farms on land. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Where United States Marines were granted permission to use lands and objectors to registration had no say in granting permission, this evidence indicates objectors did not own land. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Where evidence demonstrates that man and family are given permission to live on land, court will not find land was transferred by gift or purchase. Nua v. Leomiti, 4 A.S.R. 404.

Where man is given permission to live on land after having given daughter of title holder gifts of pigs and mats, court will not find that land was either given outright or purchased by these gifts. Nua v. Leomiti, 4 A.S.R. 404.

Where objector to registration of land was present during survey which described land as belonging to applicant and he did not object to survey, his claim to land is weakened. Mageo v. Fuga, 4 A.S.R. 426.

Where matai offers no objection to member of family's permitting strangers to live on land, there is strong indication that land is individually owned and not communal. Lolo v. Heirs of Sekio, 4 A.S.R. 477.

When the ownership but not the boundary of land is in dispute, no survey is required. Fa'atupu v. Malepeai, 2 A.S.R.2d 58 App. Div. 1985).

Land title action was barred by res judicata when ownership of same tract had been resolved between same families over same issues by earlier final judicial resolution. Taulaga M. v. Patea S., 4 A.S.R.2d 186.

A trial court decision that was not appealed and that adjudicated ownership of a tract of land acquired the effect of res judicata and bound the court in later dispute between the same parties over the same tract of land. Te'o v. Sotoa, 5 A.S.R.2d 90.

Party who unsuccessfully sought title to a tract of land in previous action and failed to appeal may not later resurrect same claim to same land. Sialega v. Taito, 5 A.S.R.2d 99.

When one party to a land dispute established historic possession of the land and adverse party, who could not establish superior right to possession, had built on the land over possessor's objections, adverse party was obliged to remove his building without compensation. Olo v. Tulisua, 6 A.S.R.2d 86.

Where (1) court had jurisdiction over judgment debtor and her property; (2) attorney who represented judgment debtor had successfully petitioned the court for appointment as "special guardian" of judgment debtor's minor children for the purpose of selling real estate conveyed by her to the children and retaining funds in his trust account pending court approval of their disposition; and (3) same attorney had been designated by judgment debtor's husband as "attorney in fact" to sell a house located on the land, court had jurisdiction to determine whether the proceeds from sale of the house were part of the proceeds from sale of the land and to enjoin removal of the proceeds from the territory pending such determination, even though husband was neither a named party to the action nor personally amenable to service of process in the territory. Te'o v. Continental Insurance Co., 6 A.S.R. 2d 135.

In American Samoa any Samoan can acquire land in any village, not just the village in which his family or matai title resides, by gift, purchase, or original cultivation. Seva`aetasi v. Fanene, 9 A.S.R.2d 118.

One who acquires land by gift or original cultivation may do so on his own individual account or on behalf of his family, so such land may become either individual or communal property. Seva`aetasi v. Fanene, 9 A.S.R.2d 118.

Judgment affirming a decision of land commission, in which one party had made a claim to ownership of land and another party had filed an objection, and in which the commission's decision purported only to reject the claim advanced by the

original claimant, did not convey to the objector a title good against the world. Willis v. Fai`ivae, 10 A.S.R.2d 121.

Where plaintiff family asserted that members of defendant family had not been present on disputed land, but witnesses for the plaintiff family had been absent from the territory during most of the period in question, and plaintiff family failed to call as a witness the only family member who had lived in the vicinity, the evidence preponderated in favor of the defendant family members' testimony that they had been on the land. Leomiti v. Toluao, 11 A.S.R.2d 49.

Witness from one village, testifying on behalf of a land claimant from that same village, had no reason to lie when he said the land was in another village. Meafua v. Taliu (Mem.), 13 A.S.R.2d 74.

An individual who claims land as individual property of himself and his siblings, rather than as communal property of an extended family, must overcome the presumption that land in American Samoa is communally owned. Avegalio v. Leatumauga, 18 A.S.R.2d 9.

The Territorial Registrar's records on land and matai-title registrations are, without contrary evidence, presumed to be accurate. In re Matai Title Seva'aetasi, 19 A.S.R.2d 133.

A conveyancing instrument such as a deed does not certify ownership of land but merely publicly attests to the fact that one person's interest in land, whatever that may be, has been conveyed to another. Reid v. American Samoa Gov't, 28 A.S.R.2d 158.

The court may adjudicate conflicting claims to land in favor of both the applicant and objector. Objectors are not required to make separate surveys and file separate petitions for registration before the court may award them title. Malaepule v. Fa`agau, 29 A.S.R.2d 215.

Credible, convincing evidence existed in favor of defendant's claim to land where defendant testified that disputed land was given to his family by village council upon original division of village, where no other families from the same village had appeared to controvert defendant's testimony, where precedent indicated that defendant's family was the only one to defend title to land, and where evidence indicated that plaintiffs' occupancy was not exclusive. Seva'aetasi v. Moi, 1 A.S.R.3d 232 (Land & Titles Div. 1997).

Land disputes are decided by a preponderance of the evidence. Ulufaleilupe v. Uiagalelei, 2 A.S.R.3d 212 (Land & Titles Div. 1998).

Court held that disputed land belonged to family with title of equal rank to its neighboring families as it was unlikely that lesser title in village hierarchy would control land in same vicinity of lands held by such higher ranked titles. Filiupu v. Pogisa, 5 A.S.R.3d 230 (Land & Titles Div. 2001).

Where case involves the same parties and issue regarding land ownership and court has previously adjudicated the land at issue to be communal land of a certain family, court will recognize the res judicata effect of the previous decision to reinforce the holding that the land at issue is that family's communal land. Tuigamoa v. Tu`ugaolo, 5 A.S.R.3d 239 (Land & Titles Div. 2001).

§ 4(2) —First Occupancy Claims

Claim to land without accompanied use or occupation is insufficient to acquire title thereof. Ilaoa v. Toilolo, 1 A.S.R. 602.

Samoans acquire title to bush land under custom by open occupation and use coupled with claim of ownership. Tago v. Sami, 2 A.S.R. 285.

Samoans acquired title to land through first occupancy and claim of ownership and cession of islands to United States did not affect these private land rights. Sei v. Aumavae, 2 A.S.R. 396.

Occupation coupled with claims of ownership will establish ownership to what was bush land before such occupation. Soliai v. Lagafua, 2 A.S.R. 436.

Mere claim of ownership of bush land will not establish original title to it. Soliai v. Lagafua, 2 A.S.R. 436.

Where land claimants did not clear land or occupy any part of it nor do any more than claim to own it, they have not established title to it. Soliai v. Lagafua, 2 A.S.R. 436.

Occupation plus claim of ownership was sufficient to establish title to bush land in Samoa. Soliai v. Levu, 2 A.S.R. 440.

Samoan custom that occupation and claim of ownership of land is on behalf of family establishes presumption to that effect in absence of contrary evidence. Soliai v. Levu, 2 A.S.R. 440.

Occupation coupled with claim of ownership will establish ownership to what was bush land before occupation, and under Samoan custom, occupation by matai was on behalf of communal family. Leasiolagi v. Fao, 2 A.S.R. 451.

Title to bush land is achieved by occupation thereof under claim of ownership. Toomata v. Vea, 2 A.S.R. 564.

When family clears land from bush and claims ownership, it acquires title through first occupancy and use, coupled with claim of title. Togia'i v. Aumua, 3 A.S.R. 3.

Title to bush land is acquired by occupation thereof under claim of ownership, and it was custom for matai and members of family clearing bush and occupying land to claim it as communal lands for family. Fesagaiga v. Alo-Pepe, 3 A.S.R. 118.

Before Government was established by Navy in 1900, Samoans acquired title to their lands through first occupancy coupled with claim of ownership. Tialavea v. Aga, 3 A.S.R. 272.

Samoans acquired title to land through first occupancy coupled with claim of ownership. Lualemana v. Filo, 3 A.S.R. 642.

Samoans acquired title to land through first occupancy coupled with claim of ownership. Lago v. Mageo, 4 A.S.R. 287.

Samoans acquire title to land through first occupancy coupled with claim of ownership. Fe'a v. Sisipeni, 4 A.S.R. 320.

Samoans acquire title to land through first occupancy coupled with claim of ownership. Tuanaitau v. Paogofie, 4 A.S.R. 375.

Samoans acquire title to land through first occupancy coupled with claim of ownership. Tuia v. Savea, 4 A.S.R. 483.

Although a family had been required by the military to leave the area during World War II, this did not constitute an abandonment of the sort that might entitle strangers to claim the rights of first occupancy; rather, the latter could have acquired the land only by conveyance from the original owner or by adverse possession. Magalei v. Atualevao, 19 A.S.R.2d 86.

§ 4(3) —Clearing and Planting

Where family took all produce and profits from land for over 20 years, such actions are evidence of ownership of the land by that family. Satele v. Afoa, 1 A.S.R. 424.

Where there is conflicting and contradictory evidence concerning ownership of land before cession to United States, court will look to corroborating evidence; and evidence of clearing land from bush, planting it, and then holding possession corroborates claim of ownership under tradition. Tuafili v. Taape, 2 A.S.R. 155.

Evidence supports claim that matai planted, used and claimed land as individual land and not as communal land of family. Tago v. Sami, 2 A.S.R. 285.

Before government was established, in accordance with Samoan customs, family clearing from land from bush and planting it becomes owners. Faataliga v. Fano, 2 A.S.R. 376.

If virgin, unclaimed land is cleared and occupied for individual benefit, court will find this sufficient to support claim of ownership. Muli v. Ofoia, 2 A.S.R. 408.

Presumption is that when matai cleared family lands from bush, he did so for family and that lands are communal family lands. Letele Family v. Lafoga, 2 A.S.R. 466.

Court takes judicial notice of fact that when members of Samoan family took possession of bush land it was on behalf of matai as owner of communal family property. Soliai v. Levu, 2 A.S.R. 440.

When members of family cleared land from bush and claimed ownership, it was on behalf of matai as owner of communal family land. Letele Family v. Lafoga, 2 A.S.R. 466.

Even if portion of surveyed land remains virgin, plantations and pig walls are sufficient to establish claim to land. Maluia v. Isumu, 2 A.S.R. 557.

Taking of trees occasionally for construction of house does not constitute possession of general area from which trees are taken, nor does it meet requirement of first occupancy coupled with claim of ownership which is basis of land ownership under Samoan custom. Lualemana v. Brown, 3 A.S.R. 348.

Fact person gets coconuts from land may not be evidence of ownership but merely of generosity of rightful owner. Ofoia v. Pritchard, 4 A.S.R. 326.

Under Samoan custom, it would be unusual for 15-year-old boy to hire six laborers to clear virgin bush in order to claim land as boy's individually owned property. Tuanaitau v. Paogofie, 4 A.S.R. 375.

Under Samoan custom title belongs to one who clears land from virgin bush and plants it. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Fact that claimant cleared lands from virgin bush and continuously planted lands for extended period is evidence of ownership. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Where applicant to register claimed members of family cleared virgin bush, court may ascertain that they did so for another family to whom they were related by marriage. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Where evidence showed that land had been cleared from virgin bush by one who shortly thereafter registered part of the land in his own name without any objection from senior matai of the communal family of which he was a member, and later surveyed the entire land and conveyed it by warranty deed to his daughter, evidence was sufficient to overcome the

presumption that land in American Samoa is communally owned. Satele v. Fai`ai, 9 A.S.R.2d 20.

In order to establish a claim to individually owned land, a party must show that the land was (1) cleared in its entirety or substantially so from the virgin bush by an individual through his own initiative and not by, for, or under the direction of his aiga or its senior matai; (2) cultivated entirely or substantially so by him; and (3) occupied by him or his family or his agents continuously from the time of the clearing of the bush. Lealaimatafao v. Lautele, 9 A.S.R.2d 39.

Title to individual land arises from initial occupation of virgin bush land and its continued use, and not from the registration of land; registration does not confer title, but does preclude further contest of the registrant's title provided he has complied with all statutory requirements. Sese v. Leota, 9 A.S.R.2d 136.

Claim to individual ownership of land in American Samoa requires proof of initial clearing of bush land and sustained use and occupation of the land thereafter. Sivia v. Alaimalo, 13 A.S.R.2d 95.

Claimant to an individual title to virgin bush must show he initially cleared and settled such land for himself. Fania v. Sipili, 14 A.S.R.2d 70.

If there has been no occupancy or possession but only an occasional visit to the bush, such use was insufficient to defeat the land claim of people who came later to clear the area, make plantations, and occupy it continuously. Lualemana v. Atualevao, 16 A.S.R.2d 34.

§ 4(4) —Possession and Use

Cultivation and permanent improvements to land evidence ownership by those making the cultivation and improvements. Maloata v. Leoso, 1 A.S.R. 134.

Where it has not been customary to record title in books and where lands have been transferred without written deeds, long occupancy and tradition go a long way in establishing title. Talala v. Logo, 1 A.S.R. 166.

Cultivation and possession of land for period of time in excess of any statutory period of limitation is strong evidence of ownership. Fuimaono v. Leasiolagi, 1 A.S.R. 189.

Where no written record exists revealing ownership of land, the best evidence of such ownership is that which shows who has been using land for past 20 years under claim of right and without objection by other parties. Satele v. Afoa, 1 A.S.R. 467.

Family that has uninterrupted and adverse use of land for 40 years under claim of right has superior claim to land over family who has not used or cultivated the land for 20 years. Sekio v. Suafoa, 1 A.S.R. 475.

Where family acquired ownership of land by taking possession and making use thereof together with a claim of ownership prior to American occupation of Samoa, then family still has ownership unless lost through voluntary surrender, adverse possession or condemnation proceedings. Ilaoa v. Toilolo, 1 A.S.R. 602.

Possession of land creates presumption of ownership in possessor. Talo v. Tavi, 2 A.S.R. 63.

Where owner permits other to use land without intending to part with ownership, title remains in owner. Siva v. Asoau, 2 A.S.R. 113.

Possession is species of title which is good against all who cannot show better title. Willis v. Willis, 2 A.S.R. 276.

As against all persons who cannot show greater title, court finds possessors who are Samoan to be co-owners of land in dispute. Willis v. Willis, 2 A.S.R. 276.

Wrongful eviction by party with no greater right to land does not deprive possessor of what right he may have had to possession. Willis v. Willis, 2 A.S.R. 276.

Present possession of land creates presumption of ownership. Aumavae v. Tuitele, 3 A.S.R. 342.

Where person living on family land claims land as individually owned, court will questions why he waited 37 years to offer it for registration. Tuanaitau v. Paogofie, 4 A.S.R. 375.

Fact government established prison farm on land with permission of claimant is evidence of ownership. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Fact applicants for registration of land have possession creates presumption of ownership. Lolo v. Heirs of Sekio, 4 A.S.R. 477.

Probative force of possession of real estate as presumption of ownership increases with duration of possessor’s tenure. Lolo v. Heirs of Sekio, 4 A.S.R. 477.

Presumption of ownership is derived from possession of real property, the probative weight being dependant upon duration of possessor’s tenure. Laeli v. Moetoto, 4 A.S.R. 494.

Possession of real property creates presumption of ownership. Puluti v. Muliufi, 4 A.S.R. 672

Person in possession of land is owner as against anybody but legal owner. Mageo v. Government, 4 A.S.R. 874.

Continuous use and possession is better evidence of title than family history and tradition. Tupuola v. Tu'ufuli, 1 A.S.R.2d 80 (App. Div. 1983).

That no member of a family occupying a tract of land has ever rendered service to senior matai of another family is evidence tending to show that the family occupying the land was not occupying it as tenants or permittees of the other family. Sialega v. Taito (Mem.), 3 A.S.R.2d 40.

A tract of land located on the outskirts of a village, which has come to be regarded as part of that village, may still be the communal land of a family from a neighboring village that has long occupied the land. Sialega v. Taito, 3 A.S.R.2d 78.

Long occupancy of land by one family is not necessarily inconsistent with ownership by another family. Leota v. Faumuina, 4 A.S.R.2d 11.

Where defendants' contention that plaintiffs were permitted the use of a disputed tract only on condition of continuing service to senior matai of defendants' family was unsupported by credible evidence, and plaintiffs had long occupied the land without rendering such service and had publicly asserted outright ownership in numerous ways over a number of years, plaintiffs were entitled to register the tract in their name. Seumalo v. Satele, 6 A.S.R.2d 103.

Possessor of land who obtained possession by recent ouster of long-time possessor did not thereby acquire the benefit of a presumption of ownership, but can be evicted by the prior possessor even though prior possessor cannot prove a title good against the world. Tulisua v. Olo, 8 A.S.R.2d 169.

Possessor of land who obtained possession by recent ouster of long-time possessor had the status of a mere trespasser or intruder, and such status was not affected by long residence on neighboring land called by same name as land presently in dispute. Tulisua v. Olo, 8 A.S.R.2d 169.

Defendants' permissive occupation of plaintiff's property did not amount to a legal interest in the land whereby the defendants could maintain the claim that the land was theirs to live on forever. Isumu v. Palaia, 12 A.S.R.2d 98.

Actual occupation with a claim of ownership---not the exercise of power over the actual occupants at some time in the distant past, nor even present political authority over a village, county, or district---is the best evidence of land ownership in American Samoa. Lualemana v. Atualevao, 16 A.S.R.2d 34.

If there has been no occupancy or possession but only an occasional visit to the bush, such use was insufficient to defeat the land claim of people who came later to clear the area, make plantations, and occupy it continuously. Lualemana v. Atualevao, 16 A.S.R.2d 34.

A pattern of settlement provides evidence of land ownership. Tuiasosopo v. Afoa, 16 A.S.R.2d 90.

When ownership of land is in dispute and there is no written record or document showing positive title, the best evidence of ownership is found in the person who has been using the land under a claim of right and without objection from other parties. Uiagalelei v. Ulufale, 17 A.S.R.2d 158.

Continuous use and possession of real property is better evidence of title than family history and tradition, since the person in possession of land is considered the true owner as against anyone but the legal owner. Uiagalelei v. Ulufale, 17 A.S.R.2d 158.

In a dispute regarding ownership of a parcel of land where an active church stood, the appellate court accepted the trial court reasoning that since it was unlikely that someone would lease land containing an active church, appellants' claim that the disputed area was the same area referred to in an old lease agreement of their land was not tenable. Tuato`o v. Taua`a, 17 A.S.R.2d 163.

Possession of real property carries with it a presumption of ownership. Tuato`o v. Taua`a, 17 A.S.R.2d 163.

Where ownership of land is at issue, the best evidence of such ownership is found in the person who has been using the land under a claim of right without objection from other parties. Tuato`o v. Taua`a, 17 A.S.R.2d 163.

Trial court did not place undue emphasis on the testimony of one witness where it decided ownership of disputed land based not only on that witness' testimony, but on the description of land in two leases and the fact that the prevailing party had possessed and controlled the disputed land for years. Tuato`o v. Taua`a, 17 A.S.R.2d 163.

In land disputes, possession of real property is the best evidence of ownership and carries with it the presumption of ownership. Conversely, a mere claim to land without accompanied use or occupation is insufficient to acquire title thereof. Malaepule v. Fa`agau, 29 A.S.R.2d 215.

Continuous use and possession of the land generally indicates ownership in Samoan tradition, and gives rise to a legal presumption of ownership. Malaepule v. Fa`agau, 29 A.S.R.2d 215.

Continuing open use and occupation of a disputed area can be used to support a land claim. Ulufaleilupe v. Uiagalelei, 2 A.S.R.3d 212 (Land & Titles Div. 1998).

Where two unrelated families had lived together on land

peacefully and harmoniously over significant period of time, interspersing their own improvements upon the land without any logical pattern of present control, court would not declare land to be sole communal land of either family, nor would it create a new form of communal land ownership, but instead ruled that each was entitled to continue, indefinitely, such joint occupancy and use. Faumuina v. Tautolo, 5 A.S.R.3d 262 (Land & Titles Div. 2001).

Where land was found to be neither the exclusive communal land of either of two family-parties, court apportioned rents owed by government for use of such land based on the extent of occupancy and use by each family. Faumuina v. Tautolo, 5 A.S.R.3d 262 (Land & Titles Div. 2001).

Where two families mutually, peacefully and harmoniously, occupied and used land in a manner so irregularly intermingled that any areas of separately owned land could not be defined, Court determined that land could not be registered as only one family's communal land. Faumuina v. Tautolo, 6 A.S.R.3d 306 (Land & Titles Div. 2002).

§ 4(5) —Family Tradition and Reputation

In resolving dispute over ownership of land, court will consider evidence of who was using land in absence of written record of title. Satele v. Afoa, 1 A.S.R. 424.

Conflicting claims of ownership founded solely on tradition without foundation in fact cannot be accepted by court. Tufaga v. Mativa, 1 A.S.R. 184.

Reputation and family tradition may be admitted into evidence to prove title to land where there is no record title. Amituanai v. Sauitufuga, 2 A.S.R. 485.

It is practice of this court to permit use of family tradition and reputation for purpose of establishing title to land. Fesagaiga v. Seigafo, 3 A.S.R. 26.

In determining ownership of land, court has access to family traditions and history. Mulu v. Taliutafa, 3 A.S.R. 82.

In American Samoa, courts will use tradition even though it is hearsay, in determining title to land since in most cases there is no recorded title. Tialavea v. Aga, 3 A.S.R. 272.

Court must sort our fact from fiction or legend to determine rightful claimant among four contenders to register land. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Where member of family fails to corroborate or substantiate family's claim to land, court finds claim of family weakened. Mageo v. Fuga, 4 A.S.R. 426.

Where matai seeking to register land as communal property of his family relied on family history that conflicted with equally credible family history of objector to registration, and where preponderance of the evidence showed the land to be occupied by objector and those rendering service to him, registration would be denied. Mataituli v. Utuutuvanu, 7 A.S.R.2d 134.

Where land claimant, an untitled man, contended that the opposing party, a ranking matai of the village, had come to him looking for a place to plant crops and that he had given the matai permission to plant in a "taloloa" area under his control, this contention was inconsistent with cultural norms; the evidence therefore preponderated in favor of opposing party's contention that he had cleared and cultivated the land in order to acquire additional lands for his family. Lealaimatafao v. Lautele, 9 A.S.R.2d 39.

Where almost all residents of disputed land were members of two related families, court deciding which of these two families owned the land would consider reputation in the community, the opinions of the residents themselves, and past assertions of ownership and failures to assert ownership by heads of the respective families. Seva`aetasi v. Fanene, 9 A.S.R.2d 118.

Since the history of how a tract of land was first named and occupied, told and retold over centuries, tends to vary from family to family, one family's history will not ordinarily be dispositive of judicial proceedings regarding land ownership. Seva`aetasi v. Fanene, 10 A.S.R.2d 144.

Rather than base its decision on ownership of land on which party had the most comprehensive theory about the history of the land, court based its decision primarily on the best evidence of occupation during the last hundred years. Seva`aetasi v. Fanene, 10 A.S.R.2d 144.

Where matai who claimed land belonged to her family was also a member of another family that claimed the same land, and prior to obtaining her matai title had urged the matai of the other family to register part of the land, her earlier action would not absolutely preclude her later claim but was evidence supporting the court's conclusion that the land had traditionally been regarded as belonging to the other family. Seva`aetasi v. Fanene, 10 A.S.R.2d 144.

For a chief of one Samoan family to be buried on land of another family, while not unheard of, is hardly in the main stream of tradition; rather, the general and long standing custom is to place family graves on family land, to tend them carefully, and to rely on them as evidence of land ownership. Uiagalelei v. Fuimaono, 14 A.S.R.2d 49.

Evidence of a family tradition to the effect that the present possessors of land are beneficiaries of an ancient but revocable license from the family to whom the tradition belongs is insufficient, at least when the tradition is vigorously disputed and thinly corroborated, to overcome the presumption of

ownership that comes with many years of possession. Uiagalelei v. Fuimaono, 14 A.S.R.2d 49.

Appellate court affirmed as not clearly erroneous the trial court finding that the grave site of appellee's parents was located on land belonging to appellee rather than appellant, based on facts that it was unlikely that appellee's family would bury a chief on land of another family when they had land undisputedly theirs a few feet away, that the grave was the only existing monument on the disputed land, and that appellee's family continually used and possessed the disputed site for almost sixty years. Uiagalelei v. Ulufale, 17 A.S.R.2d 158.

The tradition that certain lands are reserved for the use of certain family members is at its strongest when the family is a large and prestigious one containing clearly identifiable sub-groups. Talili v. Williams, 18 A.S.R.2d 23.

A parcel of land was determined to belong to a family when a cemetery in which family members were buried, and a guesthouse, were located on the land and when a second family's presence on the land was of recent origin. Utu v. Paolo, 23 A.S.R.2d 22.

Although largely hearsay, oral family history and tradition of occupancy and cultivation is necessary in a communal land-tenure system commonly lacking title documentation and so is admissible in evidence for establishing title to a parcel of land. Toilolo v. Poti, 23 A.S.R.2d 130.

While hearsay evidence of family histories and traditions is admissible in communal land disputes, such evidence must always be viewed with caution. Afemata v. Pasa, 25 A.S.R.2d 132.

§ 4(6) —Records and Documents

Where land owner makes claim to War Damages Commission but fails to indicate ownership of specific land presently in dispute, this is evidence that he did not consider himself owners of such land. Sei v. Aumavae, 2 A.S.R. 396.

Execution of instrument by family member acknowledging ownership of land by matai, for purpose of avoiding adverse possession claim by family member, and reciting fmaly member's life tenancy does not, as a matter of law, create life tenancy. CAS 907(2). Foster v. Fa'amuli, 4 A.S.R. 3.

Court determines who has title to land on basis of Samoan land records and inheritance law designating heir upon death of record title holder. Ofoia v. Pritchard, 4 A.S.R. 326.

Court grant and administrator of estate's deed established good record title to land therein described. Ofoia v. Pritchard, 4 A.S.R. 326.

Freehold land was taxable until time income tax law become effective, and payment of taxes is evidence of ownership. Ofoia v. Pritchard, 4 A.S.R. 326.

Court finds ownership of disputed land in claimant where it is registered in name of predecessors and where title grew out of promise by matais to convey family owned land to individual and her child in return for furnishing certain necessities for funeral. Soliai v. Apelu, 4 A.S.R. 349.

Proper filing of separation-of-structure agreement is strong indication that person filing owns house which is subject of agreement. Siania v. Solaita, 4 A.S.R. 362.

Fact claimant filed for and was paid war damages on land is evidence of ownership. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Facts objectors to registration of land never filed nor were paid for war claim on land is evidence of fact that they were not owners. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Court finds applicant to register land did not file war claim on land since none appears on file available to court. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Where two plats are presented as evidence of ownership of land but do not mention name of land and do not show certification by surveyor, court will deny admission as evidence. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Agreements separating dwelling houses from land, duly filed, are evidence of ownership. Mageo v. Fuga, 4 A.S.R. 426.

Where objector to application to register land claims portion of disputed land adjacent ot land which was surveyed and registered in his family, it is probable that if claims portion where his, he would have surveyed and registered it at time he registered adjacent land. Mageo v. Fuga, 4 A.S.R. 426.

Evidence of chain of title indicates ownership of land is in government subject to condition contained in deed. Mana v. Talo, 4 A.S.R. 668.

Where land is surveyed and leased to third party, assumption is that leased land includes entire plot and that 20 feet of adjoining land not so leased nor used for other purposes is not property of lessor. Fuga v. Mageo, 4 A.S.R. 899.

That matai of family occupying a tract of land asserted ownership in legal documents required by law to be conspicuously posted and publicly recorded, and that no one objected to such assertions, is evidence tending to show that the family was occupying the land in its own right but is not dispositive of title. Sialega v. Taito (Mem.), 3 A.S.R.2d 40.

Courts can and do disregard land registrations that are clearly proved to have been procured by fraud, or in which the failure to afford required notice affirmatively appears in the record of the registration. A.S.C.A. §§ 37.0101 et seq. Ifopo v. Siatu`u, 12 A.S.R.2d 24.

Territorial registrar is charged with registering title to land only when all statutory registration procedures have been met, and court should not assume that he did not comply with this obligation. A.S.C.A. §§ 37.0101 et seq. Ifopo v. Siatu`u, 12 A.S.R.2d 24.

Trial court denial of appellant's land claim was supported by substantial evidence where his underlying contentions were inconsistent with documentary records and with the result of a previously litigated case. Moea`i v. Alai`a, 12 A.S.R.2d 91.

A land registration, effected in accordance with all statutory procedures, establishes good title against the world, and a later registration of the same land is of no legal effect. A.S.C.A. § 37.0101 et seq. Fa`aaua`a v. Tauiliili, 15 A.S.R.2d 71.

The Court will make no finding as to the traditional name of a parcel of land; any party who is held to own part of the tract in dispute is free to call it whatever he likes. Tuiasosopo v. Afoa, 16 A.S.R.2d 90.

A certificate of registration issued after compliance with the registration statutes is evidence of a title good against the world and therefore can only be issued after strict compliance with the statutory procedures. Magalei v. Atualevao, 19 A.S.R.2d 86.

Absent compelling proof to the contrary, the court will assume that the Territorial Registrar recorded a land title only after complying with his legal obligations, including notice requirements. A.S.C.A. § 37.0103. Asifoa v. Faoa, 21 A.S.R.2d 91.

Recordation of a genuine copy of a deed is permitted under certain circumstances, as being similar to the evidentiary admission of a copy of an instrument as an exception to the best evidence rule. R.O.E. 1002, 1003, 1004(1). Vaimaona v. Tuitasi, 22 A.S.R.2d 1.

Serious irregularities in land registration documents may overcome a title registration's evidentiary presumption of land ownership. Ava v. Logoai, 22 A.S.R.2d 65.

§ 4(7) —Hearsay

SEE EVIDENCE § 8 – HEARSAY

Proof of gift of land before 1900 in accordance with Samoan custom requires evidence other than hearsay. Faaafe v. Sioeli, 2 A.S.R. 21.

When both parties to supposed land transaction are dead, testimony by interested party who was not present is hearsay and should be excluded. Fe'a v. Sisipeni, 4 A.S.R. 320.

Visit by one member of court to land that was the subject of litigation, and subsequent report of that judge to other judges, did not constitute impermissible "testimony" by the judge when both counsel had been present at the viewing of the land and no objection had been made. Vaimaona v. Paleafei, 3 A.S.R.2d 92.

Testimony by those seeking to invalidate a land registration, to the effect that they never saw the required notices posted, was insufficient to meet the heavy burden of proving that the territorial registrar ignored his sworn duty by recording title to the land without posting the required notices. Vaimaona v. Tuitasi, 12 A.S.R.2d 68.

Although largely hearsay, oral family history and tradition of occupancy and cultivation is necessary in a communal land-tenure system commonly lacking title documentation and so is admissible in evidence for establishing title to a parcel of land. Toilolo v. Poti, 23 A.S.R.2d 130.

While hearsay evidence of family histories and traditions is admissible in communal land disputes, such evidence must always be viewed with caution. Afemata v. Pasa, 25 A.S.R.2d 132.

Although it is generally accepted that title to land cannot be evidenced by hearsay, Talo v. Tavai, 2 A.S.R. 63, 68 (Trial Div. 1939), an exception to the hearsay rule exists for the "communal land-tenure system", permitting the admission of oral family histories in the absence of "title documentation." Toilolo v. Poti, 23 A.S.R.2d 130, 132 (Land & Titles Div. 1993); see Tupuola v. Tu`ufuli, 1 A.S.R.2d 80, 81 (App. Div. 1983). Malaepule v. Fa`agau, 29 A.S.R.2d 215.

Although hearsay evidence of family history and tradition is routinely admitted on land title issues, without corroboration it is regarded as inherently weak evidence. Laie v. Estate of Tuiveta, 3 A.S.R.3d 200 (Land & Titles Div. 1999).

§ 5 Adverse Possession

§ 5(1) —General Provisions

Permitting "matai" to obtain title to land from members of family by adverse possession would result in injury and injustice because in Samoa members of family are subject to power of "matai". Vili v. Faiivae, 1 A.S.R. 138.

Court finds that statute on adverse possession is applicable to Samoa since it was part of English common law at time of revolution. Talo v. Poi, 2 A.S.R. 9.

Statute of limitations and law of adverse possession do not run against Government of American Samoa. Teo v. Totoa, 2 A.S.R. 243.

Court finds it improbable that fifteen-year-old boy would enter upon land adversely, claiming it as his own. Sauafea v. Vaaitautia, 2 A.S.R. 310.

Unless it is expressly provided otherwise by law, statutes of limitation do not operate to bar suits involving public or governmental rights which are brought by, or on behalf of, state or government. Lago v. Mageo, 4 A.S.R. 287.

Neither laches nor statute of limitations run against Government of American Samoa. Mageo v. Government, 4 A.S.R. 874.

Finding that adverse possession was effected for benefit of entire family and not solely for one member was not erroneous. Ross v. Scanlan, 4 A.S.R. 913.

Adverse possession is a mixed question of law and fact; whether facts exist which constitute adverse possession is for the trier of fact, but whether facts as delineated are sufficient to constitute adverse possession is question of law. Ross v. Scanlan, 4 A.S.R. 913.

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. Sesepasara, 8 A.S.R.2d 43.

Because land can be owned communally in American Samoa, a communal family may obtain title to land through adverse possession. A.S.C.A. § 37.0120. Anderson v. Vaivao, 21 A.S.R.2d 95.

Land owned by ASG is not subject to acquisition by adverse possession, because the statute of limitations for adverse possession does not run against the government. A.S.C.A. § 37.0120. Anderson v. Vaivao, 21 A.S.R.2d 95.

Title to public premises cannot be acquired by adverse possession. American Samoa Gov't v. Estate of Fuimaono Tuinanau, 28 A.S.R.2d 187.

To succeed on a claim of adverse possession one must show that the possession was continuous, open, notorious, and hostile to any claim of ownership, for a period in excess of time required by the adverse possession statute then in force. Fa`atoafe v. Tuia`ana, 30 A.S.R.2d 163.

A family's adverse possession claims, which a family failed to assert at the time of an initial dispute over title registration allegedly due to lack of actual notice, cannot disturb the initial adjudication. Savane v. Lafi, 31 A.S.R.2d 31.

Where claim of adverse possession had not been raised in previous land case between same parties, but was ripe at time that case was decided, court's previous determination regarding ownership was conclusive as to such claim. Seva'aetasi v. Moi, 1 A.S.R.3d 232 (Land & Titles Div. 1997).

A family member usually cannot adversely possess an assigned portion of his family's communal land and acquire individual title to the land; however, a family member can acquire title to his family's communal land by adversely possessing it for 30 years, pursuant to A.S.C.A. § 37.0120. Tiapula v. Isumu Leapagatele's Children, 6 A.S.R.3d 324 (Land & Titles Div. 2002).

Where family member and his immediate family occupied and used communal land without any contrary occupancy or other interference by other members of the family and possessed land exclusively, continuously, openly, notoriously, and hostilely to family's claim of ownership for a period of approximately 41 years, family member acquired title to the land by adverse possession. Tiapula v. Isumu Leapagatele's Children, 6 A.S.R.3d 324 (Land & Titles Div. 2002).

§ 5(2) —Elements

§ 5(2)(a)—Generally

Adverse possession of land must be open, notorious, hostile, continuous and visible. Salavea L. v. Ilaoa, 2 A.S.R. 15.

Evidence shows that family was in actual, open, notorious, visible, continuous, exclusive and hostile possession of land for more than twenty years, thus acquiring title by adverse possession, and unaffected by loose claims of ownership by another family. Magalei v. Maea, 2 A.S.R. 35.

Color of title is not necessary element to adverse possession in American Samoa. Talo v. Tavi, 2 A.S.R. 63.

Where possession of land by claimant has been open, notorious, actual, visible, continuous, hostile and under claim of title for more than twenty years, title vests in possessor. Tuiolosega, v. Voa, 2 A.S.R. 138.

Possession of land which has been actual, open, exclusive, continuous and under claim of title for more than twenty years vests title in adverse possessor. Sei v. Aumavae, 2 A.S.R. 396.

Evidence shows that applicant planted and occupied land, accompanied by possession which was actual, open, notorious, exclusive and under claim of title, thus barring any other private claim to ownership, through operation of statute of limitations. Soliai v. Lagafua, 2 A.S.R. 436.

Actual, open, notorious, continuous, exclusive possession under claim of right from prior to World War I to 1940 is

sufficient to establish title by adverse possession. Soliai v. Levu, 2 A.S.R. 440.

Where person has been in actual, open, notorious, peaceable, exclusive, continuous, hostile and adverse possession of land for more than twenty years, he acquires title by adverse possession. Sione v. Tiualii, 3 A.S.R. 66.

Open, notorious, hostile, exclusive and continuous possession of land for more than 20 years vests ownership in possessor. Ofoia v. Pritchard, 4 A.S.R. 326.

Actual, open, notorious, hostile, exclusive and continuous occupancy of portion of land for more than 20 years confers title by adverse possession. Fau v. Wilson, 4 A.S.R. 443.

Statute provides that actual, open, notorious, hostile, exclusive and continuous occupancy of land for 20 years will bar action for recovery of real property and confer title by adverse possession sufficient against all. Lolo v. Heirs of Sekio, 4 A.S.R. 477.

Evidence establishes that possession of applicant for registration has been actual, open, exclusive, notorious and continuous. Lolo v. Heirs of Sekio, 4 A.S.R. 477.

Where parties engage in illegal land transaction, where violation constitutes a crime, deed representing conveyance is absolutely void and cannot be used as color of title in conjunction with claim of land as adverse possessor. Ross v. Scanlan, 4 A.S.R. 913.

Even if plaintiff family once had plantations on disputed land, defendant family would have become owner by virtue of open, notorious, exclusive, continuous, and hostile occupation of the land for twenty years under the adverse possession statute then in effect. A.S.C.A. § 37.0120 (prior to 1982 amendment). Leomiti v. Toluao, 11 A.S.R.2d 49.

Actual, open, notorious, hostile, exclusive and continuous occupancy of real estate for 30 years confers a title thereto by adverse possession which is sufficient against all. A.S.C.A. § 37.0120(a). Vaivao v. Craddick, 14 A.S.R.2d 108.

Acquiring land under an adverse possession statute requires open, notorious, continuous, and exclusive possession. Lualemana v. Atualevao, 16 A.S.R.2d 34.

Acquiring land through adverse possession requires actual, open, notorious, hostile, exclusive, and continuous occupancy for the statutory period. Willis v. Fai`ivae, 17 A.S.R.2d 38.

Acquiring land by adverse possession requires possession which is exclusive, continuous, open, notorious, and hostile to anyone else's claim of ownership for the statutory period. A.S.C.A. § 37.0120. Magalei v. Atualevao, 19 A.S.R.2d 86.

Possession is adverse if it is exclusive, continuous, open, notorious, and hostile to another person's ownership for the 30-year statutory period. Tiapula v. Isumu Leapagatele's Children, 6 A.S.R.3d 324 (Land & Titles Div. 2002).

§ 5(2)(b)—Actual Possession

Where lessee occupies property through written and recorded lease, such occupation shall constitute actual, visible, exclusive and hostile possession by lessor against other claimants to property. Lutu v. Faga, 1 A.S.R. 480.

Claims of title without actual possession are never grounds for adverse possession. Salavea L. v. Ilaoa, 2 A.S.R. 15.

Family may possess land without living on it by making plantations, gathering fruits, and using land for burial ground. Salavea L. v. Ilaoa, 2 A.S.R. 15.

Possession of real property during prolonged period created presumption that possessor held under grant, the probative weight of force being dependent upon duration of possessor's tenure, and possession in excess of twenty years creates title in possessor by statute of limitations. Togia'I v. Aumua, 3 A.S.R. 3.

It is not necessary that person claiming title under adverse possession should have been in personal possession of land, but he may claim it through agent or tenant. Fesagaiga v. Segafo, 3 A.S.R. 26.

Weight of evidence supports conclusion that parts of land used by objector to application for registration are his land through adverse possession. Fau v. Wilson, 4 A.S.R. 443.

Occupancy is necessary to establish adverse possession, but occupancy does not require living on land but includes planting, cultivating and harvesting crops or pasturing livestock. Fau v. Wilson, 4 A.S.R. 443.

§ 5(2)(c)—Open and Notorious Possession

In order to assert claim as adverse possessor, it must be shown that true owner had knowledge of adverse holding or that it was so open and notorious as to raise presumption of notice to true owner. Sapela v. Veevalu, 1 A.S.R. 124.

Under matai system, family which is co-tenant of land but which is not in possession does not have constructive notice of intention of possessing co-tenant to claim land as his own by fact that possessing co-tenant had exclusive possession and appropriate fruits of land for his own use for statutory period, and consequently possessing tenant does not acquire entire title by adverse possession. Leapaga v. Taumua L., 2 A.S.R. 56.

With respect to co-tenants, fact that one is in possession and other is not does not constitute ouster for purpose of adverse possession, but refusal to let co-tenant into possession and denial of co-tenant's claim of title for whole property where excluded co-tenant has actual or constructive knowledge of facts constituting ouster, constitutes ouster which will make possessing co-tenant owner upon expiration of statute of limitations. Leapaga v. Taumua L., 2 A.S.R. 56.

True owner of land must have opportunity to learn of adverse claim and to protect rights in land, and where matai gives no indication to family that he is claiming lands individually, such occupancy is not adverse. Letele Family v. Lafoga, 2 A.S.R. 466.

A family member cannot adversely possess his family's communal land unless he first gives actual notice to other family members that he claims individual ownership of the land. Tiapula v. Isumu Leapagatele's Children, 6 A.S.R.3d 324 (Land & Titles Div. 2002).

Where family member made it clear to family sa`o that he claimed the land as his individually owned property, such action constituted actual notice to the family of his ownership claim. Tiapula v. Isumu Leapagatele's Children, 6 A.S.R.3d 324 (Land & Titles Div. 2002).

§ 5(2)(d)—Exclusive Possession

Under Samoan custom, whenever land is unoccupied or real owner is unable to use it because of absence, relative would be entitled to occupy property and by so doing, there would be no inference that he is occupying adversely. Sapela v. Veevalu, 1 A.S.R. 124.

Under Samoan custom, members of family are in privity and cannot exercise adverse possession in relation to "matai" of family. Sapela v. Veevalu, 1 A.S.R. 124.

Tenant in common may acquire title to entire property by adverse possession by ouster of co-tenants and assertion of title to entire property in himself. Leapaga v. Taumua L., 2 A.S.R. 56.

Adverse possession cannot be predicated on possession of parent as against child, and matai stands as father in relation to family. Letele Family v. Lagoa, 2 A.S.R. 466.

Adverse possession does not begin to run in favor of claimant until he disavows idea of holding for, or in subservience to, another, and actually sets up exclusive right in himself by some clear, positive, and unequivocal act. Letele Family v. Lafoga, 2 A.S.R. 466.

To assert ownership of land by adverse possession, it is not enough to show continued occupancy, but claimant must also show that he claimed it as his own for all that time and not that he was merely living on land as matai of family. Letele Family v. Lafoga, 2 A.S.R. 466.

Exclusiveness of possession is a necessary element of title by adverse possession; if claimant shared possession with other families in communal land necessary element of adverse possession is lacking. Aigamaua Family v. Poloa, 2 A.S.R. 515.

Branch of family cannot claim title to land through adverse possession if there is evidence that they occupied land because of membership in family. Atufili v. Timoteo, 3 A.S.R. 395.

One member of family cannot acquire title to communal family land adversely to other members of family even though he has actual, open, notorious, exclusive, and continuous possession for 20 years unless he gives actual notice to other members of family of his claim of individual ownership. Tuanaitau v. Paogofie, 4 A.S.R. 375.

Alleged adverse possessor does not have exclusive possession of communal family land where members of family take fruits from land. Tuanaitau v. Paogofie, 4 A.S.R 375.

Claim of portion of communal land within plot of applicant for registration was distinguished by adverse possessor. Lolo v. Heirs of Sekio, 4 A.S.R. 477.

Party claiming ownership of disputed tract could not establish acquisition of title through adverse possession with evidence that he alone received economic proceeds of tract, since close relatives of previous owner still inhabited tract and claimant occasionally acquiesced to references to tract as possession of previous owner. Tuileata v. Amituana'i, 4 A.S.R.2d 168.

§ 5(2)(e)—Hostile Possession

Where claimant as adverse possessor is related to landowner and where he permits others in family to reside on land, he is neither hostile nor exclusive in his possession. Sapela v. Veevalu, 1 A.S.R. 124.

Where one enters land by agreement of owner he must quit land and give notice to owner that future possession will be adverse if title by adverse possession is to be granted. Tuitele v. Sopoaga, 1 A.S.R. 161.

Where evidence shows one person is on land by virtue of agreement of another then subsequent possession by virtue of such agreement cannot be adverse regardless of length of time of possession. Tuitele v. Sopoaga, 1 A.S.R. 161.

Fact possession of land was taken by force before cession of Samoa to United States does not prevent claim based on adverse possession. Talala v. Logo, 1 A.S.R. 166.

Statutes of limitations on recovery of land are vital to welfare of society, and even though original entry of possessor is unlawful, he is entitled to ownership when period has run if his possession meets all requirements of adverse possession. Tufaga v. Mativa, 1 A.S.R. 184.

In order to acquire title to lands by adverse possession, possession must be hostile with intent to dispossess owner, and possession under license or permission of owner is never hostile. Fanene Family v. Brown, 3 A.S.R. 260.

Where alleged adverse possessor lives on land at sufferance of member of family holding title, his possession is not actual, open, notorious, hostile, exclusive or continuous. Nua v. Leomiti, 4 A.S.R. 404.

Possession of communal family land with consent of matai cannot be adverse to family of matai. 4 A.S.R. 735.

Since many Samoan families allow other families to live on their land, "hostile" possession within the meaning of territorial statute allowing acquisition of land by adverse possession must be proved by evidence of acts unequivocally inconsistent with the ownership of the land by another family. A.S.C.A. 37.0120. Sialega v. Taito (Mem.), 3 A.S.R.2d 40.

Possession of land was not adverse but permissive where, although defendant held possession for over 30 years on land held in trust for people of the islands of Manu'a, her land use permits were signed by third parties and she sought trustee's permission to repair buildings. Tufele v. Mose, 7 A.S.R.2d 157.

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. Sesepasara, 8 A.S.R.2d 43.

Although a document filed in an attempt to arrest adverse possession, stating that certain persons were occupying property by permission of the signatory, was inconsistent with a prior sale of the same land to one of the named occupants by the signatory or by his predecessor in title, the document was not conclusive since the signatory and/or his predecessor might have acted inconsistently by selling the land and later filing the document. Ifopo v. Siatu`u, 10 A.S.R.2d 66.

Widow who was neither a blood member of her late husband's family nor analogous in any way to a member of the family, and whose possession of land was open, notorious, and clearly hostile to the competing claim of the husband's family, could acquire the land by adverse possession. A.S.C.A. § 37.0120. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

In land title cases, permission given by an ancestor of one claimant to an ancestor of another to occupy the site in dispute may be relevant and material where one party has traditionally been subservient to and habitually rendered traditional service (tautua) to the other, since under the common law permission defeats a permittee's claim of adverse possession and grants him only a personal license which the grantor may revoke at will. Utu v. Fuata, 17 A.S.R.2d 104.

Where plaintiffs attempted to advance adverse possession claim, evidence produced in previous action that that Plaintiff's predecessor had received a "flawed" deed, allowing him to possess land, demonstrated permissive possession of the land. Seva'aetasi v. Moi, 1 A.S.R.3d 232 (Land & Titles Div. 1997).

Permissive occupation cannot create title by adverse possession. Alai`asa v. Te`o, 5 A.S.R.3d 266 (Land & Titles Div. 2001).

Permission defeats permittee's claim of adverse possession and grants only personal license. Williams v. Tupuola, 6 A.S.R.3d 44 (App. Div. 2002).

§ 5(2)(f) —Duration Requirement

Samoa Land Commission and High Court have held that ten years undisputed possession of land is sufficient to pass title to possessor. Talala v. Logo, 1 A.S.R. 166.

At time of decision, ten years is limitation placed on possession of land which grants title in possessor. Tufaga v. Mativa, 1 A.S.R. 184.

Where one family has pule over large tract of land for over 100 years, another family using part of the land is not entitled to ownership thereof without open and notorious possession for a period of 20 years or more and without objection of the family in which pule resides. Satele v. Afoa, 1 A.S.R. 467.

Family that has uninterrupted and adverse use of land for 40 years under claim of right has superior claim to land over family who has not used or cultivated the land for 20 years. 1 A.S.R. 475.

Family who lived on land for seventy years needed only twenty years of open, notorious and undisputed possession under claim of right to obtain title to land together with its pule. Maluia v. Tafetee, 1 A.S.R. 537.

Courts of American Samoa adopt English law of adverse possession, divesting true owner of title and vesting it in adverse possessor after twenty years of continuous possession. Talo v. Tavi, 2 A.S.R. 63.

Courts of American Samoa have adopted twenty-year state of limitations from English law on recovery of real property. Tago v. Sami, 2 A.S.R. 285.

Where party has continuous possession of land for more than 20 years and such possession is adverse, title vests in adverse possessor. Magalei v. Tago, 3 A.S.R. 185.

Possession and use of land for over twenty years vests title in possessor in accordance with doctrine of adverse possession. Tialavea v. Aga, 3 A.S.R. 272.

Actions for recovery of real property in Samoa must be brought within 20 years after cause of action accrues. Lualemana v. Filo, 3 A.S.R. 642.

Adverse possession for period of twenty years operates to divest true owner of his title and vest it in adverse possessor. Ifopo v. Lutu, 4 A.S.R. 211.

Statutory period governing acquisition of title by adverse possession is 20 years and effect of running of period is to vest title in adverse possessor. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Actions for recovery of real property must be brought within 20 years after cause of action accrues. Fau v. Wilson, 4 A.S.R. 443.

Actions for recovery of real property must be brought within 20 years after cause of action accrues. (CAS 3.1101) Fau v. Wilson, 4 A.S.R. 443.

Adverse possession for 20 years confers title "which is sufficient against all." Laeli v. Moetoto, 4 A.S.R. 494.

Where party has possessed lands for 35 years, and other enters land claiming it from many years ago, possessing party has established title through adverse possession. Laeli v. Moetoto, 4 A.S.R. 494.

A family which has occupied a tract of land for at least thirty years, and which has on many occasions acted as the owner of the land in ways that were utterly inconsistent with the claim of another family, has acquired the land by adverse possession even if it had not done so by original occupancy. A.S.C.A. § 37.0120. Sialega v. Taito, 3 A.S.R.2d 78.

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. Sesepasara, 8 A.S.R.2d 43.

Because the adverse possession statute was amended in 1962 to change the prescriptive period from twenty years to thirty years, occupancy beginning later than the effective date of the 1962 amendment, which has been interrupted, or which has not been exclusive at any time since 1962 must meet the thirty-year requirement in order to acquire title by adverse possession. A.S.C.A. § 37.0120. Willis v. Fai`ivae, 17 A.S.R.2d 38.

§ 5(2)(g)—Continuous and Uninterrupted Possession

Interruption of continuity necessary to acquire title by adverse possession occurs when adverse claimant recognized title of owner, and upon such recognition, adverse possession ceases to exist, and will not begin to run again until claimant repudiates title in owner. Sapela v. Veevalu, 1 A.S.R. 124.

To acquire title by adverse possession, possession must have been continuous and uninterrupted for statutory period. Talo v. Poi, 2 A.S.R. 9.

While actual commencement of suit will stop running of statute of limitations, where suit is voluntarily abandoned, discontinued or dismissed or is not proceeded with for considerable period of time, operation of statute will not be suspended. Tuiolosega v. Voa, 2 A.S.R. 138.

Commencement of suit prior to expiration of applicable limitation period interrupts running of statute of limitations as to all parties to action and their privies, and application to register land or objection thereto stops running of statute for benefit of adverse possessor. Sauafea v. Vaaitautia, 2 A.S.R. 310.

Mere denial by owner of right of adverse occupant or claims of title short of disturbance of rights of adverse claimant in legal sense, will not interrupt running of statute or prevent its becoming a bar. Fesagaiga v. Seigafo, 3 A.S.R. 26.

Continuity of possession is essential element of adverse possession, and when possession is not continuous for full statutory period, it ceases to be effective as soon and as often as break occurs, for law restores constructive possession of owner. Fesagaiga v. Alo-Pep, 3 A.S.R. 118.

Where family fears occupant may claim lands through adverse possession, matai may file family's claim to land, thus arresting running of statute. Fanene Family v. Brown, 3 A.S.R. 260.

Even where alleged adverse possessor can prove elements of adverse possession, claim of adverse possession would fail where title holder files instrument arresting statutory period in accordance with provision of code. (CAS 907) Nua v. Leomiti, 4 A.S.R. 404.

Where counsel attempts to introduce into evidence instrument arresting statute of limitations in connection with acquiring title to land by adverse possession, court will ascertain whether instrument was filed with Clerk of Court and if it was, will admit it into evidence. Nua v. Leomiti, 4 A.S.R. 404.

None of the claimants of a disputed tract acquired title through adverse possession when no one of them ever occupied any portion of it continuously and openly for thirty years in a manner hostile to the rights of the original owners. Satele v. Uiagalelei, 6 A.S.R.2d 143.

§ 5(3) —Tacking

Claimants to land who have been in actual, open, notorious, continuous, visible, exclusive and hostile possession of land for over twenty years acquire title by means of adverse possession, and possession of ancestor may be tacked on to possession of heirs to determine period of possession. Faaafe v. Sioeli, 2 A.S.R. 21.

Possession of predecessor in interest may be tacked on to present adverse possessor for purpose of computing period of adverse possession. Talo v. Tavi, 2 A.S.R. 63.

Adverse possession will apply where possession of successive occupants are in privity, and where those holding actual possession are holding in subordination and with permission of trustee. Fruean v. Mageo, 2 A.S.R. 591.

Relationship of donor of land to donee will supply necessary privity to permit tacking of adverse possession of former onto latter. Fesagaiga v. Seigafo, 3 A.S.R. 26.

When the Marines took possession of land during the war, it was always with permission of Samoans, and period during which Marines were in possession of land may be tacked on to period in which persons from whom they got permission to use land were in possession for purpose of determining ownership by adverse possession. Lualemana v. Filo, 3 A.S.R. 642.

Court may tack period of time lands were used by United States Marines with permission of land possessors in order to determine period of possession. Lualemana v. Chiefs of Aitlagi, 4 A.S.R. 383.

Period of possession of predecessor in title may be tacked onto possession of heirs in determining period of adverse possession. Lolo v. Heirs of Sekio, 4 A.S.R. 477.

Evidence established fact that applicant's predecessor or person occupying under applicant's predecessor's authority possessed land from 1920 until 1945, and that applicants or person occupying under applicant's authority possessed land from 1945 to present time. Lolo v. Heirs of Sekio, 4 A.S.R. 477.

§ 6 Quieting Title

§ 6(1) —Generally

Where evidence sustains ownership of land in family at time of cession of Samoa to United States, ownership is still in family in absence of voluntary conveyance, condemnation or adverse possession in another. Talo v. Poi, 2 A.S.R. 9.

Where evidence establishes that family owned land before cession of lands to United States, family continues to own land unless it lost title through adverse possession, conveyance or condemnation since then, because cession did not change private rights in land and control passed to each succeeding matai of family. Salavea L. v. Ilaoa, 2 A.S.R. 15.

Cession of Samoa to United States did not affect private land ownership which was determined in accordance with Samoan custom, but since cession, these customs are subject to written law and so much of common law of England as is applicable to conditions of Samoa. Talo v. Tavi, 2 A.S.R. 63.

Defects in property titles in American Samoa may be cured by operation of statute of limitations. Siva v. Asoau, 2 A.S.R. 113.

Cession of Manua Islands to United States did not affect private land titles. Siva v. Asoau, 2 A.S.R. 113.

Family who used and occupied land at time of cession to United States was entitled to land at that time. Siva v. Asoau, 2 A.S.R. 113.

Cession of Samoa to United States did not affect private rights in property. Fiailoa v. Meredith, 2 A.S.R. 129.

Cession of islands of Samoa to United States Government did not affect private land titles, and ownership preceding that time continued after cession. Fesagaiga v. Alo-Pepe, 3 A.S.R. 118.

Holder of inferior estate may surrender his interest in land by reversion, remainder, mutual agreement or failure to maintain physical possession of land. Talagu v. Te'o, 4 A.S.R. 121.

Since land owned by Samoans before cession to United States was retained by them after cession, it could be obtained by government only by negotiation or condemnation. Lago v. Mageo, 4 A.S.R. 287.

Supreme Court of Samoa had jurisdiction to grant title to land before United States Administration. Ofoia v. Pritchard, 4 A.S.R. 326.

Court finds proper name for land. Nua v. Leomiti, 4 A.S.R. 404.

Decree of High Court provides link in chain of title. Fau v. Wilson, 4 A.S.R. 443.

Proper procedure to determine claims of various grantees of single grantor is quiet title action, not declaratory judgment. Moon v. Falemalama, 4 A.S.R. 836

To recover land, legal owner must exercise right against wrongful possessor. Mageo v. Government, 4 A.S.R. 874.

Damages should not be awarded for mental anguish, ridicule, and embarrassment caused by one family having claimed to own land that was actually owned by another. Sialega v. Taito, 3 A.S.R.2d 78.

Action by landowner, whose title to the land has recently been affirmed by trial and appellate courts, to evict persons who were not parties to the case should have been brought as a separate action rather than as a post-judgment motion in the case that adjudicated title to the land. Fonoti v. Fagaima, 5 A.S.R.2d 158.

Defendant who built on land long occupied by plaintiffs with full knowledge of plaintiffs' possession and over their objections was a bad faith possessor who would be obliged to remove his building without compensation. Olo v. Tulisua, 6 A.S.R.2d 129.

Where it did not appear from the evidence that a common grantor had sold two parties the same land, but on the contrary the two deeds clearly described two different adjoining parcels, a defect in the title conveyed to the first purchaser would not give him a right to the land the common grantor had conveyed to the second purchaser. Lutu v. Semeatu, 13 A.S.R.2d 88.

Persons continuing to occupy and cultivate land adjudicated as belonging to another family are subject to sanctions for contempt. Lualemaga v. Asifoa, 23 A.S.R.2d 17.

In the absence of statutory authorization for privity exceptions in probate proceedings, any claims with respect to the land, lease, and improvements must be determined in an independent action. Estate of Jennings, 24 A.S.R.2d 3.

The holder of legal title to property is the presumed owner of full beneficial title, rebuttable only by clear and convincing evidence of inequity warranting a trust remedy. Stephens v. Stephens, 30 A.S.R.2d 55.

When certain land has a valid title registration, the law conclusively presumes either that the procedures for alienation of communal land were followed or that the land was not communal. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

When the title to land is properly registered, all other claims of ownership are forever precluded. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

When land is properly registered according to the law, the record owner holds title against all other claims of ownership, and subsequent judicial inquiry into the validity of the title is precluded. Tulifua v. Tuitele, 2 A.S.R.3d 219 (Land & Titles Div. 1998).

Title registration is a procedural device which precludes others from attacking the validity of the record owner's title, it is not a mode of land alienation. Tulifua v. Tuitele, 2 A.S.R.3d 219 (Land & Titles Div. 1998).

§ 6(2) —Burden of Proof

Burden of proof rests on party asserting claim to property as against possessor thereof, and unless sufficient evidence of claim presented, claimant will not obtain judgment. Sapela v. Mageo, 1 A.S.R. 143.

If person wishes to lay claim to land cultivated and possessed by others on grounds that such cultivation and possession is by license of claimant, then burden of proff as to existence of license is on such claimant. Fuimaono v. Leasiolagi, 1 A.S.R. 189.

Civil cases are decided upon weight on evidence and while evidence on neither side may be strong, the side with the strongest evidence wins. Asuega v. Lauti, 1 A.S.R. 549.

Burden rests on those who assert rights in land against possessor. Fanene v. Mauga, 2 A.S.R. 144.

Court finds weight of evidence shows defendant to be possessor of land since 1942, having authorized others to look after land and gather fruits from it. Ofoia v. Pritchard, 4 A.S.R. 326.

Weight of evidence established that pastor's new house is on land given for pastor's residence even though house is larger than house it replaces. Muasau v. Pita, 4 A.S.R. 337.

Applicant to register land has failed to prove ownership by preponderance of evidence. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Applicant to register land does not demonstrate ownership by preponderance of evidence where he fails to show his family cleared land or even lived for extended period of time. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Where evidence of objector to application to register land is not persuasive or substantiated, objector fails to prove claim to portion of surveyed land. Mageo v. Fuga, 4 A.S.R. 426.

Where plaintiff fails to prove right to land by preponderance of evidence, court will dismiss his petition even though defendant has also failed to prove his right of ownership. Paleafei v. Leatisua, 4 A.S.R. 496.

Common law principle that "plaintiff must recover on the strength of his own title, not on the weakness of the defendant's" did not prevent court from finding that plaintiff was entitled to possession of land although neither party had proven ownership, when plaintiff had been in possession for many years and had recently been dispossessed by defendant. Olo v. Tulisua, 6 A.S.R.2d 129.

Evidence of very recent assertions of ownership to disputed land, after the occurrence of events which had enhanced the value of the land and given rise to the action being tried, was of little use to court attempting to determine true owner of the land. Moea`i v. Te`o, 8 A.S.R.2d 85.

Court's appraisal of the value of real estate is not a conclusion of law requiring support from findings of fact, but is itself a finding of fact. Roberts v. Sesepasara, 8 A.S.R.2d 124.

Plaintiff's suit to evict defendant from land on which he recently built a home was denied where neither party showed a better title to land or a superior right to possess it, since the senior matai of neither family testified, the evidence given was contradictory, and neither party showed an earlier attempt to register title or convincing evidence of prior use and occupation. Hunkin v. Paaka, 14 A.S.R.2d 23.

Plaintiff's claim to disputed land was superior to that of defendant, who attempted to locate the boundaries noted in the original land grant based on scarce data and various assumptions which were plausibly rebutted by plaintiffs. Vaivao v. Craddick, 14 A.S.R.2d 108.

Plaintiffs' claim to disputed land was superior to that of defendant, where evidence indicated land was exclusively used and occupied by plaintiff families within living memory and family through whom defendant claimed ownership had never exercised proprietary rights or interfered with plaintiffs' possession or exercise of such rights. Vaivao v. Craddick, 14 A.S.R.2d 108.

Claim for unspecified damages to land was denied absent proof of damages. Vaivao v. Craddick, 14 A.S.R.2d 108.

Petition for quiet title was denied absent a survey and proof of compliance with the title registration statute. A.S.C.A. § 37.0101 et seq. Vaivao v. Craddick, 14 A.S.R.2d 108.

Plaintiff failed to carry burden of proving land ownership when his evidence largely consisted of his memories, especially when defendants' evidence as to leases and actual control clearly predominates and is more plausible. Tuato`o v. Congregational Christian Church, 15 A.S.R.2d 10.

Once the registered owner of land has shown that the area in controversy is the same land previously registered, the burden then shifts to the challenger, who can only prevail by showing that his family subsequently acquired the land by deed from record owners or by adverse possession. A.S.C.A. § 37.0120. Avegalio v. Leatumauga, 18 A.S.R.2d 9.

Plaintiff could not prove title was fraudulently procured where title holder and his heirs after him openly claimed the land, occupied and used the land virtually exclusively, and where no evidence of deception existed. Tulifua v. Tuitele, 2 A.S.R.3d 219 (Land & Titles Div. 1998).

§ 7 Alienation of Land

§ 7(1) —Protections for Communal Land

SEE ALSO REAL PROPERTY § 2(7) –COMMUNAL LANDS, CONVEYANCE

Regulations prohibit sale of native lands to foreigners, but also provide for establishment of trust in favor of children or marriage between Samoan and non-native. Sapela v. Veevalua, 1 A.S.R. 124.

Governor’s power to approve alienation of lands includes sale, gift, exchange, inheritance or devisement. Willis v. Willis, 2 A.S.R. 276.

Person half-European cannot acquire interest in land except freehold, since alienation of lands is prohibited to anyone who is not three-fourths Samoan blood. CAS 1216. Willis v. Willis, 2 A.S.R. 276.

Naval Regulation prohibited alienation of native lands but excepted son or daughter legally married to non-native or their issue, but permitting grant of trust. Atufili v. Timoteo, 3 A.S.R. 395.

Matai is in control of family lands and may not alienate such lands without written approval of Governor. (CAS 1282). Fau v. Wilson, 4 A.S.R. 443.

Court takes judicial notice that most valuable tangible thing that Samoans possess is land and that average Samoan needs statutory protection regarding alienation of land. Haleck v. Lee, 4 A.S.R. 519.

Governor is charged with protecting Samoan people with regard to alienation of their lands and to take care that laws are faithfully executed. Const. Art II, Sec 9, Art. IV. Haleck v. Lee, 4 A.S.R. 519.

The Code of American Samoa lacks Statute of Frauds but full performance and detrimental reliance in agreement to convey real property ar exception to Statute in any event. Lavata’I v. Fuimaono, 4 A.S.R. 824.

Grant of portion of communal land for church purposes may not be enforced against a succeeding matai where the land no

longer bears ties to a religious program. Mageo v. Viena, 1 A.S.R.2d 83 (App. Div. 1983).

Culture protective treaty provisions establish persuasive presumption that all land in Samoa is communal land and party claiming otherwise has burden of proving lawful alienation. Transfer of land for church purposes permits church to retain only so much land as is actually needed for religious programming; use of other land is by the frace of the matai. Reid v. Tavete, 1 A.S.R.2d 85 (App. Div. 1983).

Territorial statute dealing with "alienation of land" provides substantive restrictions on alienation and also sets forth procedures for the lawful alienation of land, which are designed to ensure that land will not be alienated lightly even in the absence of a specific substantive restriction. A.S.C.A. §§ 37.0201 et seq. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Final step in the statutory procedure for alienation of communal land is recordation of the transaction with the territorial registrar; when a buyer and seller comply with all the statutory provisions for alienation of land, including this recordation provision, the buyer becomes the owner of whatever interest the seller had in the land. A.S.C.A. § 37.0210. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Distinction between separate statutory procedures for registration "of the land" and "of the deed" is best characterized as a distinction between substance and procedure: compliance with the land registration statute protects the landowner by precluding rival claimants from attacking the record owner's title, whereas the statute on land alienation leaves rival claimants procedurally free to object to the record owner's title but provides that anyone who complies with its provisions becomes the lawful owner of the land. A.S.C.A. §§ 37.0101 et seq., 37.0201 et seq. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

It would be to the advantage of a party who purchases land that has never been previously registered to apply for registration in accordance with both the "titles" chapter and the "alienation" chapter. A.S.C.A. §§ 37.0101 et seq., 37.0201 et seq. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Territorial statute on alienation of land does not prohibit the alienation of communal lands, but does prohibit such alienation without the written approval of the Governor or to any person who has less than one-half native blood. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Matai cannot alienate land without complying with certain statutory procedures, including the approval of the Governor of American Samoa. A.S.C.A. §§ 37.0201 et seq. Lutu v. Semeatu, 13 A.S.R.2d 88.

A land owner with title good against the world can alienate his land in a number of ways, including a stipulated judgment. Fauolo v. Satele, 15 A.S.R.2d 141.

The Land Commission carried out its duty to prevent "improvident alienation" of land by asking the sa`o if he had consulted with his family before conveying communal land, but the Commission is under no obligation to absolutely prevent such a conveyance. A.S.C.A. § 37.0203(c). Vaimaona v. Tuitasi, 18 A.S.R.2d 88.

When the issue of the alienation of a parcel of communal land was improperly referred to the Secretary of Samoan Affairs instead of being the subject of a Land Commission hearing, the action was dismissed as being prematurely before the court. Tuioti v. Fonoti, 24 A.S.R.2d 100.

The Revised Constitution of American Samoa envisions vigorous constitutional and statutory protection for Samoan ownership of land. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

The alienation restriction of A.S.C.A. § 37.0204(b) applies to individually owned land by its language encompassing "any lands except freehold lands." Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

Alienation, as defined by A.S.C.A. § 37.0201(a), includes conveyance of a beneficial interest in trust or the conveyance of other partial interests in land. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

While A.S.C.A. § 37.0205 allows trusts for individually owned land, a Samoan proprietor must create the trust for the benefit of a son or daughter married to a nonnative, or for grandchildren arising from the mixed-race marriage. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

The land alienation laws were not written for the benefit of the individual Samoan proprietor of land, and therefore do not depend on his/her good faith for reversion to occur. A.S.C.A. § 37.0204(a) exists for the preservation of the land and culture of Samoa for the Samoan people collectively. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

Except with regard to freehold lands, or in special circumstances, a Samoan cannot “alienate” any Samoan lands to persons with less than full native blood. Craddick Dev., Inc. v. Craddick, 2 A.S.R.3d 20 (App. Div. 1998).

Alienation of land means the sale, gift, exchange, or any other method of disposal of property. Craddick Dev., Inc. v. Craddick, 2 A.S.R.3d 20 (App. Div. 1998).

Where corporation held interest in land as beneficiary of trust, receiving earnings and proceeds of the property, and possessed the rights to convey title and to manage and control the

property, said trust violated statutory and constitutional provisions prohibiting non-Samoan ownership of the land. Craddick Dev., Inc. v. Craddick, 2 A.S.R.3d 20 (App. Div. 1998).

The land restrictions contained in the Revised Constitution of American Samoa and A.S.C.A. § 37.0204(b), while racially discriminatory, are narrowly tailored to satisfy, and do satisfy, a compelling state interest--the preservation of the Samoan culture and way of life. Craddick Dev., Inc. v. Craddick, 2 A.S.R.3d 20 (App. Div. 1998).

The alienation restriction contained in A.S.C.A. § 37.0204(b) applies to all land except freehold land. Craddick Dev., Inc. v. Craddick, 2 A.S.R.3d 20 (App. Div. 1998).

The constitutional policy of shielding Samoans from alienation of their lands does not prevent the creation of forms of land ownership other than communal land. Tulifua v. Tuitele, 2 A.S.R.3d 219 (Land & Titles Div. 1998).

The land registration system in American Samoan blends a Torrens registration system, a recording system, and special Samoan provisions to protect communal ownership and the Samoan way of life. Tulifua v. Tuitele, 3 A.S.R.3d 54 (App. Div. 1999).

Under A.S.C.A. § 37.0203(c), instruments affecting the title, ownership or possession of communal land must be submitted to the Land Commission for its study and recommendation of approval or disapproval by the Governor. Taylor v. Solaita, 3 A.S.R.3d 218 (Land & Titles Div. 1999).

Under A.S.C.A. § 37.0203(a), (b), the Land Commission has the duty to endeavor to prevent improvident alienation of communal lands by the sa`o charged with its management and control. Taylor v. Solaita, 3 A.S.R.3d 218 (Land & Titles Div. 1999).

Under A.S.C.A. § 37.0204(a), it is prohibited for any matai of a Samoan family who is, as the sa`o, in control of the communal family lands or any part thereof, to alienate such family lands or any part thereof to any person without the written approval of the Governor of American Samoa. Taylor v. Solaita, 3 A.S.R.3d 218 (Land & Titles Div. 1999).

The Cession of Tutuila and Aunu`u (April 17, 1900) and the American Samoa Revised Constitution create a government duty to protect American Samoan land only when it is taken from American Samoans and given to foreigners. Timu v. McMoore, 6 A.S.R.3d 41 (App. Div. 2002).

The process for alienating communal land, set forth in the Alienation of Communal Land Act (A.S.C.A. §§ 37.0201 *et seq.*), requires not only the involvement of the Land Commission, but gubernatorial approval as well. Te'o v. Fau, 7 A.S.R.3d 225 (Land & Titles Div. 2003).

The Registration Act (A.S.C.A. §§ 37.0101 *et seq.*) does not trump the Alienation of Communal Land Act (A.S.C.A. §§ 37.0201 *et seq.*), nor does it provide a vehicle for evading the latter. Te'o v. Fau, 7 A.S.R.3d 225 (Land & Titles Div. 2003).

Individual could not obtain title to property as his individually-owned land by simply offering to register title with the Territorial Registrar and going through the process set forth in the Registration Act, where land was in fact communal land and had not been alienated pursuant to the Alienation of Communal Land Act. Te'o v. Fau, 7 A.S.R.3d 225 (Land & Titles Div. 2003).

Under A.S.C.A. § 37.0205, the Legislature has carved out an exception to the restrictions on land alienation. Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

Under A.S.C.A. § 37.0205, a Samoan can create a trust for the benefit of a son or daughter, "in view of legal marriage with a nonnative, or for his son or daughter already married to a nonnative, or for any of the issue of any such marriage." Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

In a trust, trustees hold the legal title to the trust property while the beneficiaries hold the equitable interest. Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

A trust does not fail merely because the trustee is incapable of taking title to the property. Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

§ 7(2) —Relation to Mortgages & Creditors

SEE SECURED TRANSACTIONS § 11 – MORTGAGES

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. Dullabhbhai K. Patel & Co., Ltd., 3 A.S.R.2d 99.

Party who took possession of property, took over payments on debt owed by property owner and secured by a mortgage on the property, and executed a new document purporting to be a mortgage on the property, did not thereby acquire ownership of property. Filioali'i v. Adams, 3 A.S.R.2d 105.

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.

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.

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.

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.

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.

Non-Samoan who had intentionally permitted his Samoan spouse to be named as the purchaser of property because as a Samoan she was legally eligible to purchase it, could not escape the consequences of her being named as sole purchaser and had no protected legal interest in the property although he had paid the purchase price and built a house on the property. Tedrow v. Manuma, 12 A.S.R.2d 51.

§ 7(3) —Oral Conveyances

If purchaser of land is in possession under parol contract of sale and holds adversely to seller from moment of payment or performance of conditions of contract, although deed is not executed, and if possession continues through period of statute of limitations, purchaser acquires title. Sione v. Tiualii, 3 A.S.R. 66.

Court finds it improbable that Samoan could write contract to sell land at time when few Samoans could write, before government was established in 1900. Ofoia v. Pritchard, 4 A.S.R. 326.

Oral agreement to convey land must be clear and definite to be enforceable. Lavata'i v. Fuimaono, 4 A.S.R. 824.

Forbearance of civil claim is sufficient consideration to support oral conveyance of land. Lavata'i v. Fuimaono, 4 A.S.R. 824.

Court will enforce oral agreement conveying land, if promisee detrimentally relies on same and foregoes objecting to promisor's registration of land. Lavata'i v. Fuimaono, 4 A.S.R. 824.

A verbal promise to convey any interest in land is not legally binding. American Samoa Gov't v. Meredith, 28 A.S.R.2d 10.

An oral agreement of the sale and purchase of land is not valid under A.S.C.A. § 37.0211. Vaoga v. Wong, 7 A.S.R.2d 250 (Land & Titles Div. 2003).

§ 7(4) —Void Conveyances

Man cannot pass title to property that he cannot own because law prohibit his owning it, by making deed to it, nor does recording of such deed pass title to property, and attempt to evade law by conveying title to full-blooded Samoan is void because grantor, under law, has not title to convey. Willis v. Willis, 2 A.S.R. 276.

Deed conveyed by one whose power to convey is withheld by statute does not create color of title in transferee. Ross v. Scanlan, 4 A.S.R. 913.

Instrument to pass title to land is ineffectual under Regulation when it is not duly registered, and where there is no registration, conveyance is void. Fiu v. Sopoaga, 1 A.S.R. 210.

Attempted transfer of real property to corporation that did not exist at the time of transaction is void for lack of a lawful grantee. Petesa Congregational Christian Church v. Tu'inanau, 1 A.S.R.2d 23 (Land & Titles Div. 1980).

A proffered "settlement" of an already litigated claim, purporting to "adjust" boundaries established by the court, has no effect when it (1) was never judicially approved; (2) resulted from negotiations between a licensed legal practitioner and an adverse party represented by counsel in the absence of the latter party's counsel; (3) clearly results in disadvantage to the latter party; (4) was renounced by the latter party soon thereafter; and (5) bears a close resemblance to an earlier "settlement" asserted in court by the legal practitioner, the existence of which the adverse party denied immediately after having consulted his attorney. Te'o v. Sotoa, 5 A.S.R.2d 90.

Court may set aside a transfer of property if it is determined to be a fraudulent conveyance designed to defeat rights of the

transferor's creditors. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

Judicial scrutiny of alleged fraudulent conveyance should include consideration of whether the transaction was attended by "badges of fraud" including indebtedness of the transferor, lack of consideration for the transfer, a close family relationship between the parties to the transfer, pendency or threat of litigation against the transferor, reduction or depletion of the transferor's estate, and retention of physical possession of the property by its former possessors after the transfer has taken place. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

Where equitable owner of land, soon after the issuance of a large judgment against her, caused title to be vested in her children with no return consideration and no change in possession of the land, the conveyance was fraudulent and should be set aside at the request of judgment creditor. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

Where land of which judgment debtor was the equitable owner had been fraudulently conveyed to judgment debtor's minor children, then caused by debtor and her husband to be sold by the children to a third party, proceeds from sale to third party were subject to seizure by judgment creditor. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

Where the registered owners of land acquired it from plaintiff by fraud, a constructive trust in favor of plaintiff was properly imposed against both the land and proceeds from its sale. Fania v. Sipili, 14 A.S.R.2d 70.

Where plaintiff withdrew his objection to registering title to land in his brother's name believing that the disputed land was being split three ways, the misrepresentations of his brother and his nephew upon which plaintiff relied constituted fraud. Fania v. Sipili, 14 A.S.R.2d 70.

Defendants misrepresented to plaintiff that disputed land would be split three ways and fraudulently induced him to withdraw his objection to their registration of it by assuring him that the split was in process, allowing him continued unrestricted access to the land, and signing the building permit that allowed him to build a home on the land. Fania v. Sipili, 14 A.S.R.2d 70.

Where the registered title to land was procured by fraud, the records of the Territorial Registrar may be amended to show the correct owners even though such registration proceedings usually have in rem effect and certificates of title obtained thereby are ordinarily conclusive. A.S.C.A. § 37.0101. Fania v. Sipili, 14 A.S.R.2d 70.

According to the Restatement of Restitution § 167, "[w]here the owner of property transfers it to another, being induced by fraud, duress or undue influence of a third person, the transferee holds the property upon a constructive trust for the transferor, unless before notice of the fraud, duress or undue influence the transferee has given or promised to give value." Sipili v. Fania, 17 A.S.R.2d 96.

When real property was obtained by constructive fraud or undue influence, violating a fiduciary relationship, a constructive trust provides the remedy to transfer the property to the person entitled to it. Jennings v. Jennings, 21 A.S.R.2d 40.

§ 7(5) —Dedication of Land

No writing or formal ceremony is necessary for dedication of land; all that is necessary to validity of dedication is assent and intent of owner to appropriate it to public use and acceptance of dedication, which may be demonstrated by improvements on land and continued possession. Leiato v. Satele, 2 A.S.R. 34.

Where land has been dedicated for missionary purposes, missionaries may continue to occupy land for so long as it is used for purpose for which dedicated. Leiato v. Satele, 2 A.S.R. 341.

Legal effect of dedication of land for church purposes is not to deprive owner of title, church or public acquiring only easement in land. Leiato v. Satele, 2 A.S.R. 341.

Where missionaries have occupied land for at least thirty-six years for church purposes, and evidence supports that they were given use of land by matai after consultation with family, court will find common law dedication of land for use of missionary. Leiato v. Satele, 2 A.S.R. 341.

Land claimants' failure to object for 13 years to use of "their" land as church, supports conclusion that they dedicated portion of "their" land for church purposes. Gi v. Taetafea, 2 A.S.R. 401.

Land may be dedicated by owner for church purposes, and gifts for pious and chartiable uses will be upheld by court so long as land is used for these purposes. Togia'i v. Aumua, 3 A.S.R. 3.

Dedication of land for church purposes conveys only easement in land and not fee simple; fee remains in donor with easement held by church or public in trust. Togia'i v. Aumua, 3 A.S.R. 3.

Use of land dedicated for church purposes as homes for church personnel is consistent with dedication. Moea'i v. Corp. of Presiding Bishop, 4 A.S.R. 36.

Use of land dedicated for church purposes as home for missionaries is consistent with dedication. Moea'I v. Corp. of Presiding Bishop, 4 A.S.R. 36.

Use of land dedicated for church purposes as church cemetery is consistent with dedication. Moea'i v. Corp. of Presiding Bishop. 4 A.S.R. 36.

Use of land dedicated for school purposes as athletic field for students is consistent with dedication. Moea'i v. Corp. of Presiding Bishop, 4 A.S.R. 36.

Grant of determinable fee is where if land ceases to be used for purposes for which given, it reverts to donors or heirs of donors. Muasau v. Pita, 4 A.S.R. 337.

Court finds land was given to church, before government was established for residence of pastor, with reversionary right in donor or heirs should it cease to be used as pastor's residence. Muasau v. Pita, 4 A.S.R. 337.

Fact name of church which is donee of land has been changed is immaterial in determining church's right to use the land. Muasau v. Pita, 4 A.S.R. 337.

§ 7(6) —Gifts

Parol gift of land, accompanied by possession by donee, will be enforced in equity when donee has been induced by promise of gift to make valuable improvements to land of permanent nature to such extent as to render revocation of gift unjust, inequitable and fraud upon donee. Fiailoa v. Meredith, 2 A.S.R. 129.

Parol gift of land accompanied by possession by donee will be enforced in equity, when donee has been induced by promise of gift to make valuable improvements in land of permanent nature. Fanene v. Mauga, 2 A.S.R. 144.

Uncorroborated contention by matai that use of lands were given to donees for services rendered and titles does not have decisive bearing on court's determination that donees became outright owners through long term use and possession. Fanene v. Mauaga, 2 A.S.R. 144.

Where matai allegedly conveyed conditional gifts of land to numerous persons for use only, but donees considered lands to be outright gifts, and held possession as such for many years, investing much in development of lands, court finds it inequitable to dispossess donees of lands. Fanene v. Mauga, 2 A.S.R. 144.

Where pastor has built house on land allegedly given to him 37 yers ago, court will assume that gift was for purpose of pastorate in accordance with Samaon customs. Aulava v. Sunia, 2 A.S.R. 543.

Supposed gift of land within jurisdiction of United States Naval Station was void in 1902 after promulgation of regulation prohibiting alienation of native lands. Fe'a v. Sisipeni, 4 A.S.R. 320.

Regulation prohibiting alienation of native land would make gift of land absolutely void. Fe'a v. Sisipeni, 4 A.S.R. 320.

Where there is no satisfactory proof man owned virgin bush, he cannot make gift of it. Fe'a v. Sisipeni, 4 A.S.R. 320.

Donor of land cannot reclaim land because he does not approve donee's giving of deed to government. Mana v. Talo, 4 A.S.R. 668.

The conveyance of a house as a gift needs to meet three criteria: (1) that the donor intended to orally convey the house to the donee; (2) that the donor delivered the house to the donee; and (3) that the donee accepted the house. Pulu v. Talalotu, 7 A.S.R.3d 289 (Land & Titles Div. 2003).

The intention of the donor may be expressed in words, actions, or a combination thereof, and may be inferred from the surrounding facts and circumstances, including the relationship of the parties. Pulu v. Talalotu, 7 A.S.R.3d 289 (Land & Titles Div. 2003).

A donor may make a gift of encumbered property in which the donee agrees to discharge the indebtedness or the donor may agree to pay off the indebtedness but he is not bound to pay off the indebtedness unless there is evidence that he intended to pay it. Pulu v. Talalotu, 7 A.S.R.3d 289 (Land & Titles Div. 2003).

If a donee receives encumbered property from the donor along with the obligation to pay the debt encumbering the property and a third party satisfies the debt, donee must reimburse the third party for the amount of the debt. Pulu v. Talalotu, 7 A.S.R.3d 289 (Land & Titles Div. 2003).

§ 7(7) —Requirement of a Writing

SEE CONTRACTS § 1(4) REQUIREMENT OF A WRITING: THE STATUTUE OF FRAUDS

In order for an agreement for the sale of real property to be valid, it must be in writing, it must state the primary terms of the agreement and it must be signed by the party to be charged. Aveina v. Aveina, 4 A.S.R.3d 107 (Trial Div. 2000).

Where defendant had agreed to sell plaintiffs house and land pursuant to unenforceable oral contract, and in fact did not own the house, plaintiffs were entitled to refund of deposit money and prejudgment interest from the date their claim became liquidated, which was when plaintiff discovered misrepresentation and had demanded their money back. Aveina v. Aveina, 4 A.S.R.3d 107 (Trial Div. 2000).

American Samoa law does not recognize a contract for the

sale of real property unless it is in writing, or has been partially performed. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

The writing required by the statute of frauds may be a note or memorandum subscribed by the party to be charged. It need not be a formal document. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

A note or memorandum documenting the sale of real property should completely evidence the contract which the parties made by giving all of the essential or material terms of the contract. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

If the parties have not reduced the essential terms of a land conveyance to writing but have partially performed the contract, A.S.C.A. § 37.0211 authorizes the court to enforce the oral contract. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

Where seller failed, after two month's time, to produce a written contract to document the real estate sale and instead attempted to raise the agreed upon price, seller's breach was substantial enough to defeat the contract's purpose and entitled purchaser to rescind contract and recover, as compensatory damages, monies paid towards purchase price and survey. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

Where, after making agreement to sell land, seller wrongfully failed to perform his side of the bargain in an expeditious manner, and instead attempted to increase purchase price, such misconduct was deliberate, reprehensible and entitled purchaser to exemplary damages. Moana v. Pagofie, 5 A.S.R.3d 96 (Trial Div. 2001).

§ 8 Registration of Land

§ 8(1) —General Provisions

Proceedings for registration of land titles are valid and not in violation of Constitution of United States, which protects fundamental rights of Samoan people. Molitui v. Pisa, 2 A.S.R. 268.

A land title registration, completed according to proper statutory procedures, establishes good title against the world. Absent evidence of fraud or non-compliance with statutory procedures, registration of title cannot later be questioned. Tulafono v. Semeatu, 29 A.S.R.2d 193.

A landowner cannot register title to land which has been previously registered. A.S.C.A. § 37.0101(a). Uiliata v. Puailoa, 31 A.S.R.2d 35.

Once title to land is registered, the prohibition against further registrations is an overriding policy favoring finality in title registrations that have been properly completed. Uiliata v. Puailoa, 31 A.S.R.2d 35.

A family's objection that remains on file with the Territorial Registrar's Office, precludes another family from receiving a certificate of title registration to land. See A.S.C.A. 37.0101(b). Tuputala v. Sagapolutele, 31 A.S.R.2d 48.

Family members do not waive the right to claim land as individually owned land or as the family's communal land through adverse possession simply because the senior matai of the family refuses to take appropriate action to defend the family's claim to the land. However, family members do waive the right to claim an interest in land when they fail to take appropriate action to prosecute or defend the family's claim to the land according to land registration statutes. Savane v. Lafi, 31 A.S.R.2d 87.

An offer of registration of communal land must be made by the sa`o, which requirement may not be delegated. A.S.C.A. § 37.0102(d). The offer to register must also be accompanied by a survey requested by the sa`o, a mandatory requirement. Tinitali v. Maisa, 31 A.S.R.2d 114.

The purpose of title registration is to record the ownership of surveyed land for the world to know. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

The Territorial Registrar should not process a proffered title registration if the title to the land is already registered. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

A party is entitled to recover reasonable attorney's fees and actual costs from a claimant who unsuccessfully relitigates land titles. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

A certificate of irreconcilable dispute is not a prerequisite to instituting a communal land case where the plaintiff seeks injunctive relief. Sasa v. Levu, 2 A.S.R.3d 225 (Land & Titles Div. 1998).

The registration of title to land not in accordance with statutory procedure is null and void. Uiagalelei v. Fia, 4 A.S.R.3d 175 (Trial Div. 2000).

Under A.S.C.A. § 43.0210, due registration notices a land title to the world; absent actionable fraud or other legal basis to vacate a registration, the registered title is valid as against all persons subsequently dealing with the same land. Save Family v. Leone Catholic Parish, 4 A.S.R.3d 265 (Land & Titles Div. 2000).

Where litigant had not submitted portion of land he deemed to be at issue to the registration process, Court could not determine ownership of such land. Faumuina v. Tautolo, 4 A.S.R.3d 305 (Land & Titles Div. 2000).

Where two families mutually, peacefully and harmoniously, occupied and used land in a manner so irregularly intermingled that any areas of separately owned land could not be defined, Court determined that land could not be registered as only one family's communal land. Faumuina v. Tautolo, 6 A.S.R.3d 306 (Land & Titles Div. 2002).

The Registration Act (A.S.C.A. §§ 37.0101 *et seq.*) does not trump the Alienation of Communal Land Act (A.S.C.A. §§ 37.0201 *et seq.*), nor does it provide a vehicle for evading the latter. Te'o v. Fau, 7 A.S.R.3d 225 (Land & Titles Div. 2003).

Individual could not obtain title to property as his individually-owned land by simply offering to register title with the Territorial Registrar and going through the process set forth in the Registration Act, where land was in fact communal land and had not been alienated pursuant to the Alienation of Communal Land Act. Te'o v. Fau, 7 A.S.R.3d 225 (Land & Titles Div. 2003).

A valid registered land title is conclusive evidence to the world that the registered titleholder owns the land. Pritchard v. Pritchard, 7 A.S.R.3d 281 (Land & Titles Div. 2003).

A land title registration is presumptively valid. Pritchard v. Pritchard, 7 A.S.R.3d 281 (Land & Titles Div. 2003).

Where questions existed as to whether deceased had properly registered land, but heirs did not dispute that deceased had held land as his individually-owned land, Court would treat land as individually-owned property of deceased for purposes of intestate succession and quiet title action amongst heirs, but without prejudice to parties outside of action who might assert claim to land. Pritchard v. Pritchard, 7 A.S.R.3d 281 (Land & Titles Div. 2003).

§ 8(2) —Land & Titles Division

SEE EVIDENCE § 3(2) – LAND & TITLES DIVISION

Territorial statute giving court power to suspend procedural rules that would lead to inequitable result does not give court power to suspend rules of substantive law. A.S.C.A. § 3.0242. Ape v. Puagele, 3 A.S.R.2d 109.

Court had no power to create a new kind of land tenure inconsistent with Samoan customary law. Ape v. Puagele, 3 A.S.R.2d 109.

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.

Statutory standard of "natural justice and convenience" requires that in land mattersa party eventually be accorded his day in court and therefore, although the court prefers that all parties be present at a hearing, it will proceed without the defendants where they have continually postponed the trial date and failed to appear after proper notice of the trial date. A.S.C.A. § 3.0242. Ava v. Moe, 8 A.S.R.2d 95.

Proposed settlement of previously litigated land claim which purports to adjust the boundaries set by the court's judgment should ordinarily be submitted to court for its approval. Estate of Sotoa v. Te`o, 8 A.S.R.2d 165.

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.

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.

When the High Court dismisses cases for want of diligent prosecution, civil actions will be dismissed with prejudice if good cause is not shown to the contrary, but land-and-titles actions will be dismissed without prejudice. Jennings v. Jennings, 19 A.S.R.2d 34.

Controversies relating to land are under the exclusive jurisdiction of the Land and Titles Division. A.S.C.A. § 3.03089(b). Meredith v. Koko, 28 A.S.R.2d 149.

Upon an involuntary dismissal of a land dispute, the court's failure to direct the Registrar to register title to the land with one of the parties indicated that the involuntary dismissal would be "without prejudice." Tuputala v. Sagapolutele, 31 A.S.R.2d 48.

The court recognizes finality in Land and Titles decisions as an especially significant public policy interest, and even under its equitable powers, will refuse to entertain the merits of a claim raised thirty years after the court has issued a final order. Maresala v. Patea S. of Vatia, 31 A.S.R.2d 52.

The court does not rely exclusively on lease descriptions to determine the physical areas involved in a land dispute. Judges personally conduct site visits to ascertain the area of land in dispute. Alaimalo v. Etimani, 31 A.S.R.2d 67.

The principles underlying the Federal Rules of Civil Procedure may be applied in land and titles matters. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

The court will grant a motion to dismiss at the close of a claimant's case in a Land & Title matter if he cannot establish

a preponderance of the evidence in favor of his position. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

A.S.C.A. § 3.0209(h)'s requirement that land and title decisions be rendered within 60 days is without any sanctions and does not nullify or otherwise penalize any party to a land or title action in which the court issues a statutorily late decision. Tulifua v. Tuitele, 2 A.S.R.3d 219 (Land & Titles Div. 1998).

Under A.S.C.A. § 3.0242, proceedings before the land and titles division of the High Court are specifically exempted from the rules of civil procedure, and that division is specifically authorized to act in each case in such a manner as it considers to be most consistent with natural justice and convenience. Saunoa v. Suafa'i, 3 A.S.R.3d 3 (App. Div. 1999).

§ 8(3) —Statutory Requirements - Announcements and Notice

Failure to announce and post notice of proposed registration of land in same village violates statute and voids registration of land. Muagututi'a v. Vaovasa, 4 A.S.R. 105.

Statute requires survey to be accompanied by valid certificate of surveyor to effect that applicant gave notice in village at meeting of chiefs of time and place of survey. CAS 10.0112. Tuia v. Savea, 4 A.S.R. 483.

Certificate of notice to public which refers to survey conducted 17 years earlier does not comply with statute. Tuia v. Savea, 4 A.S.R. 483.

When neither party to a land dispute established his ownership of the disputed tract, and action was not attended by registration procedures that would provide notice of the dispute to all possible claimants, court would make no finding of ownership. Olo v. Tulisua, 6 A.S.R.2d 86.

Registration of land not performed in accordance with statutory procedure is void. A.S.C.A. §§ 37.0102, 37.0201 et seq. Faleafine v. Suapilimai, 7 A.S.R.2d 108.

Land registration performed in accordance with statutory procedures will be given full effect even though party who might have objected did not discover the proposed registration in time to object. A.S.C.A. §§ 37.0101 et seq. Faleafine v. Suapilimai, 7 A.S.R.2d 108.

Statutory standard of "natural justice and convenience" requires that in land matters a party eventually be accorded his day in court and therefore, although the court prefers that all parties be present at a hearing, it will proceed without the defendants where they have continually postponed the trial date and failed to appear after proper notice of the trial date. A.S.C.A. § 3.0242. Ava v. Moe, 8 A.S.R.2d 95.

Where statutory scheme including land registration procedure and restrictions on alienation of communal land effected its own reconciliation of competing policies, there was no need for a court to fashion a new and different one by refusing to enforce land registration statute. A.S.C.A. §§ 37.0101 et seq., § 37.0204. Ifopo v. Siatu`u, 12 A.S.R.2d 24.

Court could not conclude that notice required by statute was not given simply because the registrar's file contained no document attesting such notice, or because a number of witnesses testified that they never saw any notices. A.S.C.A. §§ 37.0101 et seq. Ifopo v. Siatu`u, 12 A.S.R.2d 24.

Land registration statute cannot have the intended effect of affording finality to disputes and security to titles if court is prepared to conduct its own de novo review of whether there was compliance with the statute in every case where non-compliance is alleged; rather, court must assume --- and absent compelling evidence to the contrary must conclude --- that territorial registrar recorded a title only after complying with his obligations under the law. A.S.C.A. §§ 37.0101 et seq. Ifopo v. Siatu`u, 12 A.S.R.2d 24.

Statute providing that "no affidavit affecting the chain of title to real estate may be filed for record" without first being posted for sixty days does not apply to registrar's certificate that notice of offer of land registration has been posted for sixty days, since (1) land registration statute does not require an affidavit or even an unsworn certificate of posting, but only that posting in fact be done; and (2) requiring that an affidavit of posting itself be posted would create an infinite regress under which no document could ever be filed and no land ever registered. A.S.C.A. §§ 37.0103, 37.0112. Meafua v. Taliu, 13 A.S.R.2d 13.

Testimony of matai that he always attended village council meetings and always looked at the post on which notices were posted, but had not heard the opposing party's survey announced and had not seen notice of her registration posted, was insufficient to rebut the presumption of validity of certificates by officials charged with announcing the survey and posting the notice, especially where matai admitted that he frequently travels abroad and may have done so during the time in question. A.S.C.A. § 37.0101 et seq. Meafua v. Taliu, 13 A.S.R.2d 13.

Court must assume, and absent compelling proof to the contrary must conclude, that territorial registrar recorded a title only after complying with his obligations under the law. A.S.C.A. § 37.0101 et seq. Meafua v. Taliu, 13 A.S.R.2d 13.

That territorial registrar's office had abandoned its former practice of using unsworn certificates rather than notarized affidavits as evidence of posting, and that the new practice

was more desirable, did not render the former practice illegal. Meafua v. Taliu (Mem.), 13 A.S.R.2d 74.

Land registration statute does not require that posting of notices be evidenced by an affidavit or by any other particular form of notice. A.S.C.A. §§ 37.0101 et seq. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Territorial statute providing for the registration of instruments, as opposed to the registration of title itself, does not specify posting or any other particular form of notice prior to registration. A.S.C.A. § 37.0210. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Where certificate of required posting of notice said that notice was posted at "the Administration Building" rather than at "the Court House" as required by statute, the court would take judicial notice that the certificate tracked the language of a former statute and that the registrar had for some years posted notice not at the Administration Building but at the Court House, which was itself the former Administration Building. A.S.C.A. § 37.0103. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Court may disregard land registrations if the failure to give statutory notice appears in the registration record itself. A.S.C.A. § 37.0101 et seq. Afualo v. Fanene, Pualioa v. Afualo, 15 A.S.R.2d 48.

Courts may disregard land registrations if the failure to give notice, as required by statute, appears in the registration record itself. A.S.C.A. § 37.0101 et seq. Fa`aaua`a v. Tauiliili, 15 A.S.R.2d 71.

Land can only be registered by its owner and not a village, because the concept of village ownership of land is ordinarily contrary to Samoan custom and tradition. A.S.C.A. §§ 37.0101 et seq. Lualemana v. Atualevao, 16 A.S.R.2d 34.

A valid registration effected in accordance with statutory procedures establishes a title good against the world. A.S.C.A. §§ 37.0101 et seq. Lualemana v. Atualevao, 16 A.S.R.2d 34.

A registration which appears on the face of its own record not to have been conducted in accordance with the statutory procedures, such as the failure to post notices and announce the survey in the village where the land is actually located, conveys no title. Lualemana v. Atualevao, 16 A.S.R.2d 34.

An affidavit of a posting of notice may be inadequate where: 1) it alleges that notice was posted for thirty-three days, as opposed to the requisite sixty days; 2) it was subscribed before the posting took place and thus was prepared without personal knowledge as to whether the posting actually took place; 3) it does not show the signature of the person qualified to take oaths and so may not have been made under oath; and 4) it states that notice was posted in a village different from that where the deed indicated the land is located. A.S.C.A. § 37.0103(a). Vaimaona v. Tuitasi, 18 A.S.R.2d 88.

Inadequacies of affidavit of posting may be supplemented on remand by testimony showing actual compliance with statutory guidelines. A.S.C.A. § 37.0103(a). Vaimaona v. Tuitasi, 18 A.S.R.2d 88.

Though registration of an instrument of conveyance is a necessary condition of the effectiveness of that instrument to pass title, it may not in all cases be sufficient; registration of the instrument gives notice to people dealing with the land "thereafter" but does not necessarily affect the interests of persons who dealt with the land before. A.S.C.A. § 37.0210. Vaimaona v. Tuitasi, 18 A.S.R.2d 88.

Where the record is unclear as to whether a deed has been duly registered, the appellate court will remand the issue to the trial court for further evidentiary findings. A.S.C.A. § 37.0210(a). Vaimaona v. Tuitasi, 18 A.S.R.2d 88.

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. Logoa'i, 20 A.S.R.2d 51.

Courts may disregard land-title registrations when the failure to give the required notice affirmatively appears in the registration itself. Asifoa v. Faoa, 21 A.S.R.2d 91.

The land-registration statutes do not require a certification or an affidavit by the Territorial Registrar or the High Court that notice was given for the required period. A.S.C.A. §§ 37.0103(c), 37.0104(b). Asifoa v. Faoa, 21 A.S.R.2d 91.

A land-title registration was void when the required newspaper publication of a proposed registration and the certification of this notice was lacking. A.S.C.A. § 37.0103(a), (c). Timu v. McMoore, 24 A.S.R.2d 84.

An affidavit executed on the day notice was posted in a proposed land title registration is proof only that it was posted on that day, not that it remained posted for 60 days. An affidavit executed at the end of the 60 day period is evidence that the notice remained posted for the requisite time. Tuitasi v. Lauofo, 25 A.S.R.2d 57.

While title registration is not a prerequisite to the validity of a document alienating an interest in land, it is a logical first step. Tuitasi v. Lauofo, 25 A.S.R.2d 57.

Title registration must be noticed for 60 days by posting at the courthouse and at two public places in the village in which (or nearest to which) the land is located, and by publication of the notice in a local newspaper at least once every 30 days during the 60 day period, pursuant to A.S.C.A. § 37.0103(a). The applicant must provide the Territorial Registrar with affidavits

by the Clerk of Courts , the village Mayor or Pulenu`u, and from the newspaper, each stating that the required notice was given within his/her sphere. A.S.C.A. § 37.0103(c). Tuitasi v. Lauofo, 25 A.S.R.2d 57.

Substantial compliance with the notice requirements of the land title registration statutes may be sufficient when non-material errors occur, such as failure to publish notice in the newspaper a second time during the notice period, particularly if the principal objector knew of the proposed registration and made a timely adverse claim. Tuitasi v. Lauofo, 25 A.S.R.2d 57.

The fact that this court has held, on one occasion, that substantial compliance with statutory requirements was sufficient, should not yield an expectation that public officials will ordinarily receive judicial recognition of their faulty acts. Tuitasi v. Lauofo, 25 A.S.R.2d 57.

In the public interest, the Territorial Registrar should establish procedures that will ensure that the Clerk of Courts, the village Pulenu`u, and newspaper actually post or publish the requisite notices of proposed land registration, and provide the required affidavits. In the absence of more explicit statutory direction than currently exists, the affidavit of the newspaper should be signed by the owner, publisher, editor, or some other employee or agent stating his/her authority. Tuitasi v. Lauofo, 25 A.S.R.2d 57.

Land title registration and document registration laws are materially different. No statute requires either posting or publication of any notice when a document alienating an interest in communal land is proposed for registration under A.S.C.A. § 37.0210. The land Commission could adopt rules requiring notice for document registration under the Administrative procedures Act, A.S.C.A. § 4.1001 et seq., pursuant to its rule-making authority enumerated in A.S.C.A. § 37.0203(d). Without a statute or formal rule requiring notice of document registration, the lack of notice is meaningless as a bar to proposed document registration. Tuitasi v. Lauofo, 25 A.S.R.2d 57.

A defendant's claim of communal land, even though in defense, invokes the prerequisite filing of a certificate of irreconcilable dispute issued by the Secretary of Samoan Affairs or his deputy. Meredith v. Koko, 28 A.S.R.2d 149.

A deed of conveyance may be registered without meeting the notice requirements of A.S.C.A. § 37.0101. Reid v. American Samoa Gov't, 28 A.S.R.2d 158.

A certificate of irreconcilable dispute from the Secretary of Samoan affairs is plainly a jurisdictional requirement in the sense that the court cannot determine a controversy over communal land unless a certificate is filed. A.S.C.A. 43.0302(a). Alai`asa v. Faumuina, 29 A.S.R.2d 138.

The only specific exception to this certificate of irreconcilable dispute requirement is that a certificate "may not be required prior to the issuance of a temporary restraining order . . . to prevent the occurring of irreparable harm." A.S.C.A. § 43.0302(b). Alai`asa v. Faumuina, 29 A.S.R.2d 138.

When a certificate of irreconcilable dispute is not filed, the court may also make interlocutory orders other than temporary restraining orders as the court thinks appropriate, A.S.C.A. § 43.0304, particularly when "strict compliance with any rule of practice or procedure may be inequitable or inconvenient." A.S.C.A. § 3.0242(b). Alai`asa v. Faumuina, 29 A.S.R.2d 138.

Where the requirement of a certificate of irreconcilable dispute has not been satisfied, it is not necessary to dismiss the case. Alai`asa v. Faumuina, 29 A.S.R.2d 138.

Land acquisition for public purposes was expressly covered in detail under Regulation No. 2-1901. 1937 Code § 72. When transfer agreements were entered into with land owners, the land was deeded to the governor as the governmental representative, without any separate notice requirement. 1937 Code § 72.2. If no agreement was reached, a condemnation-type procedure, including notice requirements, was spelled out for land acquisitions. 1937 Code §§ 72.3-72.17. When an agreement was reached, no special notice requirements applied. Peni v. Lutali, 30 A.S.R.2d 68.

Where affidavit of posting mentioned “Administration building” instead of courthouse, described only one public place posting in village nearest the land, was attested to at beginning of posting period, not end, and where jurat was never signed by Territorial Registrar, it was facially defective. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

Because Territorial Registrar is obligated to register a land title only when all the statutory requirements are met, Court could not conclude that required notices were not properly given where evidence consisted of witnesses simply testifying that they had never seen the notices. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

A.S.C.A. § 37.0103(a) does not require the continuous presence of all three notices of proposed land title registration, so long as the Registrar waits the full 60 days before registering the title, especially when at least one responsible member of the principal family adversely impacted is aware of the proposed registration. Tulifua v. Tuitele, 2 A.S.R.3d 219 (Land & Titles Div. 1998).

The certificate of registration has the same function as a decree in a quiet title action, so meticulous attention to service of process is absolutely essential. Tulifua v. Tuitele, 3 A.S.R.3d 54 (App. Div. 1999).

P.L. No. 21-1 made three changes to the procedures for public notice under the land registration process: (1) it required independent verification of the pre-existing village and courthouse posting requirements; (2) it required all notices of land registrations to receive verified publication in a local newspaper once each 30 days of the 60-day posting period; and (3) it compelled strict compliance with these procedures by prohibiting the registrar from registering land until such notice verifications were filed with the registrar. Tulifua v. Tuitele, 3 A.S.R.3d 54 (App. Div. 1999).

Where Registrar possessed actual knowledge that posting had been prematurely removed and statutory notice requirements had not been met, he was prevented from legally certifying that notice requirements had been complied with and therefore such registration failed for lack of notice. Tulifua v. Tuitele, 3 A.S.R.3d 54 (App. Div. 1999).

Under A.S.C.A. § 43.0210, due registration notices a land title to the world; absent actionable fraud or other legal basis to vacate a registration, the registered title is valid as against all persons subsequently dealing with the same land. Save Family v. Leone Catholic Parish, 4 A.S.R.3d 265 (Land & Titles Div. 2000).

§ 8(4) —Burden of Proof

Where communal land is offered for registration, registrant has burden of proving he has title to land. Liu v. Fao, 2 A.S.R. 41.

To register communal land, applicant must show by preponderance of credible evidence use of all portions of land offered. Magalei v. Siufanua, 4 A.S.R. 101.

Where weight of evidence demonstrates portion of land shown in survey is not property of applicant for registration of title, application must be denied. Fau v. Wilson, 4 A.S.R. 443.

Where weight of evidence clearly shows land on survey belongs to applicant to register by virtue of undisturbed possession, plantings, and testimony of reliable witness, court will order registration. Tauese v. Maui, 4 A.S.R. 605.

In contested registration of land trial, applicant has burden of proof, irrespective of objector’s failure to disprove applicant’s title. Likewise, objector must prove title by preponderance of evidence in order to have land registered in his name. Toilolo v. Galoia, 4 A.S.R. 719.

If neither applicant nor objector can prove ownership of disputed land, court will deny application for registration. Toilolo v. Galoia, 4 A.S.R. 719.

In an action for the registration of land in American Samoa, in which the party who has attempted to register the land is labeled the "plaintiff" and parties who object are "defendants," defendants do not acquire the right to register the land in their own names simply because the plaintiff has failed to prove his case. Tuia Suasuai v. Salave'a (Mem.), 3 A.S.R.2d 1.

In an action for the registration of land in American Samoa in which no party has proved either title or possession, the action should be dismissed without prejudice to the rights of either party. Tuia Suasuai v. Salave'a (Mem.), 3 A.S.R.2d 1.

Registration of land is not essential to ownership, and a party's withdrawal of an offer to register after a final judgment awarding him the land does not divest him of his title. Te'o v. Sotoa, 5 A.S.R.2d 90.

Where matai seeking to register land as communal property of his family relied on family history that conflicted with equally credible family history of objector to registration, and where preponderance of the evidence showed the land to be occupied by objector and those rendering service to him, registration would be denied. Mataituli v. Utuutuvanu, 7 A.S.R.2d 134.

When no adverse claim was filed with respect to part of a survey offered for registration, and where the evidence reflected that this land had in fact been settled and occupied by the applicant for registration, the uncontested portion could be registered as the property of the applicant. A.S.C.A. §§ 37.0101 et seq. Maea v. Manuu, 11 A.S.R.2d 93.

Where the evidence showed that disputed land was originally cleared and cultivated by the village in a collective effort, and tracts surveyed by various families within the village overlapped one another and extended beyond any evidence of recent cultivation, no party had proven entitlement to the land by the preponderance of the evidence and all offers of registration should be denied. A.S.C.A. §§ 37.0101 et seq. Maea v. Manuu, 11 A.S.R.2d 93.

Denial by trial court of appellant's offer to register land, based on court's findings that (1) all or almost all members of the appellee's family were connected to the appellant's family and vice versa; (2) the matai title held by appellee was recognized in the village as a title in its own right; and (3) that the land offered for registration was in fact occupied by the appellee and by family members who rendered service to him rather than to appellant, did not implicitly suggest that appellant's matai title was a lesser matai title of appellee's family, but concluded only that appellant had not established his claim to the land. Utuutuvanu v. Mataituli, 12 A.S.R.2d 88.

Argument that trial court had incorrectly referred to disputed land by appellee's name for it, rather than by the different name used by appellant, would not advance the merits of appellant's case where appellee prevailed on the basis of competent evidence quite unrelated to the name of the land. Utuutuvanu v. Mataituli, 12 A.S.R.2d 88.

Registrar's certificate of title is presumed to be valid and a party asserting its procedural irregularity has the burden of presenting compelling proof. A.S.C.A. §§ 37.0101 et seq. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Objection to court's finding that the signature on a deed was not a forgery, where the objecting party had judicially admitted that he signed the deed, had had every opportunity to examine the document before trial, and had even appended it to his complaint as Exhibit A, but had testified for the first time at trial that he had not signed the document after all, was without merit. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Offer to register certain land either as individual or communal property of claimants would be denied where: a prior suit held that land was owned communally by objectors to the registration; claimants cited two different theories of ownership in their offer of registration and at trial; and claimants' theories were inconsistent with both law and custom. Lutu v. Semeatu, 13 A.S.R.2d 88.

Where objectors to registration of land cited a prior case holding that the land belonged to them, but offered no surveys delineating the extent of their respective claims within the disputed area, the court would deny the offer of registration but would express no opinion with regard to the claims of the objectors beyond the holding in the prior case. Lutu v. Semeatu, 13 A.S.R.2d 88.

Individual title to land is registered in claimant's name if the claim is publicly posted for sixty days, no adverse claim is lodged within that period, and all other statutory requirements are met. A.S.C.A. § 37.0103. Fania v. Sipili, 14 A.S.R.2d 70.

Registration of disputed land was denied to both claimant and counter-claimant where neither proved his family was entitled to all the land claimed. Utu v. Fuata, 17 A.S.R.2d 104.

Although an offer of registration to which no one objects is automatically registered as the property of the claimant, when objections are made and give rise to a lawsuit, the court hears the evidence from all parties and then renders its judgment. Willis v. Fai`ivae, 17 A.S.R.2d 179.

If no party meets the minimal burden to present some credible evidence, the action should be dismissed without prejudice to the rights of either party. Willis v. Fai`ivae, 17 A.S.R.2d 179.

Compliance with the land-registration statute creates a strong presumption that the land belongs to the person or persons named in the certificate of registration; this presumption is conclusive unless rebutted by either (a) compelling proof that the certificate of registration was obtained by fraud or (b) fatal irregularities affirmatively appearing on the face of the registration documents. A.S.C.A. § 37.0101 et seq. Ava v. Logoai, 19 A.S.R.2d 75.

Though evidentiary rather than constitutive, the presumption resulting from a land registration is almost always conclusive; as such, it cannot be rebutted merely by evidence that the land has traditionally been reputed to belong to someone other than the registrant or even by the testimony of one or several witnesses who say they never saw the required posting. Ava v. Logoai, 19 A.S.R.2d 75.

The mere filing of a document with the Registrar, without compliance with either the procedures for the registration of land or those for the conveyance of communal land, conveys no title. A.S.C.A. §§ 37.0101 et seq., §§ 37.0201 et seq. Magalei v. Atualevao, 19 A.S.R.2d 86.

In reviewing a decision of the Land and Titles Division or the Trial Division, the Appellate Division utilizes a "clear error" standard. This standard of review applies to the lower court's evaluation of witnesses' credibility. Paolo v. Utu, 26 A.S.R.2d 18.

The presumption that land has been validly registered arising from the Territorial Registrar’s issuance of a certificate of registration is not conclusive, and can be overcome by a presentation of compelling evidence. Pita v. Garrett, 29 A.S.R.2d 141.

The court will engage in a de novo review of the Territorial Register’s compliance with statutory requirements only when there is a facially defective record of the registration, proof of a fraudulent registration, or other compelling grounds. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

In the absence of compelling proof to the contrary, the court must conclude that the Registrar registers title to land when there has been compliance with the title registration statutes. Tulifua v. Tuitele, 2 A.S.R.3d 219 (Land & Titles Div. 1998).

A title registration will be set aside only when the evidence compels the conclusion that it was procured without the mandated notices and other procedures or by fraud. Tulifua v. Tuitele, 2 A.S.R.3d 219 (Land & Titles Div. 1998).

The testimony of witnesses that they did not hear the notice of an intended survey, or see posted notices of a proposed title registration, is not sufficient to overcome the presumption that public officials complied with their statutory duties or the vesting of the title to land by the official registration. Tulifua v. Tuitele, 2 A.S.R.3d 219 (Land & Titles Div. 1998).

Plaintiff could not prove title was fraudulently procured where title holder and his heirs after him openly claimed the land, occupied and used the land virtually exclusively, and where no evidence of deception existed. Tulifua v. Tuitele, 2 A.S.R.3d 219 (Land & Titles Div. 1998).

Absent compelling proof to the contrary, a trial court is required to conclusively presume that the Registrar recorded a

land title only after complying with his obligations under the law. Tulifua v. Tuitele, 3 A.S.R.3d 54 (App. Div. 1999).

§ 8(5) —Survey and Description Requirements

Court will not order land registered until proper survey has been conducted in accordance with provisions of code. CAS 74. Satale v. Faga, 2 A.S.R. 26

By virtue of Sec. 74(3) of the Codification, Court may not register land where boundaries cannot be clearly ascertained. Liu v. Fao, 2 A.S.R. 41.

Where it is impossible to get survey for registration of title, tract can be established by Samoan name and tradition and registered accordingly. Taliutafa v. Toaga, 2 A.S.R. 218.

Code requires that when land is offered for registration, it must be properly surveyed, and where survey requirements is not complied with, land cannot be registered. CAS 905. Soliai v. Lagafua, 2 A.S.R. 436.

Code requires that point of departure of survey be from certain type of fixed monument. Soliai v. Levu, 2 A.S.R. 440.

Land offered for registration cannot be registered upon order of court until provisions of Code requiring proper survey have been complied with. CAS 905. Ifopo v. Vaiao, 2 A.S.R. 472.

Court will not order registration of land until there is proper survey in accordance with provisions of Code. CAS 905. Amituanai v. Sauitufuga, 2 A.S.R. 485.

Court will not order registration of land where there has not been proper survey. Toomata v. Vea, 2 A.S.R. 564.

Court cannot order registration of land unless description clearly identified boundaries. Mulu v. Talitutafa, 3 A.S.R. 82.

Code requires that all boundaries of land be identified by metes and bounds before it may be registered. CAS 10.0112. Lago v. Mageo, 4 A.S.R. 287.

Court in denying application to register land, and finding ownership in another, may require other parties to survey individual parts of land they claim in accordance with decision. Nua v. Leomiti, 4 A.S.R. 404.

Code provides that no title to land shall be registered unless description identifies boundaries of land. Fau v. Wilson, 4 A.S.R. 443.

Title to land cannot be registered unless registrar is satisfied that there are not conflicting claims and unless description clearly identifies boundaries of land. CAS 10.0112. Tuia v. Savea, 4 A.S.R. 483.

Party to case involving dispute over ownership of land must allow opposing party to survey the full extent of the land he claims, even though this encroaches on land claimed and occupied by first party. Satele v. Uiagalelei, 6 A.S.R.2d 109.

Court will issue preliminary injunction against any party who refuses to allow surveys by opposing parties on land claimed and occupied by him. Satele v. Uiagalelei, 6 A.S.R.2d 109.

Offer of registration for communal land must be accompanied by survey requested by senior matai of the family; a family with a vacant senior matai title must select a senior matai before it can offer land for registration. A.S.C.A. § 37.0102. Faleafine v. Suapilimai, 7 A.S.R.2d 108.

Whether a lapse of time between the making of a land survey, with the attendant notice required by statute, and offer of survey for registration was so great as to prevent rival claimants from receiving fair notice is a question of fact to be resolved on a case-by-case basis. A.S.C.A. § 37.0102(c). Lualemaga v. Sosene, 9 A.S.R.2d 85.

Where landmarks and registered survey maps showed that the land in dispute had been registered as property of plaintiff's family for forty years, and the principal evidence for defendants was the recollection of their counsel that as a boy he had used to purchase pancakes from a woman who lived on the land but who was not related to the plaintiff, the defendants would be enjoined from going on the land. Avegalio v. Leatumauga, 9 A.S.R.2d 96.

As a matter of law, an earlier survey registered in accordance with law prevails over a later one. Willis v. Fai`ivae, 17 A.S.R.2d 38.

The court is bound to recognize a land survey which has been registered according to law. A.S.C.A. § 37.0101 et seq. Willis v. Fai`ivae, 17 A.S.R.2d 38.

A land survey may not be registered until the owner has complied with the statutory requirements. A.S.C.A. § 37.0101 et seq. Willis v. Fai`ivae, 17 A.S.R.2d 179.

A survey which has never been posted in accordance with statutory requirements cannot be registered. A.S.C.A. §§ 37.0101 et seq. Magalei v. Atualevao, 19 A.S.R.2d 86.

Even if procedural defects prevent a family from registering its land survey, a court may nonetheless adjudicate the rights of parties who have received notice of the family's claim, filed their competing claims, and fully litigated their claims. Magalei v. Atualevao, 19 A.S.R.2d 86.

The proponent of a title registration must submit a properly performed survey with the offer of registration. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

When litigation arises out of an objection to an offer for registration of title to land, lapse of time between the survey and the registration offer raises a question of fact whether rival claimants to the particular and adjacent lands received fair notice of the intended survey. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

Where certificate of registration of title was not facially invalid, Court could conclusively presume that notice of intended survey was properly given and that the survey was performed contemporaneously and in accordance with A.S.C.A. § 37.0102. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

Under A.S.C.A. § 37.0102(d), only the sa`o can lawfully request a survey of a family's communal land, and the sa`o cannot delegate that authority. Taylor v. Solaita, 3 A.S.R.3d 218 (Land & Titles Div. 1999).

A transfer of title is not effective where a survey authorization was not put through the mandated recommendation and approval steps in the land alienation process. Taylor v. Solaita, 3 A.S.R.3d 218 (Land & Titles Div. 1999).

§ 8(6) —Objection to Registration

Where objectors' unsurveryed lands are included within survey of land offered for registration, Court will deny registration. Liu v. Fao, 2 A.S.R. 41.

All persons who do not object to registration of title in accordance with proceedings established by law are barred from making claim to disputed land thereafter. Leapaga v. Taumua L., 2 A.S.R. 56.

Land cannot be registered where there are conflicting claims to parts of it or where land contained within survey is partially owned by another. CAS 905. Muagututia v. Faimalo, 4 A.S.R. 237.

Court finds part of land included in application to register belongs to another family. Nua v. Leomiti, 4 A.S.R. 404.

Court finds that claim of objector to small portion within land sought to be registered is unsubstantiated. Mageo v. Fuga. 4 A.S.R. 426.

Court will deny application to register communal land where objector shows ownership of land withing surveyed tract which is not identified. Tuia v. Savea, 4 A.S.R. 483.

Where court denies application to register land, it is not necessary for it to determine rights of objector in land. Tuia v. Savea, 4 A.S.R. 483.

Objection to application to register land must be filed within 60 days after application was filed, and objection not filed in time cannot be considered. CASA 10.0112. Puluti v. Muliufi, 4 A.S.R. 672.

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.

Legal practitioner who has served as arbitrator in a land dispute in his capacity as an employee of the Office of Samoan Affairs may not serve as counsel to one of the parties in a case resulting from the same dispute. Fanene v. Seva'aetasi (Mem.), 3 A.S.R.2d 108.

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.

Complaint asserting ownership of land did not fail to state a claim because of plaintiff's failure to comply with statutory requirement of timely objection to defendant's prior registration of land, where pleadings did not establish that defendant had complied with statutory notice requirements for registration of land. T.C.R.C.P. Rule 12(b)(6); A.S.C.A. §§ 37.0102, 37.0103. Moeisogi v. Faleafine, 5 A.S.R.2d 131.

Court may not consider a claim to ownership of land by one who has not timely objected to registration of the land by another. A.S.C.A. § 37.0103. Falefia v. Sipili, 7 A.S.R.2d 1.

Where objector to proposed registration proved his family's claim to the land by preponderance of the evidence at trial, but objector had not served other objectors with notice of trial date, court should not order registration of the land as the property of the prevailing objector but should allow objector to file a proposed registration in accordance with statutory procedures. Mataituli v. Utuutuvanu, 7 A.S.R.2d 134.

Court acted properly in granting motion to dismiss at conclusion of plaintiffs' case, at least in light of territorial statute allowing land court to proceed in such manner as it considers to be most consistent with natural justice and convenience, where plaintiffs objected that evidence they had been saving for rebuttal could have established a prima facie case but court concluded that defendants would prevail even if plaintiffs succeeded in proving every fact they offered to prove on rebuttal. A.S.C.A. § 3.0242. Willis v. Fai`ivae, 10 A.S.R.2d 121.

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 negate the existence of an irreconcilable dispute. A.S.C.A. § 43.0302. Leota v. Sese, 12 A.S.R.2d 18.

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.

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.

Land registration statute, under which any objection to proposed registration must be filed within sixty days or land is registered in the name of the claimant and all other claims of ownership are forever precluded, does not amount to a judicial transfer of land from the "true" owner to the registered owner; rather, the statute gives anyone who believes himself the owner of land a fair opportunity to present his claim to the court, and then conclusively presumes that anyone who did not avail himself of this opportunity was not the true owner of the land. A.S.C.A. §§ 37.0101 et seq. Ifopo v. Siatu`u, 12 A.S.R.2d 24.

Land registration statute gave competing claimants sixty days in which to urge any objection to the proposed registration, including objection that the land was communal and that no sale was approved by the Land Commission or by the Governor. A.S.C.A. §§ 37.0101 et seq., 37.0204. Ifopo v. Siatu`u, 12 A.S.R.2d 24.

Where objections to land registration based on statutory procedures for alienation of communal land were not raised within sixty days of proposed registration, the law conclusively presumes either that the procedures for alienation of communal land were met or that the land was not communal. A.S.C.A. §§ 37.0101 et seq., 37.0204. Ifopo v. Siatu`u, 12 A.S.R.2d 24.

Purpose of requirement that objection to proposed registration of land be made within sixty days was to relieve the registrant of the burden of affirmatively proving every fact necessary to establish title after the passage of many years, during which witnesses would tend to die and documents to be lost or destroyed. A.S.C.A. §§ 37.0101 et seq. Ifopo v. Siatu`u, 12 A.S.R.2d 24.

Statute providing that land should not be registered when a competing application for registration is pending neither renders void a final judgment entered in violation of its terms, nor otherwise permits a collateral attack on that judgment. A.S.C.A. § 37.0101. Tela v. Aoelua, 12 A.S.R.2d 40.

Purpose of statute providing that land should not be registered when a competing application for registration is pending is to preclude registration until competing claimants have opportunity to be heard; party who was an objector to a proposed registration and whose competing claim was fully heard and decided was therefore not prejudiced by the court's failure to determine his competing application for registration at the same time. A.S.C.A. § 37.0101. Tela v. Aoelua, 12 A.S.R.2d 40.

Territorial land registration statute gives anyone who believes himself the owner of land a fair opportunity to present his claim to the court, and then conclusively presumes that anyone who did not avail himself of this opportunity was not the true owner of the land. A.S.C.A. § 37.0101 et seq. Meafua v. Taliu, 13 A.S.R.2d 13.

Temporary absence from the vicinity during the time when land was surveyed and offer of registration posted did not excuse failure to object to the registration during statutory 60-day period. A.S.C.A. § 37.0101 et seq. Meafua v. Taliu, 13 A.S.R.2d 13.

Parties who did not object to offer for registration of land in accordance with statutory procedure were bound by the result in the ensuing registration proceedings, although they were not parties to the proceeding, because registration proceedings have in rem effect. A.S.C.A. §§ 37.0101 et seq. Tufono v. Vaeao, 13 A.S.R.2d 47.

Under territorial statute dealing with "titles to land," a procedurally valid registration precludes subsequent judicial inquiry into the validity of the record owner's title; anyone who wishes to object on any ground whatever to the registrant's claim of ownership has sixty days within which to do so, and in the absence of such objection the land is registered in the name of the claimant and all other claims of ownership are forever precluded. A.S.C.A. §§ 37.0101 et seq. Vaimaona v. Tuitasi (Mem.), 13 A.S.R.2d 76.

Where a claim to register individual title to land is disputed, the successful claimant must prove to the Land and Titles Division that he originally cleared and maintained the area for personal use. Fania v. Sipili, 14 A.S.R.2d 70.

Where plaintiff offered land for registration which was not finally registered until a dispute with an objector was settled seven years later, defendant's intervening registration of land which partly overlapped the land claimed in plaintiff's pending registration was void to the extent of the overlap, since defendant had not timely objected to plaintiff's initial offer of

registration of the land. A.S.C.A. § 37.0103. Lealaimatafao v. Misiaita, 17 A.S.R.2d 110.

Party who does not timely object to another's offer to register land cannot later claim such land by filing a notice of adverse claim or by offering to and registering title to such land. A.S.C.A. §§ 37.0103, 37.0101(b). Lealaimatafao v. Misiaita, 17 A.S.R.2d 110.

Since land may not be registered where there are unlitigated or unresolved competing claims (including pending lawsuits regarding registration of the same property), the Territorial Registrar must deny such registration. A.S.C.A. § 37.0101(b). Lealaimatafao v. Misiaita, 17 A.S.R.2d 110.

Any registration of land regarding which there are unlitigated or unresolved competing claims (including pending lawsuits regarding registration of the same property) is void and may be ordered cancelled. Lealaimatafao v. Misiaita, 17 A.S.R.2d 110.

Because failure to meet statutory notice requirements can deprive family members of an adequate opportunity to object to the registration of title, compliance with the statutory notice requirements for registrations of title is an essential feature of the registration process. A.S.C.A. §§ 37.0101 et seq. Vaimaona v. Tuitasi, 22 A.S.R.2d 1.

Regarding proposed land transfers, for which the Land Commission must provide the government with recommendations, the Land Commission should hold public hearings and must give reasonable notice of its deliberations to interested persons, regardless of the forum selected to "study" proposed transactions. Vaimaona v. Tuitasi, 22 A.S.R.2d 1.

Since no statute or administrative rule compels the referral of objections to document registration to the Secretary of Samoan Affairs, the Territorial Registrar should not automatically make such referrals when such objections arise. Such cases are properly forwarded to the Secretary only if referrals are required by statute, by administrative rule, by orders of the Land Commission on a case-by-case basis, or pursuant to specific authority delegated to the Registrar by the Land Commission. The land Commission should establish policies and criteria for making such referrals. Tuitasi v. Lauofo, 25 A.S.R.2d 57.

The process of referring disputes of land lease document registration to the Secretary of Samoan Affairs must not frustrate the aims of A.S.C.A. §§ 37.0203, 37.0204, 37.0221, and 37.0222, which require the land Commission to formulate recommendations for the Governor, and for the Governor to make the final decision regarding approval or disapproval of the proposed lease. Tuitasi v. Lauofo, 25 A.S.R.2d 57.

Any claimant who fails to object to the offer of registration of title to land by the end of the 60-day notice period loses his claim and is forever bound by the subsequent registration, in the absence of fraud or similar circumstance. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

Absence of a family's sa`o from the territory during 60-day notice period does not excuse the family's failure to object to an offer of registration of title to its land. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

§ 8(7) —Finality of Judgments

Where land is registered after proceedings in accordance with statute and where due notice has been posted and there is no evidence of fraud, title to that land cannot thereafter be questioned with respect to rights preceding date of determination. Molitui v. Pisa, 2 A.S.R. 268.

Rights in land, the ownership of which was determined by judical decree, must be determined in accordance with survey at time of decree and not subsequent survey which is at variance. Fau v. Wilson, 4 A.S.R. 443.

When individually owned property is registered by grantee's recording deed, grantor's interest terminates and subsequent "grantees" are constructively presumed to have notice of prior recorded deed. 27 A.S.C. § 601(a) and (b). Moon v. Falemalama, 4 A.S.R. 836.

That land registered in the name of one party can later be proved to have been property of person other than registrant will not void a registration otherwise performed in accordance with statute if the true owner did not object within the period prescribed by statute. A.S.C.A. §§ 37.0101 et seq. Faleafine v. Suapilimai, 7 A.S.R.2d 108.

Trial court decision adjudicating land ownership that was not appealed became res judicata and bound the court in a later dispute between the same parties over the same tract of land. Estate of Sotoa v. Te`o, 8 A.S.R.2d 165.

Final judgment awarding land to a party vests title in that party and his subsequent withdrawal of an offer to register the same land does not divest him of that title. Estate of Sotoa v. Te`o, 8 A.S.R.2d 165.

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.

Party in land case who claimed to be the owner of all nine tracts identified in an early lease as belonging to the chiefs of the village, and who at trial had clearly attempted to mislead

the court on a number of matters, was not entitled to a new trial on the ground that no other party had presented a history of the land that accounted for all nine tracts, since under the circumstances his credibility was weakened rather than strengthened by his attempt to claim all nine tracts as his own. Moea`i v. Te`o, 9 A.S.R.2d 107.

Attorney in land case has a duty to know exactly what land is being claimed by each party and to explain this to his client well before trial; court would therefore deny motion for new trial by a party who did not claim certain land during the trial because neither he nor his attorney knew that it was part of the land being claimed by another party. Moea`i v. Te`o, 9 A.S.R.2d 107.

Party who wishes to seek relief from judgment in land case on the ground that his attorney did not explain to him before trial what land was involved in the case should consult another attorney, since pursuit of such relief will give rise to a conflict between the party and his present attorney. Moea`i v. Te`o, 9 A.S.R.2d 107.

Judgment in prior case, between same parties and involving same land as the present case, was res judicata and therefore bound the parties and the court notwithstanding losing party's contention that the judgment did not accord with Samoan custom. Aoelua v. Tela, 10 A.S.R.2d 20.

Where judgment in prior case, between same parties but involving different land, had rejected one party's contention that he was the owner according to Samoan custom of all lands occupied by the other party, court deciding subsequent case must reject this contention notwithstanding the party's contention that the prior judgment did not accord with Samoan custom. Aoelua v. Tela, 10 A.S.R.2d 20.

Absent any evidence of fraud, registration of title to land pursuant to legislative procedures (which require, inter alia, public posting of an offer of registration for sixty days during which any objections must be filed) cannot be questioned. A.S.C.A. §§ 37.0101 et seq. Ifopo v. Siatu`u, 10 A.S.R.2d 66.

Statutory proceedings for registration of land have in rem effect. A.S.C.A. §§ 37.0101 et seq. Ifopo v. Siatu`u, 10 A.S.R.2d 66.

Land registration statutes were intended by the legislature to secure finality of the registration process, and review of the process forty years later would be in derogation of that objective by causing public confidence in the recordation process to disappear and the security of registered land titles to be seriously weakened. Ifopo v. Siatu`u, 10 A.S.R.2d 66.

Court would not look behind a land title recorded forty years earlier and accompanied by territorial registrar's recital indicating that the notice required by statute had been given, where plaintiff's testimony that neither she nor any family member had been made aware of the registration was not based on personal knowledge as she had resided elsewhere at all relevant times. Ifopo v. Siatu`u, 10 A.S.R.2d 66.

Court would not invalidate a land title registered forty years earlier on the ground that the territorial registrar's file did not contain a certificate that the required notice of a survey had been given, since the certificate might have been misplaced during the intervening years and since the court could assume that the Registrar would comply with the statute prohibiting acceptance of the registration without the required certificate. A.S.C.A. § 37.0103. Ifopo v. Siatu`u, 10 A.S.R.2d 66.

In an action attacking the validity of a concluded land registration proceeding to which a presumption of conclusiveness had attached, the court would not surmise from a variance in dates between the survey and the offer of registration that the required notice of the survey had not been given, since the original commissioning of a survey in 1933 did not preclude the possibility of a physical retrace in 1945 when the registration process was undertaken. A.S.C.A. § 37.0102. Ifopo v. Siatu`u, 10 A.S.R.2d 66.

Court could not conclude that lands registered forty years earlier by one party as individual land had in fact been the communal land of another party, and that the registration was therefore in violation of the statute governing alienation of communal land, where (1) plaintiff's evidence of title was at best circumstantial whereas defendant's claim was supported by the records of the territorial registrar to which the legislature intended to have a final and in rem effect; (2) plaintiff's family had failed to timely object to the registration and had thus waived their rights; and (3) the registration was in apparent compliance with law and without evidence of fraud. Ifopo v. Siatu`u, 10 A.S.R.2d 66.

Judicial decision stating that a certain tract (1) was "the property of" a named party, (2) that she should have the rents during her lifetime, and (3) that she should make a will saying who she wanted to receive the rentals after her death, adjudicated the question of title to the property as between the parties to the case and their successors in interest. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

Although court may have in personam jurisdiction to order a party to convey to another party a deed to property in another state, it cannot directly affect or determine title to that real property. Godinet v. Godinet (Mem.), 11 A.S.R.2d 156.

Since Oregon court had no jurisdiction to transfer title to land in American Samoa, judgment attempting to do so was entitled to full faith and credit only if the question of jurisdiction had been fully and fairly litigated in the court which rendered the original judgment. Godinet v. Godinet (Mem.), 11 A.S.R.2d 156.

Where judgment adjudicating title to land had been final for twenty-three years, discretion would be exercised in favor of finality and an end to the needless protraction of litigation; after twenty-three years of settled expectations the equities were against the reopening of judgment. T.C.R.C.P. Rule 60(b). Taulaga v. Patea, 12 A.S.R.2d 64.

Assuming that deputy territorial registrar had the power to cancel the prior recordation of a lease had there been something genuinely wrong with it, an aggrieved party would have the right at any time to apply to the court for direction or redress, and the aggrieved party could exercise such right by alleging and proving in an action for eviction that the substantive bases for the cancellation were without merit. A.S.C.A. § 4.1106. American Samoa Government v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Barring land claims by res judicata or collateral estoppel is improper if the parties or their predecessors-in-title were not parties in the previous case. Afualo v. Fanene, Pualioa v. Afualo, 15 A.S.R.2d 48.

A land registration in conflict with a Court order in a prior adjudication of land claims is void--or at least voidable in the absence of reliance by innocent third parties--for the same reasons that a registration would be without legal effect if it conflicted with an earlier valid registration. Fa`aaua`a v. Tauiliili, 15 A.S.R.2d 71.

Even if it would not exceed the Court's power, declaring a prior judicial decision null and void, when witnesses have died and memories have faded in the intervening thirty years, would be imprudent and unjust because the Court at that time was in a much better position to determine the issues material as to whether land should be registered. Lualemana v. Atualevao, 16 A.S.R.2d 34.

The court's decision regarding ownership of a parcel of land is binding on all parties to that consolidated case; as such, they are estopped from objecting to an offer of registration by the party held to be its owner. Willis v. Fai`ivae, 17 A.S.R.2d 179.

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.

A person who takes an interest in real property from one who litigated the property's title is in privity with him and so is bound by res judicata. Puailoa v. Estate of Lagafuaina, 19 A.S.R.2d 40.

Even if erroneous, a court's decision as to whether a parcel of land is a person's individual land or a family's communal land is binding on later courts. Puailoa v. Estate of Lagafuaina, 19 A.S.R.2d 40.

Summary judgment is appropriate when the only issue raised by an objector to a land/building separation agreement is identical to the issue she and her predecessor raised in a previous case and that issue was litigated and decided between the parties. T.C.R.C.P. 56. Fanene v. Fanene, 19 A.S.R.2d 69.

If issued by a court having jurisdiction over the parties and the subject matter, an order requiring the Registrar to issue a land-registration certificate is binding on the parties and their successors in interest and can be vacated only in the most extraordinary and compelling of circumstances. T.C.R.C.P. 60(b). Ava v. Logoai, 19 A.S.R.2d 75.

A court order requiring the Registrar to issue a land-registration certificate did not bar a plaintiff from litigating the issue of whether a registration of somebody else's property, affirmatively identified as such by the applicant in his registration documents, is nevertheless a valid registration, when neither this issue nor the plaintiff was previously before the court. Ava v. Logoai, 19 A.S.R.2d 75.

Once a grantee has received and registered a deed to land, a subsequent deed has no effect, and so an injunction properly enjoined a later purchaser from interfering with the prior grantee's use and enjoyment of the land. Sa v. Vollrath, 21 A.S.R.2d 37.

Dismissal of a lawsuit for lack of diligent prosecution is with prejudice in a civil action but without prejudice in a land and titles action. Jennings v. Jennings, 21 A.S.R.2d 40.

A collateral attack of an in rem judgment is permissible if notice in the first case was defective. Asifoa v. Faoa, 21 A.S.R.2d 91.

The interest in the finality of judgments is especially strong in regards to land titles. Fed. R. Civ. P. 60(b); T.C.R.C.P. Rule 60(b). Reid v. Puailoa, 23 A.S.R.2d 101.

The interest in the finality of judgments is especially strong in regards to land titles. Fed. R. Civ. P. 60(b); T.C.R.C.P. Rule 60(b). Reid v. Puailoa, 23 A.S.R.2d 144.

A judgment concerning the ownership of a tract of land as between the same families is res judicata and binding on all members of the families, because Samoan communal land belongs to families rather than individuals. Savane v. Lafi, 31 A.S.R.2d 31.

Where family was represented by both village matai and sister of sa`o, and advised by a capable legal practitioner and family member, it was a party to previous land case and bound by

that decision. Mailei v. Faumuina, 1 A.S.R.3d 206 (Land & Titles Div. 1997).

A concluded registration proceeding carries a presumption of finality. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

§ 9 License to Use Land

§ 9(1) —Generally

If person wishes to lay claim to land cultivated and possessed by others on grounds that such cultivation and possession is by license of claimant, then burden of proof as to existence of license is on such claimant. Fuimaono v. Leasiolagi, 1 A.S.R. 189.

License is permission to use land and may be granted to flood land, erect buildings, to cut timber and a variety of other uses. Lutu v. Ponali, 2 A.S.R. 508.

License is authority to do lawful act which, without it, would be unlawful, and can be created orally and without consideration. Tago v. Leota, 4 A.S.R. 341.

Defendant was not entitled to a new trial on the ground that plaintiff had abandoned its rights to land under a license, since the alleged license was not a basis of the court's determination that plaintiff was entitled to possess the land. Olo v. Tulisua, 6 A.S.R.2d 129.

A court may compel specific performance of a partially performed, unwritten agreement; the court's power to compel specific performance is expressly recognized in the statute of frauds relating to land transactions. A.S.C.A. § 37.0211. Manoa v. Jennings, 21 A.S.R.2d 23.

After-the-fact compensation for a land's use is not an adequate substitute for obtaining permission or following applicable statutory procedures in order to use the land in the first place. Mamea v. American Samoa Power Authority, 26 A.S.R.2d 47.

An irrevocable license, sometimes referred to as an easement by estoppel, arises where an owner or occupier of land permits another to use that land under circumstances in which it was reasonable to foresee that the user would substantially change position believing that the permission would not be revoked, and the user did substantially change position in reasonable reliance on that belief. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

§ 9(2) —Creation of License

Evidence supports creation of license in possessor to use land. Talo v. Tavai, 2 A.S.R. 63.

Under custom, in consideration for service, matai may give license to another to use his own land. Tago v. Sami, 2 A.S.R. 285.

Where court finds that land owners had no intention to convey interest in estate to party, but gave him permission to live there and use land, court will find that land owners granted parol license. Magalei v. Tago, 3 A.S.R. 185.

Where matai grants permission to person to plant and use family lands in consideration for service offered him by person, he is granting license but not ownership, such license being the authority to do an act or acts upon land of another without possessing any right or interest therin. Tuileata v. Talivaa, 3 A.S.R. 201.

Where person, not blood member of family, is permitted to occupy communal family land, there being no lease or conveyance, that occupant has license only without possessing any estate or interest in land. Lutu Family v. Petelo, 3 A.S.R. 252.

Where no complaint has been filed against defendants for use of family lands in planting non-permanent crops, it may be inferred that such permission was granted since ti is common to permit other to plant non-permanent crops under Samoan Customm. Faamuli v. Leiato, 3 A.S.R. 308.

License to plant non-permanent crops on land may be implied from circumstances, and cannot be pre-emptorily revoked so as to require immediate remove with destruction of growing crops since this would destroy necessary food sources; however court will permit planters nine months to remove crops from land. Faamuli v. Leiato, 3 A.S.R. 308.

Fact Samoan did not object to another's occupying land and planting permanent crops thereon is evidence that possessor is occupying with permission of owner. Aumavae v. Tuitele, 3 A.S.R. 342

Letter of authorization permitting person to use bulding for "beer joint" created license. Faiivae v. Tiumalu, 3 A.S.R. 402.

License may arise by implication and may result from circumstances or ratification of preivous acts. Tago v. Leota, 4 A.S.R. 341.

Court orders that license cannot extend into licensor's land beyond point where it presently occupies land pursuant to implied license. Tago v. Leota, 4 A.S.R. 341.

Where plaintiff brought former action in court to remove part of defedant's house, but plaintiff permitted defendant to continue to occupy that portion pursuant to agreement with defendant, then defendant occupies land as licensee. Tago v. Leota, 4 A.S.R. 341.

A person who has been shown not to be the landowner may not register the land but, under the common law, may remain in possession until ousted by someone who can prove he is the true owner. Opapo v. Puailoa, 16 A.S.R.2d 11.

When a party in a title dispute has given a person permission to occupy the land, that person may remain on the land as a licensee until ousted by a person with better title than the licensor. Opapo v. Puailoa, 16 A.S.R.2d 11.

A jilted licensee cannot ordinarily attack his licensor's title because legal title is none of the licensee's concern; however, if a tract's ownership is truly a concern of the licensee, a party in a title dispute cannot disturb the peaceable possession of the other or of persons occupying by permission of the other until one side proves a better title than the other. Opapo v. Puailoa, 16 A.S.R.2d 11.

§ 9(3) —Rights Created by License

Where oral license is revoked, licensee should be granted reasonable time to remove personal property such as structures and plantations from land. Talo v. Tavai, 2 A.S.R. 63.

Licensee has right to continue to live in house for which he was granted license but he has no right to reconstruct it so that it violate conditions of license, and court will issue mandatory injunction requiring licensee to reconstruct house so that it conforms with conditions of license. Lutu v. Ponali, 2 A.S.R. 503.

Where licensor revokes parol license to use real property, licensee may retain possession of property and make use of it in accordance with terms of license until such time as value of use of property is equal to value of his expenditures less value (after they are torn down) of any buildings which he has erected on land which are removable. Magalei v. Tago, 3 A.S.R. 185.

Licensee may retain possession of land and make use of it in accordance with terms of license until such time as value of use of property is equal to value of her expenditures less value (after they are torn down) of building she has erected on land which may be removed from land. Tuileata v. Talivaa, 3 A.S.R. 201.

Licensee may retain possession after revocation of license until such time as value of property is equal to value of expenditures of licensee less value (after they are torn down) of buildings which he has erected on land and can remove when he leaves. Lute Family v. Petelo, 3 A.S.R. 252.

Where licensee, in reliance upon license, has expended money and labor on land, and license is revoked, he may retain possession until value of use of land is equal to value of his expenditures thereon less value of buildings (after they are torn down) which he may remove from land. Aumavae v. Tuitele, 3 A.S.R. 342.

Where licensee has been authorized to have full control over use of building, has made substantial improvements to building, and has paid consideration for license, he is entitled to equivalent in value of his expenditures through use of building. Faiivae v. Tiumalu, 3 A.S.R. 402.

Where licensee relied upon previous license from licensor for 11 years and expended money in tearing down old house and in constructing new one as a result of such reliance, court will allow licensee to exercise license and live in house for reasonable period of time. Tago v. Leota, 4 A.S.R. 341.

Licensee who torn down old house which was partially built on licensor’s land and laid foundation for new house, relied on license received for old house, which, not having been revoked, was still effective. Tago v. Leota, 4 A.S.R. 341.

Occupant of land whose occupancy was by virtue of a license from the landowner, but who subsequently asserted ownership of the land, engaged in transactions purporting to sell parts of the land, and forced landowner to bring successive lawsuits to establish his ownership of land to which the landowner's title had been previously adjudicated, was a bad faith possessor who had the right upon eviction to harvest seasonal crops and to remove fixtures erected by him but was entitled to no other compensation. Fonoti v. Fagaima, 5 A.S.R.2d 158.

Religious organization that had been permitted by landowner to build a permanent structure on the land under circumstances suggesting indefinite occupancy by the church, and which had not been shown to have acted inconsistently with any express or implied condition of its license, was a good faith possessor and would ordinarily be entitled on eviction to choose between removing the structure or leaving it upon the land and receiving compensation from the landowner. Fonoti v. Fagaima, 5 A.S.R.2d 158.

Where family removed dwelling house from disputed lands after boundary was marked but continued to use umu on same lands without objection by neighboring occupants, court may conclude that use of the umu was grounded in a historic license. Faleafine v. Suapilimai, 7 A.S.R.2d 108.

Failure of family members to demand immediate payment of rent when lessee fell behind did not constitute a waiver of the family's entitlement to eventual payment, especially in light of the vacancy in the family matai title, but did justify the lessee in treating time of payment as not of the essence. Hunkin v. Grisard (Mem.), 13 A.S.R.2d 38.

Assuming that deputy territorial registrar had the power to cancel the prior recordation of a lease had there been something genuinely wrong with it, an aggrieved party would have the right at any time to apply to the court for direction or

redress, and the aggrieved party could exercise such right by alleging and proving in an action for eviction that the substantive bases for the cancellation were without merit. A.S.C.A. § 4.1106. American Samoa Government v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Activities on land pursuant to a license, no matter how extensive and no matter what the original state of the land, cannot give rise to a claim of ownership. 15 A.S.R.2d Afualo v. Fanene, Pualioa v. Afualo, 15 A.S.R.2d 48.

Creditor who already obtained a judgment and a writ of execution and levied upon the property of judgment creditor prior to the notice of ASG's tax lien, prevails against the ASG as a judgment lien creditor with respect to such property. 26 U.S.C. § 6323(a); A.S.C.A. § 11.0401 et seq. Shantilal Brothers, Ltd. v. KMST Wholesale, 15 A.S.R.2d 115.

A personal license conditioned on performing traditional service (tautua) becomes revocable when that service ceases. Scratch v. Sua, 22 A.S.R.2d 53.

A valid lease agreement duly executed by the matai, assented to by the Governor, and recorded with the Territorial Register will be enforced even when the family that owns the communal land no longer wants the lessee to remain on the land. Lolagi v. Maluia, 30 A.S.R.2d 159.

A party with a valid lease is entitled to a permanent injunction securing his or her right to quiet enjoyment. Lolagi v. Maluia, 30 A.S.R.2d 159.

Any activities on the land in pursuance of a license, no matter how extensive and no matter what the original state of the land, cannot give rise to a claim of ownership. Seva'aetasi v. Moi, 1 A.S.R.3d 232 (Land & Titles Div. 1997).

§ 9(4) —Mortgages

SEE SECURED TRANSACTIONS § 11 – MORTGAGES

Where owner of mortgaged property retained the right to use and possession of the property until default, and where there was no evidence of default on the debt secured by the mortgage, garnishment by unsecured judgment creditor of rents derived from the property did not interfere with the rights of the mortgagee. A.S.C.A. § 37.1005. Landrigan v. Opelle, 5 A.S.R.2d 155.

Statute which states that no instrument shall be effective to create a security interest unless it contains a description of items to be mortgaged prevents the creation of a "general mortgage" and reinforces the statutory prohibition against mortgages on after-acquired real property and fixtures, as well as security interests in personal property. A.S.C.A. §§ 27.1510(c), 37.1003. Shantilal Brothers, Ltd. v. KMST Wholesale, 15 A.S.R.2d 115.

American Samoa's chattel mortgage statute requires not just that the mortgage contain some language sufficient to put third parties on inquiry, but that it contain a "description" of the "specific" article or articles mortgaged. A.S.C.A. § 27.1510. Shantilal Brothers, Ltd. v. KMST Wholesale, Inc., 16 A.S.R.2d 103.

The general rule appears to be that notice of an unrecorded mortgage, given to a creditor who has already "fastened his lien upon the property by judgment," comes too late regardless of whether a writ of execution has issued. Shantilal Brothers, Ltd. v. KMST Wholesale, Inc., 16 A.S.R.2d 103.

The general rule against mortgages of after-acquired real property contains an important exception for cases in which the property to be acquired is described in the mortgage document. A.S.C.A. § 37.1003. Shantilal Brothers, Ltd. v. KMST Wholesale, Inc., 16 A.S.R.2d 103.

§ 9(5) —Termination

License to use land is revocable even tough licensee has made improvements on land and put in plantations, since intention of parties was not convert license into interest in land. Talo v. Tavai, 2 A.S.R. 63.

Fales and cook houses can be taken down and removed elsewhere, and pineapple, taro, and yam plantations can be removed from land so that such improvements on land pursuant to oral license to use land do not make license irrevocable, and do not create irrevocable license by prescription. Talo v. Tavai, 2 A.S.R. 63

License given by landowner was continued by heirs of landowner by acquiescence and implication, and became irrevocable after licensee put in coconut and breadfruit plantations and built European house on land, and license will continue until death of licensee or licensor, unless continued by heirs of licensor. Tago v. Sami, 2 A.S.R. 285.

After parol licensee has entered and made expenditures in money and labor in reliance upon license, such license becomes irrevocable. Lutu v. Ponali, 2 A.S.R. 503.

Building of house and putting in plantations with permission of owner creates parol license in possessor, and where much work has gone into land on reliance upon license, it is irrevocable during lifetime of licensee. Aulava v. Sunia, 2 A.S.R. 543.

License in land, being personal, ordinarily is terminated by death of either licensor or licensee, unless, in case of death of licensor, his heirs elect to continue it in force. Aulava v. Sunia, 2 A.S.R. 543.

Whre license is granted to family of pastor, it will terminate upon death of longest-lived of children. Aulava v. Sunai, 2 A.S.R. 543.

Where person has been granted right to use path or road to boat house across land of another this grant constitutes license, and where licensee has expended money in reliance thereon, license is irrevocable. Foster v. Olotoa, 3 A.S.R. 76.

Parol license is revocable by land owners, but licensee is entitled to compensation for expenditures made in reliance on license. Magaeli v. Tago, 3 A.S.R. 185.

Where value of land will never equal value of expenditure of licensee, then license cannot be revoked. Tuileata v. Talivaa, 3 A.S.R. 201.

Since parol license is not interest or estate in land, it cannot be subject matter of inheritance and it will come to end at death of license unless people elect to continue it, but license does not terminate upon death of matai who grants it since family continues to be licensor. Tuileata v. Talivaa, 3 A.S.R. 201.

Licensee's refusal to render service to matai licensor is reasonable ground for revocation of license. Lutu Family v. Petelo, 3 A.S.R. 252.

Under Samoan custom, at least majority of family must maintain petition for eviction of person from family lands, and where there is not majority, petition must be dismissed. Fanene Family v. Brown, 3 A.S.R. 260.

Nineteen members of family who petition for eviction of occupant from family lands represent themselves only and not family, where they are small minority of family, cannot show authorization of family to bring suit and there is evidence of opposition to suit by other family members. Fanene Family v. Brown, 3 A.S.R. 260.

Daughter of deceased licensor has right to withdraw license granted by her mother allowing persons to live on individually owned family estate. Foster v. Tali, 4 A.S.R. 59.

Religious organization that had been permitted by landowner to build a permanent structure on the land under circumstances suggesting indefinite occupancy by the church, and which had not been shown to have acted inconsistently with any express or implied condition of its license, was a good faith possessor and would ordinarily be entitled on eviction to choose between removing the structure or leaving it upon the land and receiving compensation from the landowner. Fonoti v. Fagaima, 5 A.S.R.2d 158.

Depending on circumstances, a parol license without consideration may be revocable at will, irrevocable until licensee recoups his expenditures made in pursuance of the license, or irrevocable for the intended duration of the license. Isumu v. Palaia, 12 A.S.R.2d 98.

A license is personal and non-assignable, and therefore will ordinarily expire at the death of the licensor or the licensee, unless in the case of the licensor's death, the license is extended by the licensor's heirs. Isumu v. Palaia, 12 A.S.R.2d 98.

Parol license allowing licensees to build and occupy a home on licensor's land was irrevocable, until the death of either the licensor or the licensee and so long as the licensees should comply exactly with its terms, where licensees had not been troublesome, had rendered tautua effectively, and had made substantial and costly improvements on the land, and neither party had envisioned an earlier termination when the license was granted. Isumu v. Palaia, 12 A.S.R.2d 98.

§ 10 Easements & Servitudes

§ 10(1) —General Principles

Court decrees easement and right of ingress and egress to permit plaintiff to cross defendant's land to get to public highway. Tago v. Leota, 4 A.S.R. 341.

The idea that the owner of a valley has a right to the adjoining mountainsides as a sort of curtilage or natural frontier, while having some support in Western political theory and Samoan tradition, is not a principle of universal application. Afualo v. Fanene, Pualioa v. Afualo, 15 A.S.R.2d 48.

Land ownership and easement rights extend to those uses that are incidental or necessary to the reasonable use of the land. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

An irrevocable license, sometimes referred to as an easement by estoppel, arises where an owner or occupier of land permits another to use that land under circumstances in which it was reasonable to foresee that the user would substantially change position believing that the permission would not be revoked, and the user did substantially change position in reasonable reliance on that belief. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

§ 10(2) —Prescriptive Easements

Permissive or prescriptive easement will not be decreed when pre-existing use of way is sporadic and not essential to access. Moananu v. Tauvale, 4 A.S.R. 698.

To refute a claim of easement by prescription, a party must establish that they positively gave permission for such use of the land. Gi v. American Samoa Gov't, 5 A.S.R.3d 259 (Land & Titles Div. 2001).

Altering a prescriptive easement is not permitted where it increases the burden on the servient estate. Gi v. American Samoa Gov't, 5 A.S.R.3d 259 (Land & Titles Div. 2001).

With regard to prescriptive easements, an increase in the amount of traffic on a roadway (or people on a sidewalk) is not considered an increased burden. Gi v. American Samoa Gov't, 5 A.S.R.3d 259 (Land & Titles Div. 2001).

A right of way by prescription is bounded by reasonable enjoyment, but it carries with it such incidents as are necessary for that reasonable enjoyment. Gi v. American Samoa Gov't, 5 A.S.R.3d 259 (Land & Titles Div. 2001).

A sidewalk adjacent to a roadway is an incident necessary to the reasonable enjoyment of the roadway easement in that it provides a safe walkway for pedestrians using that right of way. Gi v. American Samoa Gov't, 5 A.S.R.3d 259 (Land & Titles Div. 2001).

Maintenance of a thoroughfare is incidental or necessary to the reasonable use of such land. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

New sidewalk which was installed outside of the area previously used by government for old road was determined to be within area reasonably required for lateral support of the old road and therefore installation of such new sidewalk was proper. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

§ 10(3) —Implied Easements of Necessity

Where a tract of land, which was once part of a larger tract whose owner subdivided and sold parts of it, is found to be without access to a road, an easement arises by implication over the other part or parts of the land subdivided, if such easement is strictly necessary for the beneficial use of the tract sold. Sese v. Leota, 9 A.S.R.2d 25.

An implied easement of necessity in favor of a parcel subdivided and sold from larger tract, in order to provide access to a road, will exist (1) only against adjoining lands retained or subsequently sold by the grantor, (2) only where the easement is strictly necessary for the beneficial use of the tract sold, and (3) only for so long as the necessity continues; mere inconvenience will not give rise to an implied easement of necessity. Sese v. Leota, 9 A.S.R.2d 25.

Implied easement of necessity is based upon a public policy that favors full utilization of land, so that the grantor is presumed to convey whatever is necessary for the beneficial use of the land; the easement will therefore be implied regardless of the actual intentions of the parties. Sese v. Leota, 9 A.S.R.2d 25.

In action for an implied easement of necessity, that the grantor had registered the proposed dominant parcel, but had never registered the proposed servient parcel or the larger tract from which both had been subdivided, did not preclude finding that a single grantor once held unity of title over those parcels, since ownership of individual land does not arise from registration, but from initial use and occupancy. Sese v. Leota, 9 A.S.R.2d 25.

In action for an implied easement of necessity, the court would neither examine whether defendant's servient parcel was subject to a title dispute with a third party nor determine the merits of that dispute prior to granting relief against defendant, where (1) the alleged third party claim had not been zealously made; (2) defendant had bulldozed, improved, and used the alleged area of dispute since its conveyance to him; and (3) evidence of the claim amounted to no more than an allegation made as a defense to plaintiff's action. Sese v. Leota, 9 A.S.R.2d 25.

Implied easement of necessity will arise over defendant's land despite his grantor's representation that plaintiff's would gain access elsewhere, where the grantor once held unity of title over both defendant's and plaintiff's land, plaintiff's parcel has been deprived of access to a road by defendant's erection of a wall over what the grantor originally pointed out as their accessway; and the easement is strictly necessary for the use of plaintiff's land. Sese v. Leota, 9 A.S.R.2d 25.

For purpose of finding an implied easement of necessity, contiguous parcels of land originally claimed by a single grantor qualify as having been under common ownership even though part of the land was surveyed and registered and part was not. Sese v. Leota, 9 A.S.R.2d 136.

Actual intent of parties to land conveyances did not conflict with their presumed intent not to render a parcel of land useless by denying any access to a road, where the evidence showed only that the original grantor had acted inconsistently by first showing the plaintiff a right of way over his reserved land and then selling that land to defendant with the representation that plaintiff would gain access elsewhere. Sese v. Leota, 9 A.S.R.2d 136.

Court would burden defendant's land with an implied easement of necessity, rather than imposing the easement on another party's adjacent land which was an apparent servient parcel as well, where defendant was the latest grantee of a common grantor; the grantor had earlier identified to the owner of the dominant parcel an accessway across what was now defendant's land; the implied easement was a logical extension of an established accessway; and defendant was aware that access to the dominant parcel might be affected by the conveyance of land to him. Sese v. Leota, 9 A.S.R.2d 136.

Recorded deed of sale made purchasers at least the equitable owners of the property, so that seller no longer had any right

to encumber the property by establishing an easement over it in favor of purchasers of another tract. Leota v. Sese, 12 A.S.R.2d 18.

Contention by litigants that the land they purchased had belonged not to the seller but to his communal family, advanced for the purpose of defeating an easement of necessity in favor of an adjoining tract on the ground that there was no unity of title between the true tracts, would instead have the effect of divesting the litigants of any property rights at all in the disputed tract. Leota v. Sese, 12 A.S.R.2d 18.

That one of two tracts sold by grantor was registered in his name, whereas other tract was not so registered, did not mean that grantor had no title in the unregistered tract, and did not preclude easement of necessity over one tract in favor of the other. Leota v. Sese, 12 A.S.R.2d 18.

When an owner of two adjacent parcels of land conveys one of them, or when the owner of a parcel of land conveys a part of it, the grantee takes the land with all benefits that appear to belong to the land at the time of the transfer. Letuli v. Le'i, 22 A.S.R.2d 77.

The purpose of recognizing implied easements is to carry out the intent of the parties in light of all the circumstances, which include the visibility and permanency of the easement on the servient estate, reasonable necessity of the easement, actual use of the easement at the time of the transfer, and reasonably foreseeable uses of the easement. Letuli v. Le'i, 22 A.S.R.2d 77.

An implied easement by necessity is inappropriate as long as some means of access exists. Fuimaono v. Fuia, 23 A.S.R.2d 121.

The extent of an implied easement must be inferred from all circumstances of the case, including those uses that can reasonably be expected, or as might reasonably be required in the normal development of land. This includes not only the right of ingress and egress, but also the right to make use of the easement for installation of utilities. Le`i v. Olo, 25 A.S.R.2d 33.

The rule that the grantee of an easement by implication may not materially increase the burden on the servient estate must balance against the principle that the extent of an implied easement includes those uses which are reasonably expected or required for normal land development. Le`i v. Olo, 25 A.S.R.2d 33.

In modern times, the installation of utility lines is a practical necessity incident to the residential use of property. Le`i v. Olo, 25 A.S.R.2d 33.

An easement by implied grant arises when the owner conveys one of two adjacent parcels of land or subdivides a single parcel, with the parties' silent intent that the grantee takes the land with all benefits that appear at the time of the transfer to belong to the land with respect to the land the grantor retains. Hanipale v. Iuta, 31 A.S.R.2d 92.

The parties to an implied easement must manifest their intent to create an implied easement through an existing use of the retained land that is apparent, permanent, and reasonably necessary to the beneficial enjoyment of the transferred land. The implied grant will extend to reasonably foreseeable changes in the present use. Hanipale v. Iuta, 31 A.S.R.2d 92.

To sustain an easement by implied grant, a party need only show reasonable necessity. Hanipale v. Iuta, 31 A.S.R.2d 92.

An easement of necessity over other tracts of land can be granted only if the facts reveal that the subject of the grant is an inaccessible land-locked parcel of land. Vaoga v. Wong, 7 A.S.R.2d 250 (Land & Titles Div. 2003).

Easement of necessity doctrine does not apply where the person seeking an easement has by choice created the very obstructions on their own land that create the need for an easement. Vaoga v. Wong, 7 A.S.R.2d 250 (Land & Titles Div. 2003).

§ 10(4) —Servitudes

Sometimes referred to as the executed-parol-license doctrine, the creation of a servitude by estoppel arises where an owner of land permits another to use the land under circumstances in which it was reasonable to foresee that the user would substantially change position believing that the permission would not be revoked, and the user did substantially change position in reasonable reliance on that belief. Vaoga v. Wong, 7 A.S.R.2d 250 (Land & Titles Div. 2003).

Under the servitude by estoppel rule, a landowner may be estopped to deny the existence of a servitude burdening the land only if the establishment of the servitude is necessary to avoid an injustice. Vaoga v. Wong, 7 A.S.R.2d 250 (Land & Titles Div. 2003).

In applying the servitude by estoppel rule, courts should be careful not to penalize persons who engage in neighborly acts of courtesy and cooperation by permitting others to use their land. Vaoga v. Wong, 7 A.S.R.2d 250 (Land & Titles Div. 2003).

§ 11 Covenants

When lessors, by not paying their lawful debt to the bank that held the mortgage on the leased premises, caused a writ of execution to be issued against the premises, they breached the covenant of quiet enjoyment which is an essential element of every leasehold agreement. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

Creative interpretations of specific restrictions on the use of real property will be accorded little weight. Lindgren v. Betham, 20 A.S.R.2d 98.

The implied covenant of quiet enjoyment allows a tenant to cancel his lease with no liability if the landlord "substantially interferes" with the tenant's use of the property. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

In order to constitute "substantial interference" with a commercial lease, the landlord must unreasonably interfere with the tenant's ability to conduct business. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

Land ownership and easement rights extend to those uses that are incidental or necessary to the reasonable use of the land. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

§ 12 Encroachments & Encumbrances

Fact village council approves construction of pastor's residence and village furnishes money and labor for construction is immaterial to issue as to whether residence is located on right land. Muasau v. Pita, 4 A.S.R. 337.

After studying 1929 survey, court finds that house of defendant encroaches on land of plaintiff. Tago v. Leota, 4 A.S.R. 341.

Since house of defendant is located on land decreed to belong to plaintiff, court orders eviction of defendant. Soliai v. Apelu, 4 A.S.R. 349.

Where great weight of evidence is that partially constructed fale is on defendant's family land, court will dismiss petition to remove it. Sa v. Fia, 4 A.S.R. 437

Where witness has not seen partially built fale and does not know what land it is on, testimony concerning right to build it is entitled to little weight. Sa v. Fia, 4 A.S.R. 437.

Where fence is located within rightful boundaries as determined by court, counterclaim to have it removed must be dismissed. Lutu v. Fuimaono, 4 A.S.R. 450.

Summary judgment would be awarded plaintiff on issue of land ownership previously established in a proceeding having in rem effect, but would be denied with respect to injunction against interference or encroachment on land where the pleadings and papers did not clearly show such interference or encroachment and where survey of disputed land in prior proceeding showed existing structures that might raise equitable issues. Tufono v. Vaeao, 13 A.S.R.2d 47.

Where a common grantor had sold two different adjoining parcels to two purchasers, and it appeared that strangers to these transactions had encroached on the land sold to the first purchaser, the first purchaser's remedy was against the people who were encroaching on his land and not against the second purchaser. Lutu v. Semeatu, 13 A.S.R.2d 88.

Where constructed rock wall encroached on property and diverted traffic upon property, owner of rock wall was liable for trespass. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

Whether or not to issue a mandatory injunction for removal of an encroachment, when the encroachment was not intentionally erected on another's property, is within the Court's discretion. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

When an encroachment is unintentional, the Court must balance the hardship to the defendants against the benefit to the plaintiff; if the former is great and the latter is slight, the court will ordinarily leave the plaintiff to his remedy at law. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

Where rock wall prevented plaintiffs from fully exercising their rights to the enjoyment of their lands, diverting traffic upon one plot and rendering nugatory rights-of-way, an injunction directing removal of the wall was appropriate. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

§ 13 Boundaries

§ 13(1) —Monuments & Markers

Actual monuments with reference to which conveyance is made will control description of boundaries, and where there is inconsistency between description by courses and distances and by monuments, monuments will control. Fruen v. Mageo, 2 A.S.R. 591.

Rule of law to effect that ownership follows change in course of stream or location of water does not apply to sudden and perceptible changes, and in event of such changes boundary line remains same even through stream has changed. Fruen v. Mageo, 2 A.S.R. 591.

Under Samoan custom, boundary trees are marked with "X" and trees on boundary line are common property of adjoining owners. Motu v. Faaletino, 3 A.S.R. 499.

Straight line of tall coconut trees between two tracts of land is strong circumstantial evidence of the historic boundary between the tracts. Faleafine v. Suapilimai, 7 A.S.R.2d 108.

Evidence that chief of neighboring family had pointed out a boundary line between two tracts of land, and evidence that party withdrew from disputed lands after such identification, is strong circumstantial evidence that occupants of disputed land once recognized the line as their boundary. Faleafine v. Suapilimai, 7 A.S.R.2d 108.

The idea that the owner of a valley has a right to the adjoining mountainsides as a sort of curtilage or natural frontier, while having some support in Western political theory and Samoan tradition, is not a principle of universal application. Afualo v. Fanene, Pualioa v. Afualo, 15 A.S.R.2d 48.

Continuing open use and occupation of a disputed area can be used to support a land claim. Ulufaleilupe v. Uiagalelei, 2 A.S.R.3d 212 (Land & Titles Div. 1998).

A plaintiff claiming a boundary encroachment has the burden of proof and fails to carry it where the defendant is related to the registered owner, the registration is in derogation of the plaintiff's claim, and the preponderance of the scant evidence in the case supports the defendant's presence on the land. Alai`asa v. Peka, 4 A.S.R.3d 270 (Land & Titles Div. 2000).

When a common boundary dispute arises, the deed controls if it is clear and unambiguous. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

A party may definitively establish a boundary line by acquiescence if the acquiescence continues for long enough. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

A straight line of trees is a common method of defining boundaries between adjacent, unregistered tracts of land in Samoa, and is strong circumstantial evidence of a historic property boundary. Filiupu v. Pogisa, 5 A.S.R.3d 230 (Land & Titles Div. 2001).

§ 13(2) —Boundary Disputes

Where there is no express agreement as to location of boundaries, adjoining proprietors cannot question line which they have, for considerable number of years, recognized as correct line between their properties. Fruean v. Mageo, 2 A.S.R. 591.

Unascertained or disputed boundary line dividing lands of adjoining owners may be permanently and irrevocably established by parol agreement of adjoining landowners. Ifopo v. Lutu, 4 A.S.R. 211.

Where both parties petition court for orders necessitating determination of boundary line, court will consider defendant's petition as counterclaim. Lutu v. Fuimaono, 4 A.S.R. 450.

Boundary disputes where evidence of actual division is not available can best be settled by agreement, survey, and registration. Paleafei v. Leatisua, 4 A.S.R. 496.

In boundary dispute between two parties, where there is evidence suggesting that a neighboring landowner who is not a party to the case may be the true owner of some or all of the disputed land, the court will not quiet title to the land or otherwise adjudicate the rights of the nonparty landowner, but will decide which of the two parties has proved a better right to occupy the disputed land. Faleafine v. Suapilimai, 7 A.S.R.2d 108.

Traditional boundary markers can be used to corroborate boundary lines. Ulufaleilupe v. Uiagalelei, 2 A.S.R.3d 212 (Land & Titles Div. 1998).

In determining the boundary line when the calls are inconsistent, priority is to be given to calls in the following order: natural objects or landmarks first, then artificial monuments, then adjacent boundaries, and then courses and distances. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

A physical object is only a monument to be considered in determining boundaries when it is described in the deed description. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

Where parties submitted alternate surveys generated by different surveyors, Court determined survey which referenced monuments on the common boundary in the grants to be superior to survey that utilized monuments located outside said boundary. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

§ 13(3) —Evidence

Court will place greater weight on testimony of matai as to correct boundaries than on testimony of women or children since it is his business to know these things. Toomata v. Vea, 2 A.S.R. 564.

Court will rely upon testimony of matai, 86 years old, as to boundaries of communal land of his family. Lutu v. Fuimaono, 4 A.S.R. 450.

Right of Use document, indicating size of land, is evidence of location of boundaries. Lutu v. Fuimaono, 4 A.S.R. 450.

Testimony of litigant that at seventeen years of age he had personally entered into a boundary agreement with neighboring landowner, although at the time in question his father had been living and working on the land in question, was not credible. Falefia v. Sipili, 7 A.S.R.2d 1.

In ascertaining the boundaries of communal land, the court looks at a number of factors, including the reasonableness of location, whether they are logical extensions of existing, determined boundaries, the existence of natural and man-made landmarks, and the resulting configuration of the land. Toeaina v. Konelio, 22 A.S.R.2d 25.

In determining the correct boundaries of a parcel of land, the court may compare and overlay different surveys of the land, as well as consider physical landmarks, in order to identify boundaries on which agreement exists and then proceed to resolve boundary discrepancies among the surveys. Huff v. Brown, 23 A.S.R.2d 115.

Where a boundary encroachment is claimed, the Court will not scrutinize and interpret survey maps filed in a separate case; the expert testimony of land surveyors would better assist the trier of fact. Alai`asa v. Peka, 4 A.S.R.3d 270 (Land & Titles Div. 2000).

In determining the boundary line when the calls are inconsistent, priority is to be given to calls in the following order: natural objects or landmarks first, then artificial monuments, then adjacent boundaries, and then courses and distances. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

Quantity of land is considered a relatively unreliable indicator, and should be resorted to only after courses and distances. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

Where parties submitted alternate surveys generated by different surveyors, Court determined survey which referenced monuments on the common boundary in the grants to be superior to survey that utilized monuments located outside said boundary. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

Where plaintiff had maintained hedge on property boundary for over 25 years, defendants acquiescence to the shrubbery during such time sufficiently evidenced the parties' intention as to the true common boundary. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

Where surveyor's testimony depicted surveyed plots as different areas of land, court nonetheless determined that the same land was at issue and did so based upon the facts that boundary configurations were nearly identical, that plots were of substantially the same acreage and, most importantly, the underlying facts and issues determined in prior litigation showed them to be the same. Tuana'itau v. Leomiti, 7 A.S.R.3d 262 (Land & Title Div. 2003).

§ 13(4) —Ambiguous Deeds

When a common boundary dispute arises, the deed controls if it is clear and unambiguous. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

If a deed is ambiguous, the intent of the parties at the time of the original grant controls. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

When a deed contains ambiguities regarding the location of boundary lines, the court should attempt to harmonize all words and descriptions used in the grant and consider the surrounding circumstances. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

§ 14 Property Torts

§ 14(1) —Trespass

SEE TORTS § 2(3) – TRESPASS

One part of one in legal possession of real property there exists privilege to defend possession thereof against intruders who, without consent, trespass thereon, and matai may use reasonable force to exclude trespasser. Fesagaiga v. Alo-Pepe, 3 A.S.R. 118.

Trespasser is not entitled to compensation for plantations which he put on land while committing trespass. Fesagaiga v. Alo-Pepe, 3 A.S.R. 118.

Where person takes cinders from property in good faith, thinking that he has permission from rightful owner, court will not grant injunction against future trespass since remedy at law is adequate. Lualemana v. Brown, 3 A.S.R. 348

Injunction relief is not matter of right but its grant or refusal rests in discretion of court, and court will draw distinction between temporary trespasses and trespasses which are of reoccurring nature, refusing to grant injunctions for temporary trespasses since remedy at law is adequate, but granting injunctions in cases of reoccurring trespasses where damages would be irreparable. Lualemana v. Brown, 3 A.S.R. 348.

Court will not grant injunction against trespass but will leave plaintiff to remedy at law for damages should defendant commit trespass on surveyed land. Lutu v. Fuimaono, 4 A.S.R. 450.

Court of equity will not restrain mere threatened trespass upon real estate. Lutu v. Fuimaono, 4 A.S.R. 450.

Crime of trespass requires entry and intent, which are present where person passes under roof of house to view inhabitant for criminal purposes. Bernard v. Am. Samoa Gov't, 1 A.S.R.2d 45 (App. Div. 1980).

If no basis exists on which to calculate damages, court may award damages in name only. Lutu v. Taesaliali`i, 11 A.S.R.2d 80.

An owner or possessor of land has a duty to cause no unreasonable risk of harm to others in the vicinity and so is liable for creating or maintaining dangerous artificial conditions. Crispin v. American Samoa Gov't, 21 A.S.R.2d 60.

The tort of trespass to land, unlawful interference with its possession, may occur by causing the entry of some other person or thing and may be committed as the result of an intentional, reckless, or negligent act, or as the result of an ultrahazardous activity. Letuli v. Le'i, 22 A.S.R.2d 77.

To commit the tort of trespass to land, the only intent required is the intent to enter another's land, regardless of the actor's motivation. Letuli v. Le'i, 22 A.S.R.2d 77.

The usual remedy for harm to land resulting from a past trespass and not amounting to total destruction of the value of the land is compensation (1) measured by the difference between the market value of the land before and after the harm or, where appropriate, the cost of restoration that has been or may be reasonably incurred, (2) for loss of use of the land, and (3) for discomfort and annoyance to the occupant of the land. Letuli v. Le'i, 22 A.S.R.2d 77.

If a trespass involves a continuing invasion on the land, damages may be recovered for both the past invasions and either the decrease in the value of the land caused by the prospect of the continuing invasions or the owner's cost of avoiding future invasions. Letuli v. Le'i, 22 A.S.R.2d 77.

Though an injunction is usually inappropriate for past acts of trespass because the remedy at law is adequate, both injunctive relief and compensatory damages may be granted for a continuing trespass. Letuli v. Le'i, 22 A.S.R.2d 77.

The employer of an independent contractor is generally not liable for physical harm done by the contractor or the contractor's employees; however, an employer is liable when he knows or has reason to know that, in the ordinary course of doing the work in a usual or prescribed manner, the work is likely to result in trespass. Letuli v. Le'i, 22 A.S.R.2d 77.

The usual remedy for harm to land resulting from a past trespass and not amounting to total destruction of the value of the land is compensation (1) measured by the difference between the market value of the land before and after the harm or, where appropriate, the cost of restoration that has been or may be reasonably incurred, (2) for loss of use of the land, and (3) for discomfort and annoyance to the occupant of the land. Letuli v. Le'i, 22 A.S.R.2d 77.

If a trespass involves a continuing invasion on the land, damages may be recovered for both the past invasions and either the decrease in the value of the land caused by the prospect of the continuing invasions or the owner's cost of avoiding future invasions. Letuli v. Le'i, 22 A.S.R.2d 77.

Though an injunction is usually inappropriate for past acts of trespass because the remedy at law is adequate, both injunctive relief and compensatory damages may be granted for a continuing trespass. Letuli v. Le'i, 22 A.S.R.2d 77.

The constant and unremitting scrutiny of students on school premises in order to prevent injury is not expected of school officials and teachers. Motu v. American Samoa Gov't, 28 A.S.R.2d 3.

A prevailing plaintiff in an action for trespass to real property is always entitled at least to nominal damages, even in the absence of harm or plaintiff's failure to prove compensatory damages. American Samoa Gov't v. Estate of Fuimaono Tuinanau, 28 A.S.R.2d 187.

A party harmed as a result of a trespass is generally entitled to damages for: (1) diminution in value; (2) loss of use of the land; and (3) discomfort and annoyance to the occupant of the land. Tauiliili v. Faleatua , 4 A.S.R.3d 315 (Land & Titles Div. 2000).

The tort of trespass to land is the unlawful interference with its possession. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

The only intent needed to be proven in order to establish the tort of trespass is the intent to enter another’s land, regardless of the actor’s motivation. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

In a civil trespass case, the claimant must establish (1) unlawful interference with the possession of property, (2) which is the result of intentional, reckless, negligent or ultrahazardous activities, (3) where plaintiff attempted to be at the place on the land where the trespass allegedly occurred, and (4) the entry of some other person or thing. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Where employees of construction company, while on contract with public utility, entered private landowner’s property and destroyed cement wall, chain-link fence, mango tree, plants and shrubs, and dug a trench in the ground without first obtaining easement or making arrangements to obtain one, such conduct constituted a trespass. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

If an employer employs an independent contractor to do work which he knows or has reason to know will likely involve a trespass upon the land of another, he is liable for harm

resulting to others from such trespass. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Where constructed rock wall encroached on property and diverted traffic upon property, owner of rock wall was liable for trespass. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

One is subject to liability to another for trespass if he enters land in the possession of the other, or causes a thing or a third person to do so. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

A continuing trespass that can be abated is properly eliminated by injunctive relief. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

§ 14(2) —Damages for Trespass

In the absence of proof of pecuniary loss, compensatory damages for harm to land is limited to nominal damages, though punitive or exemplary damages may be awarded. Letuli v. Le'i, 22 A.S.R.2d 77.

Intended to punish a wrongdoer and deter him and others from similar, future misconduct, punitive or exemplary damages may be awarded for outrageous conduct shown by acts done with evil motive or reckless indifference to others' rights; among the circumstances to consider are the character of a defendant's act and the nature and extent of a plaintiff's harm which the defendant caused or intended to cause. Letuli v. Le'i, 22 A.S.R.2d 77.

In the absence of proof of pecuniary loss, compensatory damages for harm to land is limited to nominal damages, though punitive or exemplary damages may be awarded. Letuli v. Le'i, 22 A.S.R.2d 77.

Though an injunction is usually inappropriate for past acts of trespass because the remedy at law is adequate, both injunctive relief and compensatory damages may be granted for a continuing trespass. Letuli v. Le'i, 22 A.S.R.2d 77.

Punitive damages may be recovered whenever the elements of fraud, malice, gross negligence, or oppression mingle in the controversy in order to punish the defendant and deter others from the commission of similar wrongs. Fiaui v. Faumuina, 27 A.S.R.2d 36.

A prevailing plaintiff in an action for trespass to real property is always entitled at least to nominal damages, even in the absence of harm or plaintiff's failure to prove compensatory damages. American Samoa Gov't v. Estate of Fuimaono Tuinanau, 28 A.S.R.2d 187.

Plaintiffs demonstrated great or irreparable injury where it was shown that co-landowner Defendant and his business partner had engaged in removal and excavation of land's natural resources, agricultural products and timber without government permits, or the approval of co-landowners, and had also allowed cattle to roam freely, thereby damaging other parts of the property. Gurr v. Gurr, 1 A.S.R.3d 203 (Land & Titles Div. 1997).

In trespass actions, compensatory damages are to be measured by (1) diminution in value, i.e., difference between market value of land before and after the harm, or cost of restoration when appropriate, (2) loss of use of the land, and (3) discomfort and annoyance to the occupant of the land. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Where plaintiff in trespass action had testified that defendants had destroyed plants, fences and walls on his land, but had failed to present any evidence regarding the market value of such items, court would not award compensatory damages. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

In trespass actions, proof of pecuniary loss is required. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

In trespass actions, where substantial actual damages are not susceptible to precise proof, the damage entitlement is limited to nominal damages. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Although plaintiffs are normally required to prove the market value of items destroyed by a trespass, a "restoration cost exception" exists where the landscaping and vegetation destroyed have intrinsic value to the landowner and are located on a homesite or recreational lot. In such cases, intrinsic value is assumed, and evidentiary support is not required. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

In trespass actions, restoration cost damages may exceed the diminution in market value of the real property on which the vegetation grew. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Where property and vegetation damaged as result of trespass was on rental property, court refused to award restoration cost damages. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

In order to award punitive damages in a trespass action, the trespasser's conduct must have been wantonly reckless or malicious. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Although trespassing parties' actions did not appear to have based on any evil intent, they nonetheless were done with

reckless disregard for rights of private property owner, in violation of written contract and public utilities' rules, and despite repeated requests to cease. Consequently, punitive damages were warranted. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

In trespass cases, damage awards must be trebled where the damage is to timber, young tree growth, products of tree growth, or cultivated grounds without lawful authority or permission. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

§ 14(3) —Negligence

SEE TORTS § 1 – NEGLIGENCE

Negligence of a landowner or land occupier is not a substantial factor proximately causing harm if the harm would have occurred despite the negligence of the landowner or land occupier. Crispin v. American Samoa Gov't, 21 A.S.R.2d 60.

§ 15 Equitable Claims

§ 15(1) —Equitable Title

In accordance with provision of Treaty of Berlin, adhered to by Samoan Lands Commission and High Court, persons who acquire land through good faith and improve it, afterwards finding that their title is defective, may receive good title by payment of equitable and just sum of money to true owner; such sum may be determined by court. Sapela v. Veevalu, 1 A.S.R. 124.

Possessor of land in bona fide belief of ownership is entitled to reimbursement for value he added to land when he is evicted by action of true owner. Sapeal v. Veevalu, 1 A.S.R. 124.

It would be inequitable for court to permit claimant to regain possession of land after many years when value of real estate has increased substantially. Tufaga v. Mativa, 1 A.S.R. 184.

Where claimant enters upon land of another and makes plantations thereon, he does not divest owner of title to land, and fact owner's action for trespass against claimant was dismissed has no bearing on title. Feso v. Vae, 1 A.S.R. 254.

Person living on land with invalid deed, nevertheless, had color of title, and was entitled to compensation for War Damages Claims. Willis v. Willis, 2 A.S.R. 276.

Substantial investment in rebuilding house supports claim of equitable title to house. Siania v. Solaita, 4 A.S.R. 362.

Person entitled to receive title to land upon completion of payments under a land sale contract is the equitable owner of the land. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

Court would exercise its equitable discretion to allow husband of judgment debtor, who had made payments on land contract and paid for a house on the land, to retain in preference to the judgment creditor half of the proceeds from sale of land which had been held in the name of the judgment debtor. Te'o v. Continental Insurance Co., 6 A.S.R.2d 135.

Where land claimant waited fifty-two years, before attempting to evict those upon the land, and innocent third parties bought land, built homes, and raised families on the land, the doctrine of laches would apply to limit any recovery, and good faith improvers would have a right to compensation upon eviction. Puailoa v. Estate of Lagafuaina, 11 A.S.R.2d 54.

Trial court correctly imposed a trust in favor of appellant's children, pending the outcome of the appeal, over land sale proceeds the trial court had awarded to appellant where the issue on appeal was whether appellant's spouse had successfully transferred the land to the children before the sale or whether it remained her property in which appellant had an equitable interest. Tedrow v. Manuma, 12 A.S.R.2d 51.

§ 15(2) —Injunctions

SEE CIVIL PROCEDURE § 8 – INJUNCTIONS

Government is entitled to injunction restraining defendants from erecting building on land between sea and Pago Pago highway since this is government land. Luce v. Pila, 3 A.S.R. 127.

Where there is not evidence that defendant is threatening to interfere with possession of premises occupied by plaintiff, court will not issue injunction to restrain such interference. Yuhashi v. Lopeti, 3 A.S.R. 322.

Injunction will not lie to restrain one from doing what he is not attempting to do and does not intend to do, and will not issue in absence of actual or presently threatened interference. Lualemana v. Brown, 3 A.S.R. 348.

Where court finds that land is communal family land and that person constructing house thereon is member of family and has been assigned land by matai, court will dismiss petition for injunction to prevent construction of house on land. Atufili v. Timoteo, 3 A.S.R. 395.

A party should not be allowed to avoid an injunction that would otherwise issue against him simply by doing all the irreparable harm he plans to do with no advance warning to those who will be injured. Talili v. Satele (Mem.), 3 A.S.R.2d 36.

Where evidence indicated that extraordinary generation of fumes resulted from scheduled annual fuel tank cleaning process, process had been completed and fume level had subsided, and process would not be repeated for about a year,

neighboring residents had an adequate remedy at law and were not entitled to a preliminary injunction against fuel storage at facility in question. Tavai v. American Samoa Government, 6 A.S.R.2d 97.

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.

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.

Preliminary injunction would be granted enjoining defendant from misrepresenting on the public record that family land was owned by non-matai family member who had signed her building permit application; the defendant would have ten days to rectify her building permit to reflect family ownership and family approval given under the signature of the matai with the appropriate family authority. Leaana v. Laban (Mem.), 12 A.S.R.2d 93.

Preliminary injunction against construction on certain land was denied where petitioner's case consisted of a claim to the land based on an uncertain family history, while respondent claimed ownership based upon a differing family history plus a showing of established use and settled occupation; and where petitioner did not show that the construction would irreparably alter the land or cause any other great or irreparable injury. Gaoa v. Tulifua, 13 A.S.R.2d 30.

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.

Injunctive relief was denied absent surveys delineating the exact interests of plaintiffs which required such relief. Vaivao v. Craddick, 14 A.S.R.2d 108.

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.

Plaintiff failed to establish sufficient grounds for a preliminary injunction enjoining defendant/matai from building on a portion of family communal land, where the court had previously found that the matai's sleeping quarters were traditionally located at that site, the matai was building the home as sa`o for the benefit of the extended family rather than for herself or her immediate family, and the plaintiffs failed to show they would suffer great or irreparable harm if an injunction did not issue. Mauga v. Asuega, 17 A.S.R.2d 4.

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.

For purposes of a preliminary injunction, a request for surety is inappropriate when the subject matter of the request relates to communal property issues. A.S.C.A. § 41.1309(b). Mamea v. American Samoa Power Authority, 26 A.S.R.2d 47.

Where unauthorized structure is small, movable, not a significant encumbrance, and nearly completed, no irreparable injury will result by allowing its completion and no preliminary injunction will lie. Pagofie v. Matagi, 1 A.S.R.3d 227 (Land & Titles Div. 1997).

Where party expressed intent to prevent new landowner from exercising its ownership rights and continually trespassed on property, interfering with new landowner’s ability to lease premises and threatening cancellation of the land sale, such actions established the necessary criteria for issuance of a permanent injunction. Amerika Samoa Bank v. Hunkin, 4 A.S.R.3d 278 (Land & Titles Div. 2000).

A preliminary injunction is appropriate only when there is (a) a substantial likelihood that at trial on the merits the applicant will prevail and obtain a permanent injunction, and (b) great or irreparable injury will result to the applicant before a full and final trial can be fairly held on the propriety of a permanent injunction. Gi v. American Samoa Gov't, 5 A.S.R.3d 254 (Land & Titles Div. 2001).

Although normal procedure was to stay proceedings pending administrative decision, where plaintiff modified request for

injunctive relief, seeking instead the removal of a constructed sidewalk, such modification required full consideration of the property rights of the parties for both preliminary and permanent injunction purposes and rendered the case ripe for trial. Court properly considered case at that point, and would have done the parties a disservice had it delayed further. Gi v. American Samoa Gov't, 5 A.S.R.3d 259 (Land & Titles Div. 2001).

When the sa`o's position is vacant, an action for injunctive relief concerning communal land must be brought by at least two blood male matai members of the family, over age 18, or if the family does not have such members, by at least two blood members, over age 18. Fiame v. Tuiolemotu Family, 6 A.S.R.3d 310 (Land & Titles Div. 2002).

Where party on contested activities on disputed communal land, Court could issue interim order, including preliminary injunction, and stay further proceedings despite the fact that jurisdictional certificate of irreconcilable dispute had not yet been issued. Fiame v. Tuiolemotu Family, 6 A.S.R.3d 310 (Land & Titles Div. 2002).

Where rock wall prevented plaintiffs from fully exercising their rights to the enjoyment of their lands, diverting traffic upon one plot and rendering nugatory rights-of-way, an injunction directing removal of the wall was appropriate. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

Actual physical interference with the use and enjoyment of another's land constitutes the most common type of nuisance and is properly subject to the issuance of a permanent injunction. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

A continuing trespass that can be abated is properly eliminated by injunctive relief. Larson v. McMoore, 7 A.S.R.3d 254 (Land & Titles Div. 2003).

§ 15(3) —Good Faith Possessor/Improvements

Where intruder on land of another in bona fide belief of title to land makes plantations, intruder and owner should attempt to agree on compensation to be made intruder fro improvements to land, and failing to agree, should resort to arbitrator. Feso v. Vae, 1 A.S.R. 254.

Even though legal title to land is in another, there may be equitable claim for improvements made on property by intruder who honestly believe he was owner of land. Feso v. Vae, 1 A.S.R. 254.

If a party, with a good faith belief of ownership, builds a home on the property of another, the Court must fashion a remedy that avoids economic waste and unjust enrichment. Atofau v. Lopa, 2 A.S.R.2d 45 (App. Div. 1985).

Occupant of land who, believing that conveyance to her by prior occupant was valid, borrowed money and used it to build improvements on the land, was entitled to compensation upon eviction by true landowner. Puailoa v. Estate of Lagafuaina, 8 A.S.R.2d 36.

Where true landowner and good-faith improver were each in possession of the land and the improvements for several years with knowledge of competing claim; value of the improvements was about equal to value of the land itself; and each party collected rents for several years while doing nothing to resolve the dispute, neither party was entitled to compensation from the other for rents collected during this period. Puailoa v. Estate of Lagafuaina, 8 A.S.R.2d 36.

Where rule by which good faith possessor of land is entitled upon eviction to compensation for the full amount by which his improvements enhanced the value of the land, and alternate rule by which possessor is entitled to no more than the actual cost of his improvements, would dictate the same result in the case at hand, court deciding case of first impression need not choose between the two rules. Roberts v. Sesepasara, 8 A.S.R.2d 124.

Justification for using the cost of improvements made by good faith possessor of land as a ceiling on the amount of compensation to which possessor is entitled upon eviction is that, once the possessor has been made whole, he can no longer complain that any enrichment of the true landowner is unjust. Roberts v. Sesepasara, 8 A.S.R.2d 124.

Rule by which evicted good faith possessor can recover no more than the actual cost of his improvements must be applied so as to prevent unjust enrichment by making possessor whole; actual cost must therefore be calculated according to the present value of money spent on improvements years ago. Roberts v. Sesepasara, 8 A.S.R.2d 124.

Where good faith possessor of land had paid for improvements made by previous occupant who was not a good faith possessor, and had spent additional funds on further improvements, and where true owner of land had neither built nor paid for any of the improvements, possessor was entitled to compensation both for the improvements she had purchased and for those she had made herself. Roberts v. Sesepasara, 8 A.S.R.2d 124.

Good faith possessor of land, who had rented the land with its improvements to a third party, is entitled upon eviction to retain any rents she received, less the rental value of the land without any improvements. Roberts v. Sesepasara, 8 A.S.R.2d 124.

Where landowner, in action for eviction of good faith possessor and accounting for rents received by the possessor, presented no evidence of what the fair rental value of the land

would have been without any improvements, court in its discretion could deny landowner any credit for such rental value. Roberts v. Sesepasara, 8 A.S.R.2d 124.

Where (1) possessor of property had continued to receive rental payments for property after notice of claim by true landowner; (2) during this time possessor had taken care of the property, made repairs and improvements, and paid for insurance; (3) true landowner during a comparable period of possession had collected rents without insuring, improving, or caring for the property; and (4) some undetermined part of the rental value of the property was due to improvements made by the possessor prior to notice of the claim by the true landowner, it was within court's equitable discretion to treat possessor as a good faith possessor throughout the period in question and to allocate half of the net rents (receipts minus expenditures) to each party. Roberts v. Sesepasara, 8 A.S.R.2d 124.

Knowledge of an adverse claim ordinarily prevents a possessor from being in good faith for the purpose of receiving compensation for improvements upon eviction. Tulisua v. Olo, 8 A.S.R.2d 169.

Possessor of land may sometimes be considered a good faith possessor even though he has knowledge of an adverse claim, when the true owner has "slept on his rights" or otherwise contributed to a situation in which it would be inequitable to deny compensation for value of improvements. Tulisua v. Olo, 8 A.S.R.2d 169.

Possessor of land who built house after notice of claim by party later held to be true landowner, over repeated objections by landowner, after suit had been filed and only a few months before trial, and who built house quickly in apparent attempt to affect the outcome of the pending litigation, acted at his own risk, and trial court was within its discretion in denying him compensation for the value of the house. Tulisua v. Olo, 8 A.S.R.2d 169.

One who begins construction on disputed land after notice of the opposing party's claim, and especially during the pendency of litigation to determine title the land, does so at his own risk and is not entitled upon eviction to compensation for the value of his improvements, at least where the opposing party has pursued its claim with diligence. Uo v. Fai`ivae, 10 A.S.R.2d 150.

Plaintiff's earlier notice to defendants that they might be occupying part of plaintiff's land did not prevent them from being good-faith improvers with respect to a particular house, when that notice concerned another building and plaintiff did not then know that the house was on her land. Lutu v. Semeatu, 17 A.S.R.2d 18.

Good-faith improvers are entitled to reimbursement for their actual expenses in improving the property or for the amount by which the improvements enhanced the value of the property whichever is less. Lutu v. Semeatu, 17 A.S.R.2d 18.

If evicted by the true owner, a person who made improvements on the land in the good-faith belief that he was the owner or that the owner had authorized him to build the improvements is entitled to compensation for their value. Leapagatele v. Nyel, 17 A.S.R.2d 201.

The measure of compensation to a good-faith improver is the lesser of the actual cost of the improvements or the amount by which they have enhanced the value of the property. Leapagatele v. Nyel, 17 A.S.R.2d 201.

A person is not entitled to compensation for improvements when he could not have believed in good faith that he had the permission of the landowner. Leapagatele v. Nyel, 17 A.S.R.2d 201.

As to the cost of the improvements and the amount by which they enhanced the property's value, if one party submits evidence which is clearly unreasonable, the court may accept the other party's evidence as conclusive. Leapagatele v. Nyel, 17 A.S.R.2d 201.

Good-faith improvers may be entitled to equitable relief for the value of improvements made to the land, but those occupying communal lands in direct opposition to the matai's wishes and in violation of a stipulated preliminary injunction are not entitled to such relief. Leapagatele v. Malauulu, 19 A.S.R.2d 109.

Equitable relief of compensation for the value of improvements made to the land is only available to an occupant who has made improvements in "good faith" and whose possession was under some color or claim of title. Faleatua v. Tauiliili, 19 A.S.R.2d 122.

Ordinarily, an improver's knowledge of an adverse land claim vitiates a claim to "good faith" for the purposes of receiving compensation. Faleatua v. Tauiliili, 19 A.S.R.2d 122.

An improver of land may be charged with actual notice when he receives notice of some fact or circumstance that would put a man of ordinary prudence to an inquiry which would, if honestly followed, lead to the knowledge of the adverse title. Faleatua v. Tauiliili, 19 A.S.R.2d 122.

A good-faith improver, whose possession of land was under a claim or color of title, is entitled to equitable relief to compensate for improvements; the measure of compensation is the lesser of (1) the actual cost of the improvements or (2) the amount by which the improvements enhanced the value of the property. Fofoagaitotoa v. Faleafine, 21 A.S.R.2d 110.

Although having built on property without the landowner's permission and so not a good-faith improver, defendant was

still entitled to compensation when the plaintiff permitted construction to continue and so contributed to a situation in which denying compensation would be inequitable. Scratch v. Sua, 22 A.S.R.2d 53.

When the court ruled that land was not a lessor's individually-owned land and so cancelled a lease, the lessee was entitled to reimbursement for unjust enrichment for improvements made to the land from the matai having authority over the land and from his communal family. Ava v. Logoai, 22 A.S.R.2d 65.

A "good-faith" possessor is one who makes improvements on land in the honest belief that he is the owner; thus, a person knew of an adverse claim to land but nonetheless carried on with construction is not entitled to equitable relief for the value of improvements. Pili v. Tuia'ana, 22 A.S.R.2d 100.

A good-faith improver of land is entitled to compensation for the lesser amount of either the present value of the actual construction cost of the improvements or the present, enhanced value of the property resulting from the improvements. Fanene v. Taaseu, 23 A.S.R.2d 1.

"Good faith" improvers of land are entitled to equitable relief, against unjust enrichment, in the way of compensation for improvements upon eviction. Estate of Malae v. Sega, 26 A.S.R.2d 136.

A good faith possessor is one who makes improvements on land in the honest belief that he is the owner, whereas knowledge of an adverse claim usually prevents someone from being a good faith possessor. American Samoa Gov't v. Estate of Fuimaono Tuinanau, 28 A.S.R.2d 187.

After eviction, former possessors of land are entitled to remove fixtures and possessions, but they are not entitled to gain compensation for the value of their improvements unless they are good faith possessors. American Samoa Gov't v. Estate of Fuimaono Tuinanau, 28 A.S.R.2d 187.

A good faith possessor must have a reasonable belief that he holds valid title to the property, and when he learns that he has no title or that the title is defective, he is no longer acting in good faith. American Samoa Gov't v. Estate of Fuimaono Tuinanau, 29 A.S.R.2d 114.

§ 15(4) —Estoppel

Estoppel generally arises from silence only when a party has a duty to speak; an owner is not estopped from pursuing a claim for rent despite failing to insist on timely payment; and a lessee remains liable for rent, and materially breaches a lease by failing to pay rent. Tiumalu v. Levi, 4 A.S.R.3d 291 (Land & Titles Div. 2000).

Under the servitude by estoppel rule, a landowner may be estopped to deny the existence of a servitude burdening the land only if the establishment of the servitude is necessary to avoid an injustice. Vaoga v. Wong, 7 A.S.R.2d 250 (Land & Titles Div. 2003).

§ 15(5) —Constructive Trusts

SEE CIVIL PROCEDURE § 9(6) —CONSTRUCTIVE TRUSTS

§ 16 Co-Ownership

§ 16(1) —Possession and Use of Common Estate

Under common law as adapted to conditions of Samoa, co-owners of land, excluding deceased owner, are tenants in common, and search subject to right of lessee. Willis v. Willis, 2 A.S.R. 276.

Where one of two or more co-tenants, without consent, erects building on common property which excluded co-tenant, said excluded co-tenant may remove building without becoming liable for trespass and may enjoin construction of building, unless property has been legally divided. Luce v. Pila, 3 A.S.R. 127.

Co-owner of real property has right to enter upon common estate and take possession of while thereof, subject only to equal right of his companions in interest. Tolivale v. Ufanua, 3 A.S.R. 196.

Tenant in common is equally entitled to use and possession of common property, and has right to occupy whole of property and every part thereof, and cannot be ejected for occupying more than his share of premises would be in case of partition. Yuhashi v. Lopeti, 3 A.S.R. 322.

A tenant in common is entitled to possession of common property as against all others save his co-tenants. Willis v. Laugutu, 4 A.S.R. 216.

Co-tenant may use and enjoy common estate in same manner as though he was sole proprietor, and subject to rights of co-tenants, he may occupy and utilize every portion of property at all times but may not exclude co-owners. Ofoia v. Pritchard, 4 A.S.R. 326.

Land held to belong to family members as tenants in common is "communal" insofar as each member held an undivided interest in the land by virtue of joint occupation and cultivation, but was not Samoan communal property for purpose of statutes requiring action to be taken by a matai. A.S.C.A. § 37.1502-03. Willis v. Willis, 4 A.S.R.2d 144.

Judgment declaring land belonging to a family that was not a traditional Samoan family with a matai to be "communal land" would be construed as having recognized family members as tenants in common of the land, thus enabling them to own and

develop land "communally" notwithstanding the nonexistence of a matai. Willis v. Willis, 4 A.S.R.2d 188.

One tenant in common cannot sell or bind the interest of another co-tenant without proper authorization, including any specific portion of that estate. Onofia v. Pitoitua, 1 A.S.R.3d 159 (Trial Div. 1997).

A tenant in common possesses an undivided possessory interest in the entire area of the land and an equal say in the uses of the land. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

A lease of land held by tenants in common is not valid unless each of the owners either consented to, gave the lessor express or apparent authority to enter, or ratified the lease transactions. Tulifua v. Tuitele, 2 A.S.R.3d 205 (Land & Titles Div. 1998).

Where one co-tenant conveys title to part of the co-owned land without authorization of the other co-tenants, title to tract conveyed may still inure to the grantee of the unauthorized conveyance where the tract is partitioned to the grantor in subsequent proceedings and if recognition of the prior conveyance can be done without prejudice to the other co-tenants. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

Where two unrelated families had lived together on land peacefully and harmoniously over significant period of time, interspersing their own improvements upon the land without any logical pattern of present control, court would not declare land to be sole communal land of either family, nor would it create a new form of communal land ownership, but instead ruled that each was entitled to continue, indefinitely, such joint occupancy and use. Faumuina v. Tautolo, 5 A.S.R.3d 262 (Land & Titles Div. 2001).

Where land was found to be neither the exclusive communal land of either of two family-parties, court apportioned rents owed by government for use of such land based on the extent of occupancy and use by each family. Faumuina v. Tautolo, 5 A.S.R.3d 262 (Land & Titles Div. 2001).

§ 16(2) —Partition

Where decree of joint ownership would be inequitable, court will divide land among joint owners. Leapaga v. Taumua L., 2 A.S.R. 56.

Upon partition of tenants in common, court will divide property equitably and justly. Emmelina v. Aneki, 2 A.S.R. 444.

Where court partitions lands and names two of landowners as owners of partitioned part, they hold as tenants in common and not as joint tenants since common law which would have made them joint tenants is not suitable to conditions in American Samoa, and right of survivorship would be unfair to heirs. Emmelina v. Aneki, 2 A.S.R. 4444.

Tenancy in common differs from traditional Samoan land tenure in that any co-owner is entitled to a partition of the property. Willis v. Willis, 4 A.S.R.2d 144.

Where one co-tenant conveys title to part of the co-owned land without authorization of the other co-tenants, title to tract conveyed may still inure to the grantee of the unauthorized conveyance where the tract is partitioned to the grantor in subsequent proceedings and if recognition of the prior conveyance can be done without prejudice to the other co-tenants. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

Where portion of property had been previously transferred, without recording, to third-party, and subsequent transferals of property were rescinded, court nonetheless found it equitable to relocate portion of property previously transferred due to construction that had already taken place on land. Pomare v. Pefu, 5 A.S.R.3d 242 (Land & Titles Div. 2001).

§ 17 Landlord-Tenant

§ 17(1) —Generally

New lease to original tenant of same premises operates as surrender of old lease by operation of law unless contrary to intention of parties. Haleck v. Tiumalu, 3 A.S.R. 380.

Trial court did not err in holding party personally liable for rental payments when that party had personally engaged in negotiations for the rental and had not formed a corporation until about the time he took possession of the property, and where all transactions were so informal that it was not clear property owner intended to deal with a corporation rather than an individual. Filioali'i v. Adams, 3 A.S.R.2d 105.

Where plaintiffs had waited three years to file suit after territorial Attorney General had announced that a territorial statute was unconstitutional, and government had granted a number of leases during the intervening years that did not conform to requirements of the statute, action for declaratory judgment that the statute was unconstitutional would be entertained but demand for the invalidation of leases signed prior to the date suit was filed was barred by laches. Tuika Tuika v. Governor of American Samoa, 4 A.S.R.2d 85.

When lessors, by not paying their lawful debt to the bank that held the mortgage on the leased premises, caused a writ of execution to be issued against the premises, they breached the covenant of quiet enjoyment which is an essential element of every leasehold agreement. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

Unrecorded lease of building, which did not include the land on which the building was located, gave rise only to contractual rights, not to a real interest in the property. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

No lease existed when the people who signed documents purporting to create various contract and/or property rights in some buildings had no authority to do so. Fagasoaia v. Fanene, 17 A.S.R.2d 91.

If there is no breach of a lease agreement, there can be no claim for which damages may be granted for lost profits and lost value of leasehold interest. Sala v. Tuika, 18 A.S.R.2d 29.

A tenant who abandons occupancy before the expiration of the lease without any legal justification remains liable for rent. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

Under A.S.C.A. § 43.0120, the statute of limitations on contract actions is 10 years; an action for rent due more than 10 years before the action is filed is barred by the statute of limitations. Tiumalu v. Levi, 4 A.S.R.3d 291 (Land & Titles Div. 2000).

Once a leasehold is created, the parties to the lease, and their executors, administrators, successors and assigns are entitled to have the contractual terms of the lease respected and upheld. Estate of Rose Turner, 6 A.S.R.3d 272 (Trial Div. 2002).

Court was without authority to award attorney's fees where estate's attorney had asked for them in defending estate from objection to passing leasehold interest, which was purportedly frivolous and made in bad faith. Estate of Rose Turner, 6 A.S.R.3d 272 (Trial Div. 2002).

Under the provisions of A.S.C.A. § 37.0221(a) and (b), native or communal land may, with the approval of the Governor, be leased to any person for any term not exceeding 55 years for any purpose, except for the mining of minerals and cutting of timber. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

§ 17(2) —Terms and Conditions of Lease

There is no statute of frauds in American Samoa, and lease is not required to be in writing. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Covenant requiring lessee to pay for fire insurance coverage does not require him to procure additional insurance as value of building increases. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Covenant to renew contained in lease is valid and for consideration even though lease has no obligation to renew since it may be inducement for his acceptance of lease and payment of consideration. Haleck v. Tiumalu, 3 A.S.R. 380.

Where lessor refuses to enter into a new lease in accordance with renewal clause of old lease, lessee is entitled to specific performance requiring lessor to so enter into new lease. Haleck v. Tiumalu, 3 A.S.R. 380.

Covenant for renewal of lease is existing and valid contract but where renewal is to be new lease, it must be presented to Land Commission for recommendation to Governor pursuant to statute, and obligation between parties to lease will not deprive Governor of his power to approve or not to approve lease under authority given him by law. CAS 1281, 1283. Haleck v. Lee, 4 A.S.R. 519.

Words "upon the expiration of this lease, parties will enter into and execute a new lease" indicate that such renewal is in fact new lease and not merely extension of old lease. Haleck v. Lee, 4 A.S.R. 519.

Prior court ruling established that "renewal clause" in lease provided for creation of new lease and not extension of old lease. Haleck v. Lee, 4 A.S.R. 519.

Evidence does not substantiate that substitute lease drawn and recommended by land commission as renewal lease contained unconscionably harsh and oppressive terms. Haleck v. Lee, 4 A.S.R. 519.

Court cannot accept statement by matai that he did not realize effect of signing lease agreement with bank where he had time to study lease. Atualevao v. Masaniai, 4 A.S.R. 664.

Where lessor wrongfully repossessed leased equipment shortly before the expiration of the term of the lease, but lessees did not prove any damages on account of the premature repossession, lessees would be required to pay rent for the period prior to repossession as well as incidental expenses allocated to the lessees by the lease agreement. Anderson v. Sinagege R.M. Utu Enterprises, 8 A.S.R. 2d 139.

Where lessees were not in default when lessor repossessed the leased equipment, lessor could not recover its expenses incident to the repossession. Anderson v. Sinagege R.M. Utu Enterprises, 8 A.S.R. 2d 139.

Where lease provided that tenant would have a right to renew at the expiration of the term of the lease, letter from landlord saying that no leases would be renewed since landlord was trying to sell the building was a breach of the lease. Development Bank of American Samoa v. Ron Pritchard Ground Services, Inc., 8 A.S.R.2d 190.

Where lease provided that tenant would have a right to renew at the expiration of the original five-year term, and where, after expiration and after various breaches of lease by both

landlord and tenant, the parties negotiated for subdivision of the leased premises and landlord sent letter stating that tenant would retain a stated square footage as its leasehold interest, with a designated space at the bottom of the letter for acceptance by the tenant, such acceptance would give rise to a new five-year lease on the modified terms. Development Bank of American Samoa v. Ron Pritchard Ground Services, Inc., 8 A.S.R.2d 190.

Where lease provided that landlord could not arbitrarily and unreasonably deny tenants the right to sublease, prohibition by landlord of all subleasing on the ground that landlord rather than tenants should have the advantage of the higher rents available from sublessees was a breach of the lease. Development Bank of American Samoa v. Ron Pritchard Ground Services, Inc., 8 A.S.R.2d 190.

Where lease provided that tenant would have a right to renew at the expiration of the term of the lease, letter from landlord saying that no leases would be renewed since landlord was trying to sell the building was a breach of the lease. Development Bank of American Samoa v. Ron Pritchard Ground Services, Inc., 8 A.S.R.2d 190.

Lessors of nightclub who continued to regard themselves as its proprietors, demanded drinks on credit, threatened to fire employees of their lessee who attempted to deny such credit, and ordered the lessee to remove a rock he had placed on top of a loose piece of roof but refused to fix the roof themselves, justified the lessee in regarding the lease as at an end. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

Where lease provided that lessee would be entitled, upon termination of the lease by fault of the lessor, to return of furniture and other improvements he installed, "less depreciated value," and where the depreciated value of all such furniture and improvements was less than the amount spent by the lessee on improvements that could not easily be removed from the building, the lessee would be entitled to the return of all furniture and improvements not affixed to the building. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

Lease drafted by lessees' attorney, and agreed to by lessor who was unrepresented by counsel, which failed to specify most terms generally included in a contract of lease and which allowed the lessee to deduct credits from the rent in an amount which was neither agreed upon nor determinable by reference to the agreement, may have been too indefinite to constitute a legally binding contract. Fealofa`i v. Reid, 14 A.S.R.2d 57.

If purported lease did not amount to a binding agreement, each party would nevertheless be entitled to quantum meruit recovery for any benefits conferred upon the other party; the lessor would be entitled to possession of the house and to its fair rental value for the time during which it had been occupied by the lessees, but only after compensating the lessees for any improvements they made which would be of benefit to the lessor. Fealofa`i v. Reid, 14 A.S.R.2d 57.

By claiming many more thousands of dollars' worth of expenses as credits against rental payments than they were even arguably entitled to under a lease drafted by their attorney, and by refusing to pay rent until such time as these expenses should all have been exhausted, lessees put themselves in breach of the lease. Fealofa`i v. Reid, 14 A.S.R.2d 57.

At common law, the landlord-tenant relationship did not give rise to a lien against the tenant's property; while such liens have been created by statute in other jurisdictions, no such statute has been enacted in American Samoa. Shantilal Brothers, Ltd. v. KMST Wholesale, 15 A.S.R.2d 115.

A lease which contains an ambiguous renewal option will be interpreted to give lessee the option to renew, rather than lessor, where renewal term and rent were fixed at the outset. Sala v. Tuika, 18 A.S.R.2d 29.

Damages for breach of a lease or a covenant in a lease, if any, must be proved according to general principles which determine the measure of damages on claims arising from breaches of other kinds of contracts. Lindgren v. Betham, 20 A.S.R.2d 98.

In the absence of some proof of damages the court is not free to estimate what might be fair based upon the its own knowledge of the rental market. Lindgren v. Betham, 20 A.S.R.2d 98.

Courts are obligated to enforce a restrictive covenant in a lease, unless enforcement would be inequitable or contrary to pubic policy. Lindgren v. Betham, 20 A.S.R.2d 98.

An untimely attempt to exercise an option to renew or extend a lease is ineffective. Reine v. Fiame, 23 A.S.R.2d 25.

As a tenancy for a fixed term expires without any notice or other act at the end of the term, when a lessor clearly showed its intent to terminate a lease, a lessee does not hold over as a consensual tenant at sufferance, tenant at will, or periodic tenant. Reine v. Fiame, 23 A.S.R.2d 25.

Except by statute or agreement, a commercial lessor is not obligated to repair or renovate leased premises. Reine v. Fiame, 23 A.S.R.2d 25.

While a contemporaneous oral agreement may establish a lessor's duty to repair, a subsequent oral undertaking cannot vary a written lease complete in itself. Reine v. Fiame, 23 A.S.R.2d 25.

At common law, an oral lease is valid. Blue Pacific Management Corp. v. Paisano's Corp., 23 A.S.R.2d 58.

Where an original ground lease did not contain a clause allowing for a second option or a right to extend the lease, a letter extending the lease does not constitute a new lease. Development Bank of American Samoa v. Scanlan, Inc., 28 A.S.R.2d 57.

The term "renewal" in a lease means that the original lease expires at its term and that upon agreement of the parties, it may be renewed through the execution of a new lease. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 28 A.S.R.2d 74.

The implied covenant of quiet enjoyment allows a tenant to cancel his lease with no liability if the landlord "substantially interferes" with the tenant's use of the property. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

§ 17(3) —Modificiation of Lease

Parol evidence rule will not exclude oral change in terms of lease which is subsequent to written instrument and which is distinct and clear. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Where the Government had drafted a lease document inadvertently omitting a provision required by statute for periodic adjustment of the rent, and the lessee had no objection to such a provision, the lease would be reformed or construed to include the required provision rather than declared invalid. A.S.C.A. § 37.2020. American Samoa Gov't v. Samoa Aviation, Inc., 11 A.S.R.2d 144.

Lease agreement omitting inflation adjustment clause required by statute would be enforced, after modification to include such a clause, where: (1) the statute did not provide that contracts omitting the required term should be absolutely void; (2) the contract complied with all applicable laws and regulations but one; (3) the only "misconduct" in which the lessee might be said to have engaged was to sign an apparently lawful agreement drafted by the lessor; (4) there was no evidence that the required clause was omitted by any reason but inadvertence; (5) the lessee had signed a covenant to obey all laws pertaining to the premises; (6) soon after being notified of the absence of the inflation adjustment clause, the lessee expressed its belief that it was in fact bound to pay the required adjustments; (7) the statute did not appear designed to punish conduct regarded as malum in se by effecting a forfeiture; (8) the statutory purpose of protecting the lessor could be accomplished by imposing on the lessee the obligation to pay the required adjustments; and (9) the record rather clearly showed that the absence of an inflation adjustment clause was not a genuine point of controversy between the lessor and lessee, but was one of a series of technical grounds on which the lessor sought to evict the lessee in order to accommodate another prospective tenant. A.S.C.A. § 37.2020. American Samoa Government v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Territorial government has the statutory right to enforce against its lessee a provision satisfactory to it whereby rentals are adjusted at intervals for inflation, although such a clause was inadvertently omitted from the lease, but has no right to evict the lessee on account of such omission. American Samoa Government v. Samoa Aviation, Inc. (Mem), 13 A.S.R.2d 65.

Lessor's acceptance from the lessee of the very performance envisaged by the renewal option, while at the same time acquiescing in the lessee's continuing possession of the demised premises, constitutes a waiver by the lessors of their right to refuse renewal of the lease by reason of lessee's breach or non-performance. Sala v. Tuika, 18 A.S.R.2d 29.

A party cannot unilaterally modify a contract, and providing tautua in lieu of rent does not relieve a lessee of its obligation to pay rent absent evidence of a mutual agreement otherwise. Tiumalu v. Levi, 4 A.S.R.3d 291 (Land & Titles Div. 2000).

Although a lessee is not justified in failing to pay rent, the lessor's failure to demand immediate payment of it justifies the lessee in treating the time of lease payments as not of the essence. Tiumalu v. Levi, 4 A.S.R.3d 291 (Land & Titles Div. 2000).

From beginning of lease, lessee openly used area beyond leased premises. Use was so obvious and extended in time that lessors impliedly gave permission for use and could not recover rent for extra space. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

§ 17(4) —Assignment of Lease

Prior lease of basement of building by lessor which is recognized by lessee of building does not constitute subletting in violation of covenant not to sublet. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Assignment of lease in violation of covenant not to assign is not grounds for forfeiture unless there is specific provision to that effect. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Any defect in lease is removed when lease is assigned to third party innocent purchaser who is unaware of defect. Haleck v. Tiumalu, 3 A.S.R. 380.

Where lease provided that landlord could not arbitrarily and unreasonably deny tenants the right to sublease, prohibition by landlord of all subleasing on the ground that landlord rather than tenants should have the advantage of the higher rents available from sublessees was a breach of the lease.

Development Bank of American Samoa v. Ron Pritchard Ground Services, Inc., 8 A.S.R.2d 190.

A lessor waives its right to object to an assignment of a lease when it accepts the assignee's performance under the lease terms, even if the lessee acted without the lessor's affirmative consent to the assignment. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

§ 17(5) —Responsibilities of Landlord

The American Samoa Government, receiving pecuniary benefit as a landlord of a government housing complex, acts in a proprietary manner, and therefore may not hide behind the cloak of governmental tort immunity when so acting. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

Without the benefit of sovereign immunity, the American Samoa Government's responsibility to its tenants is the same as that of any other landlord; and the guiding principle is that landlords have no duty to protect tenants from criminal attack. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

The forseeabilty exception to the principle that landlords have no duty to protect tenants from criminal attack is not present where only one significant criminal act occurred at a government housing complex three years prior to the attack on the plaintiff; and it is mere speculation that a prison's proximity to the government housing complex makes the latter significantly more prone to violent crime. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

The implied covenant of quiet enjoyment allows a tenant to cancel his lease with no liability if the landlord "substantially interferes" with the tenant's use of the property. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

Where a tenant abandons leased property, the landlord is obligated to mitigate any damages flowing from the tenant's liability by the amount of the rent collected from a substitute tenant. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

A landlord must exercise due diligence in making reasonable efforts to re-let abandoned premises. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

In breach of lease agreement case, defendant-lessee was entitled to a reduction in damages recovered by plaintiff-owner for rents plaintiff-owner received from substitute lessee. However, Defendant was obliged to pay plaintiff the costs of advertising the property as consequential damages. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

§ 17(6) —Responsibilities of Tenant

Absent agreement or statute, the unyielding rule at common law is that the lessor is under no obligation to rebuild or restore premises destroyed without his fault. Sala v. Tuika, 18 A.S.R.2d 29.

A tenant who abandons occupancy before the expiration of the lease without any legal justification remains liable for rent. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

Where a tenant abandons leased property, the landlord is obligated to mitigate any damages flowing from the tenant's liability by the amount of the rent collected from a substitute tenant. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

In breach of lease agreement case, defendant-lessee was entitled to a reduction in damages recovered by plaintiff-owner for rents plaintiff-owner received from substitute lessee. However, Defendant was obliged to pay plaintiff the costs of advertising the property as consequential damages. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

Estoppel generally arises from silence only when a party has a duty to speak; an owner is not estopped from pursuing a claim for rent despite failing to insist on timely payment; and a lessee remains liable for rent, and materially breaches a lease by failing to pay rent. Tiumalu v. Levi, 4 A.S.R.3d 291 (Land & Titles Div. 2000).

A party cannot unilaterally modify a contract, and providing tautua in lieu of rent does not relieve a lessee of its obligation to pay rent absent evidence of a mutual agreement otherwise. Tiumalu v. Levi, 4 A.S.R.3d 291 (Land & Titles Div. 2000).

§ 17(7) —Rescission or Cancellation

Where there is no stipulation in lease that breach of covenants will result in forfeiture of lease, lessor cannot cancel lease for such breach but must seek remedy by way of damages. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Where lease contains no forfeiture clause, it cannot be cancelled for non-payment of rent, nor for payment by monthly rather than yearly installments. Bank of American Samoa v. Brown, 2 A.S.R. 365.

In absence of provision for forfeiture, lease cannot be cancelled because leased land is used as lodging house without permit and therefore in violation of covenant not to use land illegally. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Where there is no stipulation in lease, failure of lessee to pay taxes on property in accordance with covenant, is not ground for forfeiture of term. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Where leased premises were substantially damaged by a hurricane and neither lessee nor lessor were obligated under

the lease to repair, and did not in fact make such repairs, mutual cancellation or recision of the lease under the circumstances will be inferred. Sala v. Tuika, 18 A.S.R.2d 29.

The determination of whether a lease is properly terminated is based on the terms of the lease. American Samoa Gov't v. Anoa`i, 30 A.S.R.2d 180.

A tenant who abandons occupancy before the expiration of the lease without any legal justification remains liable for rent. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

§ 17(8) —Eviction

Determination of title to real property may involve complex issues of law and custom and should be avoided, if possible, in action for eviction which generally requires determination only of superior right to possession. Prosch v. Gabbard, 1 A.S.R.2d 41 (App. Div. 1980).

New default by tenant after agreement for renewal of lease gave landlord the right, after warning and continued default, to evict tenant. Development Bank of American Samoa v. Ron Pritchard Ground Services, Inc., 8 A.S.R.2d 190.

Under territorial statutes providing that the registrar should not record any instrument appearing to be illegal, but that any person aggrieved by any official action of the register could apply to the court "at any time" for direction or redress, a lessor would not prevail in an action for eviction based on non-recordation of a lease where (1) the lease was initially recorded by the registrar's office; (2) an acting registrar later attempted retroactively to reject the lease, citing certain alleged illegalities; (3) upon trial of the eviction action, defendant invoked its right to judicial review of the registrar's action and the court found that the lease was not illegal and was therefore properly accepted for recordation. A.S.C.A. §§ 4.1104, 4.1106. American Samoa Gov't v. Samoa Aviation, Inc., 11 A.S.R.2d 144.

Where lessor's mortgagee had secured a writ of execution against the leased premises, and unrecorded lease gave lessee no real interest in the property, lessee could have been lawfully evicted by mortgagee with no recourse but to try to collect his damages from the lessor. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

When lessor's mortgagee secured a writ of execution against leased premises, giving mortgagee the legal right to evict lessee at any time, the lessee was constructively evicted from the premises by the fault of the lessor. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

That lessor's mortgagee, after securing a writ of execution against leased premises, initially chose not to evict the lessee but instead allowed lessee to remain as a tenant at will, was irrelevant to analysis of the legal relationship between lessor and lessee. Development Bank v. Sam Scanlan, Inc. (Mem.), 12 A.S.R.2d 74.

Evidence did not support lessee's claim of retaliatory eviction where the only thing lessor appeared to be retaliating for was lessee's failure to pay rent. American Samoa Government v. Manu`a Air Transport, 12 A.S.R.2d 78.

Where lessees' refusal to pay rent for several years was not based on a reasonable interpretation of the lease agreement, lessor was entitled to eviction. Fealofa`i v. Reid, 14 A.S.R.2d 57.

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.

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.

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 Pago v. KMST, Inc., 15 A.S.R.2d 20.

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.

After eviction, former possessors of land are entitled to remove fixtures and possessions, even where they exercise their licenses in bad faith. When possessors of land are evicted, having exercised their licenses in good faith, they are entitled to the choice of either removal of improvements or compensation for expenses incurred in reliance on the license. Leomiti v. Pu'efa, 27 A.S.R.2d 150.

In the case of a bad faith possessor's eviction, if fixtures and possessions are not removed within the time set by the court, they become the property of the legal possessor of the land. Leomiti v. Pu'efa, 27 A.S.R.2d 150.

A party that has properly terminated a lease agreement may be entitled to immediate possession of its premises. A.S.C.A. §

43.1405(2)(A). American Samoa Gov't v. Anoa`i, 30 A.S.R.2d 180.

Eviction of a family from family land is a matter properly within the senior matai's competence; it is the matai who has primary jurisdiction over intra-family disputes involving use of family land. Pene v. Salualo, 31 A.S.R.2d 58.

A successful litigant in summary eviction cases may be awarded costs of suit, but not attorney's fees in absence of specific statutory authority or the parties' agreement. A.S.C.A. § 43.1412. Cox v. Williams, 31 A.S.R.2d 110.

A lessor is entitled to the eviction of a lessee at the expiration of the lease, or when the lessee has breached the lease by assigning or subletting the premises without obtaining permission to do so. Tiumalu v. Levi, 4 A.S.R.3d 291 (Land & Titles Div. 2000).

When lessor's conditional notice of default unambiguously provides definite date of termination, it can function as termination of lease if its terms are not met. However, notice merely expressing conditional retaking of leased premises upon failure to cure default can be too indeterminate to convey intent to terminate lease. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

When lessor's notice of default in rent payments demanded that defendant cure default and set specific date for beginning of eviction proceedings but did not set specific date for termination of lease, notice conveyed intent to continue with terms of lease rather than intent to terminate lease. As notice of default did not terminate lease, defendant's relinquishment of premises constituted abandonment of lease. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

§ 17(9) —Authority to Lease

Where lessor does not have authorization to lease land by co-owners and executes lease, but co-owners later convey deeds of their interest to lessor, such deeds constitute estoppel by deed and vest leasehold interest in their undivided shares in lessee. Bank of American Samoa v. Brown, 2 A.S.R. 365

Where on tenant in common executes lease without authorization of others, lessee becomes tenant in common along with co-owners with respect to undivided interest which he has leased. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Co-tenants who have not signed lease of another co-tenant have no right to have lease cancelled with respect to jointly owned property. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Where lands are partitioned only for purposes of receiving rents but ownership of whole remains in matai, he may contract or enter into lease on land. Haleck v. Tiumalu, 3 A.S.R. 380.

If lease has defect because lessor matai failed to consult with members of family, defect may be cured by family's acceptance of rent. Haleck v. Tiumalu, 3 A.S.R. 380.

Counterclaim by members of matai family seeking to have lease declared void cannot be granted where members are dilatory in bringing action for many years, for equity aids only those who have been vigilant. Haleck v. Tiumalu, 3 A.S.R. 380.

Contract may provide for ownership of land to remain in matai but rent profits from leases to be divided among members of family in accordance with lands divided among them for leasing. Haleck v. Tiumalu, 3 A.S.R. 380.

Lease of land which acknowledges lessor's ownership of land and which party claiming land has signed is strong evidence of ownership of lessor. Aumoeualogo v. Mamoe, 4 A.S.R. 742.

Lessee of land cannot be heard to dispute his lessor's title. Aumoeualogo v. Mamoe, 4 A.S.R. 742.

No lease existed when the people who signed documents purporting to create various contract and/or property rights in some buildings had no authority to do so. Fagasoaia v. Fanene, 17 A.S.R.2d 91.

Even if a building located on communal land is considered separate property, the owner of said building must still satisfy the requirements of the Alienation of Land Act in order to lease it. Anoa`i v. Lai, 6 A.S.R.3d 297 (Land & Titles Div. 2002).

§ 17(10)—Damages for Breach

Where a tenant abandons leased property, the landlord is obligated to mitigate any damages flowing from the tenant's liability by the amount of the rent collected from a substitute tenant. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

In breach of lease agreement case, defendant-lessee was entitled to a reduction in damages recovered by plaintiff-owner for rents plaintiff-owner received from substitute lessee. However, Defendant was obliged to pay plaintiff the costs of advertising the property as consequential damages. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

In breach of lease agreement case, prejudgment interest is awarded on each installment of rent, less mitigation, calculated from the date the installment fell due. Scanlan v. Lai, 4 A.S.R.3d 97 (Trial Div. 2000).

The traditional remedy for breach of contract is compensatory damages, generally described as returning the parties to the position they would have held had a breach not occurred, and a claim for equitable damages generally will not lie for simple breaches of contract. Tiumalu v. Levi, 4 A.S.R.3d 291 (Land & Titles Div. 2000).

When rent is fixed at definite sum, recovery for failure to pay rent is that sum plus interest and costs of suit, less any duty to mitigate. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

Damages for lessee's waste can be measured by (a) diminution in value of property resulting from waste or (b) cost of repairing or restoring property to its former condition. Since there is no universal test for determining which measure of damages to apply, method must be decided on facts of each case. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

Although lessee's improvements were made at its expense under lease provision, lessee is not entitled to recover on claim of improving premises due to circumstances of lease termination. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

§ 17(11)—Tenants at Will

Permissible occupation of realty without provision for rent of term creates tenancy at will. Wightman v. Vala, 2 A.S.R. 136.

Tenant at will is entitled to reasonable notice to quit. Wightman v. Vala, 2 A.S.R. 136.

Where tenant at will continues to occupy realty after elapse of reasonable time from notice to quit, tenant is liable to pay rent for such period. Wightman v. Vala, 2 A.S.R. 136.

One may become a tenant at will or a periodic tenant under an invalid lease, or without a lease at all, by occupancy with consent. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 28 A.S.R.2d 74.

A tenancy at will relationship is subject to termination at will by either party to the agreement. American Samoa Gov't v. South Pacific Island Airsystems, Inc., 28 A.S.R.2d 74.

One's interest in securing a future leasehold interest is not a constitutionally protected "liberty" or "property" interest. It stretches the concept of "liberty" and "property" too far to suggest that a person is deprived of liberty or property because an at-will periodic tenancy is not affirmatively prolonged. Congressional Church of Jesus in Samoa v. A.S.G., 31 A.S.R.2d 122.

§ 17(12)—Improvements

Good-faith improvers are entitled to reimbursement for their actual expenses in improving property or for the amount by which the improvements enhance the value of the property, whichever is less, when a landlord allows a tenant to improve property, it is inequitable for the owner to deny compensation while the owner receives the benefits. Tiumalu v. Levi, 4 A.S.R.3d 291 (Land & Titles Div. 2000).

Improvements made on real estate without direct consent of owner of land become part of realty. Unauthorized removal or destruction of improvement is act of waste. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

Person who makes improvements on land in good-faith belief that owner authorized him to build improvements is entitled to compensation for their value. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

Equity will not allow landowner to be unjustly enriched by taking improvements that tenant constructed on land. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

By not completely removing improvements, leaving premises in disheveled state and less valuable than when it was leased, defendant committed waste maliciously and is liable for compensatory and exemplary damages. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

§ 17(13)—Abandonment

When lessor's notice of default in rent payments demanded that defendant cure default and set specific date for beginning of eviction proceedings but did not set specific date for termination of lease, notice conveyed intent to continue with terms of lease rather than intent to terminate lease. As notice of default did not terminate lease, defendant's relinquishment of premises constituted abandonment of lease. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

Unless otherwise agreed, upon abandonment of lease, lessor may (a) accept lessee's offer of surrender and terminate lease or (b) attempt to mitigate loss of rents by leasing premises to another lessee. If lease is terminated, lessee is liable for rent accrued before acceptance of surrender and for damage caused by abandonment. If premises are leased to another party, original lessee is liable only for difference between promised rent and rents obtained. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

Whether lessor's reentry onto premises constitutes acceptance of surrender is question of fact. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

Considering notice of default, when lessors reentered for their own purposes, they in effect accepted surrender of premises. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

§ 17(14) —Fixtures

Object is fixture if it is treated as part of premises, which may not be removed except by owner of property. J.M. Gebauer, Inc. v. Am. Samoa Power Auth., 5 A.S.R.3d 204 (Trial Div. 2001).

§ 18 Zoning

§ 18(1) —Zoning Variance

A stay of zoning variance entered by stipulation will be lifted where a third-party intervenes, in order to return the parties to the status quo. Any party remains free to seek a new stay of variance. Ala`ilima v. Zoning Board, 25 A.S.R.2d 146.

Zoning statutes and regulations are designed to protect the rights of neighboring land owners. McGuire v. Zoning Board, 3 A.S.R.3d 15 (App. Div. 1999).

Where plaintiffs consisted of a resident, and association of residents, of the neighborhood for which a variance was sought, appellants' alleged injuries fell squarely within the zone of interests for which the zoning statutes were sought to protect. McGuire v. Zoning Board, 3 A.S.R.3d 15 (App. Div. 1999).

§ 18(2) —Zoning Board

A.S.C.A. § 26.0320(h) requires that "[w]ithin 10 days after receipt of the decision the applicant or any other interested party may file a written motion for reconsideration." McGuire v. Zoning Board, 26 A.S.R.2d 59.

Appeals to the High Court from the Zoning Board "may be taken in like manner to appeals under the Administrative Procedure Act. McGuire v. Zoning Board, 26 A.S.R.2d 59.

Appeals of Zoning Board decisions proceed in like manner to appeals under the Administrative Procedures Act, in that the administrative record must be submitted within 30 days and the court is confined to that record, though it may receive evidence to supplement the record. Ala`ilima v. Zoning Board, 25 A.S.R.2d 146.

§ 19 Riparian Rights

Where no law of United States is applicable, and no law of Samoa is inconsistent, common law of England is applicable in courts of Samoa, and common law which vests title of lands below high-water mark in sovereign is law of Samoa. Foster v. Olotoa, 3 A.S.R. 76.

Land formed by accretion belongs to riparian owner on or against whose bank or shore alluvial matter is deposited. Te'o v. Gi, 4 A.S.R. 185.

Accretions to property on seaward side of road caused by stream that flowed across it accrue to owner of property, which is government. Lago v. Mageo, 4 A.S.R. 287.

Government, as owner of riparian land, is entitled to additional thereto by accretion as if lands were owned by individual. Lago v. Mageo, 4 A.S.R. 287.

Filled-in land is not property of private claimants since whoever owned land at time of cession of Tutuila and Aunu'u to Untied States owned only to high-water mark. Lago v. Mageo, 4 A.S.R. 287.

Title to filled-in land below high-water mark is in United States and not Government of American Samoa since title to land under navigable water within boundaries of Territory of United States is held by United States in trust for whole people, and future state that may be established out of territory. Lago v. Mageo, 4 A.S.R. 287.

RELIGION

§ 1 Church Governance
2 Congregational Church
3 Constitutional Issues
4 Dedication of Land

§ 1 Church Governance

One who voluntarily joins a religious society or church impliedly consents to the form of government that has been adopted by the church. Ofa v. Tongan Wesleyan Church, 8 A.S.R.2d 110.

Where the identity of a church's governing body is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy, but instead should attempt to apply "neutral principles of law." Tele`a v. Savea, 11 A.S.R.2d 110.

When the identity of the governing authority or authorities within a church is substantially at issue, civil courts must refrain from delving into ecclesiastical laws and practices that may be paramount to resolving the controversy. U.S. Const. Amend. I; Rev. Const. Am. Samoa Art. I, § 1. Lefiti v. Tauanu'u, 24 A.S.R.2d 68.

A congregation's traditional deference to its minister should not be confused with absolute power to govern. Tele`a v. Savea, 11 A.S.R.2d 110.

Matai has no inherent power to govern ecclesiastic organization simply by virtue of the traditional and secular office of the matai. Tele`a v. Savea, 11 A.S.R.2d 110.

§ 2 Congregational Church

Congregational church government is vested in the congregation, and in a case that does not involve a "schism" a majority vote of the membership is determinative. Ofa v. Tongan Wesleyan Church, 8 A.S.R.2d 110.

Control over the temporal affairs of a church with a congregational form of government vests in the whole congregation or in the organism established by the majority of the congregation for such purposes. Tele`a v. Savea, 11 A.S.R.2d 110.

The power to govern a congregational church vests in the whole congregation, or in persons or entities which the majority of the congregation may select as the governing authority for general or particular purposes. U.S. Const. Amend. I; Rev. Const. Am. Samoa Art. I, § 1. Lefiti v. Tauanu'u, 24 A.S.R.2d 68.

§ 3 Constitutional Issues

SEE CONSTITUTIONAL LAW § 7(3) – FREEDOM OF SPEECH, PRESS & RELIGION

§ 4 Dedication of Land

SEE REAL PROPERTY § 7(5) – DEDICATION OF LAND

SAMOAN CUSTOMS

§ 1 Impact on American Samoa Laws
2 Criminal Law
3 Family Law
3(1) —Family Membership
3(2) —Adoption
3(3) —Burial Grounds
4 Property Rights
5 Ceremonies
6 Samoan Language
7 Village Councils
8 Matai
8(1) —General Provisions
8(2) —General Pule or Authority
8(3) —Pule over Communal Land
8(4) —Family's Obligation of Service
8(5) —Removal
9 Elections

§ 1 Relationship Between Law & Custom

SEE AMERICAN SAMOA GOVERNMENT § 1 – THE FEDERAL GOVERNMENT, CONSTITUTION, & LAWS OF AMERICAN SAMOA

SEE CONSTITUTIONAL LAW § 3 – CONSTITUTIONAL AND STATUTORY INTERPRETATION

Courts will not destroy customs of Samoa through judicial legislation. Toomata v. Vea, 2 A.S.R. 564.

Customs of American Samoa not in conflict with laws of American Samoa or of the United States concerning American Samoa are preserved. Mulitauaopele v. Palaefei, 3 A.S.R. 93.

Customs of American Samoa which are not in conflict with laws of American Samoa and laws of United States concerning American Samoa are preserved. Seui v. Mata'afa, 4 A.S.R. 333.

Court must recognize Samoan customs where they do not conflict with laws of American Samoa or United States concerning American Samoa. Tuanaitau v. Paogofie, 4 A.S.R. 375.

Samoa was the actual historical location of the Garden of Paradise. Talili v. Satele, 4 A.S.R.2d 23.

Under Constitution of American Samoa the legislature, and particularly the Senate which is composed of traditional chiefs chosen according to Samoan custom, has a peculiar relationship to the preservation of land and culture. Rev. Const'n of Am. Samoa art. I § 3, art. II § 4. Tuika Tuika v. Governor of American Samoa, 4 A.S.R.2d 85.

Court should interpret statutes dealing with Samoan custom and matai titles so as to minimize the extent to which customary law is modified or overridden by the imported procedural framework. In re Matai Title Ma'ae, 6 A.S.R.2d 75.

Territorial statutes concerning matai titles and other customary matters represent the best efforts of the legislature to incorporate custom into written law and to provide procedures for its preservation and enforcement. In re Matai Title Sotoa, 6 A.S.R.2d 91.

Court has no power to disregard territorial statute on the ground that it allegedly conflicts with tradition or custom. In re Matai Title Sotoa, 6 A.S.R.2d 91.

Samoan way of life is dynamic, not static, and is amenable to change. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

The concept of tautua (service) varies from family to family and is best defined by the family rather than the court. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

Provision of territorial constitution that county council elect senators in accordance with Samoan custom means that the council is to use the traditional Samoan manner of decision making as it existed at the time the provision was adopted.

Rev. Const. Am. Samoa art. II § 4. Mauga v. Lutu, 10 A.S.R.2d 115.

Court will not lay down a rule prescribing the exact method or custom a county council must use to elect a senator in accordance with Samoan custom, especially as custom may vary in different counties. Rev. Const. Am. Samoa art. II § 4. Mauga v. Lutu, 10 A.S.R.2d 115.

Provision of territorial constitution that county council elect senators in accordance with Samoan custom does not include power to delegate the decision completely to a subdivision of the county, since this would allow a new custom, habit, or practice to repeal explicit and unambiguous constitutional provisions. Rev. Const. Am. Samoa art. II § 4. Mauga v. Lutu, 10 A.S.R.2d 115.

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.

Informal statements of traditional Samoan custom and law are neither binding on the Court nor persuasive, as they do not represent a recitation of legal authority. Pene v. Bank of Hawaii, 18 A.S.R.2d 65.

When a conflict arises, Samoan custom must give way to the laws of the United States and American Samoa. A.S.C.A. § 1.0202. Taeleifi v. Willis, 21 A.S.R.2d 118.

It is appropriate for the courts of American Samoa to give effect to Samoan customs and traditions. Courts should not abolish, by judicial fiat, Samoan traditions which have endured for generations in Samoan institutions and are recognized by formal legal institutions. Mulitauaopele v. Mulitauaopele, 25 A.S.R.2d 43.

Samoan custom is defined by an evolutionary process, not by the judicial process. Mulitauaopele v. Mulitauaopele, 25 A.S.R.2d 43.

Under the Deeds of Cession between the chiefs of Eastern Samoa and the United States, all vestiges of sovereignty passed from former to the latter. Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 97.

Where a conflict exists between statute and any customary privilege, the statute governs. In Re Matai Title I`aulualo, 25 A.S.R.2d 155.

Custom in conflict with law must give way. A.S.C.A. § 1.0202. In Re the Matai Title Iu, 25 A.S.R.2d 127.

There is nothing in law or custom to prevent reunification of a split matai title; however, reunification is something best left to the evolutionary process of Samoan custom, as opposed to yet another conflicting judicial pronouncement on the issue of split/joint matai titles. Fanene v. Fanene, 26 A.S.R.2d 8.

Where law and Samoan custom conflict, the law prevails. Mau v. Fuimaono, 27 A.S.R.2d 44.

The Treaties of Cession require respect and protection of the people to their lands and the recognition of property rights according to Samoan custom. Fanene v. Fanene, 6 A.S.R.3d 333 (Land & Titles Div. 2002).

§ 2 Criminal Law

SEE CRIMINAL LAW

Under Samoan custom, land may be transferred as damages for sanguinary assault. Tufaga v. Mativa, 1 A.S.R. 184.

Intercourse with taupo amounts to criminal disrespect of High Chief who appointed taupo. American Samoa v. Teleti, 1 A.S.R. 342.

Because of Samoan custom, attorney is not likely to take case against husband of his family member. Tago v. Hunkin, 3 A.S.R. 427.

Under Samoan custom, Ifoga is presented to family or deceased by those responsible for wrongful death but this is not meant to compensate family of deceased but merely as expression of sorrow and apology. Hsu v. Pratt, 4. A.S.R. 752.

That defendant's conduct was similar to pre-Christian Samoan ceremonial practices was no defense in prosecution for sexual abuse and sodomy, since territorial legislature enacted no statutory exception for such practices. A.S.C.A. §§ 46.3611, 3612. American Samoa Government v. Masaniai, 4 A.S.R.2d 156.

Using matai title without being registered as holder is criminal offense. Faagau v. Tulei, 4 A.S.R. 490.

Law provides penalties for persons using matai title without having registered it. (CAS 6.0109.) Mailo v. Fuimaono, 4 A.S.R. 757.

§ 3 Family Law

SEE FAMILY LAW

§ 3(1) —Family Membership

Under Samoan custom the male branch of the family absorbs the female branch and “pule” passes from male to male where possible. Sagapolu v. Tanielu, 1 A.S.R. 331.

Under Samoan custom, matai is trustee of family land for benefit of entire family, and his sons may, by deciding to live with their wives, become members of different family or even matais of different family. Talo v. Tavi, 2 A.S.R. 63.

Samoan custom permits person to be member of two different families at same time. Sueuga v. Laisene, 2 A.S.R. 82.

Evidence supports determination of court that matai “Veevalu” is lesser title in Mageo family, including admission of facts by matai “Veevalu” and where facts determined are supported by evidence, court will not grant petition for rehearing on grounds that it misunderstood facts. Gi v. Mageo, 2 A.S.R. 383.

Under Samoan custom, outsiders who come to live with family and are married into family become family members even though they are not blood members. Asuega v. Mauga, 3 A.S.R. 70.

Under Samoan custom, all those who live in the family are considered family members, although not necessarily blood members. Vaotuua Family v. Puletele, 3 A.S.R. 145.

Samoan custom decrees that widow with children continues to live with children on family land of her deceased husband’ if she has no children she returns to her own family’s land. Vaimaona Family v. Meafou, 3 A.S.R. 228.

Exchanging visits in manner typical of family members is evidence of family membership pursuant to Samoan custom. Foster v. Fa’amuli, 4 A.S.R. 3.

Under Samoan custom, man buried on communal family land near house he lived in, despite request by other relatives that he be buried elsewhere indicates family membership. Momoe v. Atofau, 4 A.S.R. 305.

Under Samoan custom it would be natural for man coming from another island to stay with family of his mother. Tuanaitau v. Paogofie, 4 A.S.R. 375.

Under Samoan custom, married man living with wife’s family is considered to be member of wife’s family. Lualemana v. Chiefs of Aitulagi, 4 A.S.R. 383.

Under Samoan custom, women do not marry men from their families. Lolo v. Heirs of Sekio, 4 A.S.R. 477.

Where former title holder and other matais favor person to hold title, this is strong indication that person is family member. Utu v. Aumoeualogo, 4 A.S.R. 906.

A reference to one person as the "sister" of another is not contradicted by evidence that they did not have identical ancestors, since in Samoan custom the terms "brother" and "sister" frequently refer to relatives of the same generation whether or not they are born of the same mother and father. Satele v. Uiagalelei, 8 A.S.R.2d 97.

When two branches of a family are not related to each other by blood, it would be contrary to Samoan custom for them to meet together as one family to choose a single title holder with pule over both families' lands and internal affairs. In Re Matai Title Mulitauaopele, 16 A.S.R.2d 63.

Neither law nor Samoan custom forbids the continued existence of two unrelated families, which came into being after the original line of direct descendants from the first titleholder died out. In Re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

There are four customary clans of the Misaalefua family, namely: Agafala, Vaepala, Tuimalie, and Faliu. In Re Matai Title Missaalefua, 28 A.S.R.2d 106.

Samoan families traditionally make decisions not by pure majoritarian democracy but by consensus. In Re Matai Title Missaalefua, 28 A.S.R.2d 106.

§ 3(2) —Adoption

SEE FAMILY LAW § 3(3) – VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS – ADOPTION

Court will consider children adopted in accordance with Samoan custom to be members of family. Leasiolagi v. Fao, 2 A.S.R. 451.

Many times a Samoan couple will adopt a blood relative; therefore because a child is adopted does not necessarily mean he is not a blood relative of either adoptive parent. Toatolu v. Laumea, 4 A.S.R. 223.

Legal termination of parental rights has important and irrevocable legal consequences that are often quite different from those of Samoan customary informal adoption, in which children often return to their natural parents. In Re Three Minor Children, 10 A.S.R.2d 57.

Informal fa`a Samoa adoptions do not require the consent of the Court because they do not affect the legal rights and obligations of the parties. In re Two Minor Children, 15 A.S.R.2d 28.

A Samoan customary adoption does not require Court approval or a legal termination of the rights and obligation of the natural parents. In re A Minor Child, 19 A.S.R.2d 97.

When a change in legal status is not in the child's best interest, customary Samoan adoption may continue to inure. In Re a Minor Child, 20 A.S.R.2d 49.

A change in legal status in not necessary to facilitate customary fa`a Samoa adoption. In Re a Minor Child, 25 A.S.R.2d 25 A.S.R.2d 89.

§ 3(3) —Burial Grounds

Matai of family, under Samoan custom, subject to certain limitations, has control over family lands, and he determines, with implied or express consent of family, where communal burial ground shall be. Tiumalu v. Lio, 3 A.S.R. 176

Rights of family member to land assigned to him by former matai are subject to senior right of family to use lands as family burial ground and may be taken for such purpose if family has first been assigned other land. Tiumalu v. Lio, 3 A.S.R. 176.

Samoan custom is to bury matais on communal family land and not on individually owned land. Moananu v. Tuanaitau, 3 A.S.R. 564.

Award of funeral expenses in American Samoa should not include full cost of traditional gifts to persons attending the funeral, since the expectation according to Samoan custom is that the gifts will be reciprocated over time. Fa'avae v. American Samoa Power Authority, 5 A.S.R.2d 53.

For a chief of one Samoan family to be buried on land of another family, while not unheard of, is hardly in the main stream of tradition; rather, the general and long standing custom is to place family graves on family land, to tend them carefully, and to rely on them as evidence of land ownership. Uiagalelei v. Fuimaono, 14 A.S.R.2d 49.

§ 4 Property Customs

SEE REAL PROPERTY

§ 4(1) —Generally

Under Samoan custom if family member builds his house near family guest house, he must construct it so that it will be lower than guest house; however, this requirement is not applicable where house is at substantial distance from guest house. Seui v. Mata'afa, 4 A.S.R. 333.

Where Samoan is constructing house about fifty feet from guest house, court will order that he construct it so that it is lower than guest house in accordance with Samoan custom. Seui v. Mata'afa, 4 A.S.R. 333.

There are no dower rights in communal land. Burns Philp Co v. Afo, 2 A.S.R.2d 39 (Trial Div. 1985).

§ 4(2) —Sa

Samoan custom of "Sa" establishes a lien on property for purposes of taxation. Moimoi v. Howden, 1 A.S.R. 3.

"Sa" one of the oldest Samoan customs, is resorted to when the people must pay a tax or debt. Moimoi v. Howden, 1 A.S.R. 3.

Disregard of the obligations imposed by a "Sa" requires punishment of the offender. Moimoi v. Howden, 1 A.S.R. 3.

§ 5 Ceremonies

Under Samoan custom, strangers are invited to partake of food at feasts, and if trial judges ate food at feast of another they had no obligation to donors of food, nor would the acceptance indicate any bias or prejudice if donors were party to pending case. Betham v. Faumuina, 3 A.S.R. 537.

Under Samoan custom, suatai or sua is formal presenation of food, and if party presented sua to trial judge, it would have been easily witnessed. Betham v. Faumuina, 3 A.S.R. 537.

Under Samoan custom, ipu is not confined strictly to Tuimanua and his people but can be used in connection with giving kava to other chiefs and officials. Tauanuu v. Lei, 1 A.S.R. 621.

The question of how a customary presentation ought to be divided is not one for the courts. Ioane v. Aiga Tautai O Samoa, 1 A.S.R.3d 96 (Trial Div. 1997**).**

§ 6 Samoan Language

Samoan word "tupu" means king, monarch or sovereign and represents the highest sovereign power, without condition or limitation. Teo v. Liufau, 1 A.S.R. 628.

"Tupu" implies a far higher authority than a "Faipule," "Matua" or "Tulafale Ali'i." Teo v. Liufau, 1 A.S.R. 628.

In the Samoan language "Tui" is a synonym for the word "Tupu." Teo v. Liufau, 1 A.S.R. 628.

While it was not possible to obtain an accurate definition of the Samoan word "Nofofanau," court found "Nofofanau" unquestionably indicated a degree of dependence of one person on another. Mailo v. Fanene, 1 A.S.R. 191.

The hierarchial matai title and communal land systems, along with the Samoan language, are pillars of fa`a Samoa. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

§ 7 Village Councils

Holder of Tongan title may not sit on village council on strength of title. Atufili v. Timoteo, 3 A.S.R. 395.

Under Samoan custom, chief's rank in village is indicated by number of ring steps up to floor of guest house and number of beams under his roof. Seui v. Mata'afa, 4 A.S.R. 333.

§ 8 Matai

§ 8(1) —General Provisions

Matai who does not live with family cannot serve their interests well. Galu v. Mariota, 1 A.S.R. 461.

Samoans do not part with their lands and titles easily and it would not be in accord with Samoan custom for a Samoan chief to renounce the pule of his matai name and family lands to his daughter's husband and their children forever. Maluia v. Tafetee, 1 A.S.R. 537.

Section 933 A.S. Code does not require matai to live in village to which title is attached; many Manua matais live in Tutuila, only occasionally going to their Manua villages. Tuliau v. Sunia, 4 A.S.R. 858.

Senior Matai may delegate specific task, including the bringing of a lawsuit, to a family member. Poumele, v. Ma'ae, 1 A.S.R.2d 5 (App. Div. 1980).

In some villages, the bearer of ava cup for the village council is recognized as a matai. Moea`i v. Te`o, 9 A.S.R.2d 107.

Although designation by a living matai of his successor has its place in the customs of Samoa, it has always been understood that the whole family has the right to decide whether to accept the designee or to choose someone else. In re Matai Title Tauala, 14 A.S.R.2d 83.

Having two or more persons serve as joint holders of the same matai title is consistent with the law and custom of American Samoa. In re Matai Title Mulitauaopele, 16 A.S.R.2d 63.

Although the exception, ancient Samoan traditions abound with stories of matai who obtained their titles for reasons other than blood descent from a previous title holder, such as "igagato" (conferral as a reward) and "matu`upalapala" ("commission" to avoid the extinction of the line). In re Matai Title Mulitauaopele, 17 A.S.R.2d 75.

While some families or matai may still practice the old, autocratic custom, which allows a matai to appoint his own successor, this custom must be viewed under the law as only a relic from a bygone era. In Re the Matai Title Iu, 25 A.S.R.2d 127.

There is nothing in law or custom to prevent reunification of a split matai title; however, reunification is something best left to the evolutionary process of Samoan custom, as opposed to yet another conflicting judicial pronouncement on the issue of split/joint matai titles. Fanene v. Fanene, 26 A.S.R.2d 8.

That one matai's lands are in essence being used to render tautua to another is thoroughly repugnant to the customs and traditions of the Samoan people. Afoa v. Taaifili, 26 A.S.R.2d 49.

The matai title Misaalefua is title of paramount stature in the territory. In Re Matai Title Misaalefua, 28 A.S.R.2d 106.

The overarching purpose of the Matai Registration Statute, A.S.C.A. §§ 1.0101 et seq, enacted pursuant to Article 1, section 3 of the Revised Constitution of American Samoa, is to preserve Samoan culture and to minimize the extent to which customary law is modified or overridden by the imported procedural framework concerning matai titles. In Re Matai Title Taliaaueafe, 3 A.S.R.3d 225 (Land & Titles Div. 1999).

Because a fundamental feature of the customs, culture, and traditional Samoan family organization is that a Samoan family selects its matai, or titular head, resort to the imported procedural framework of the Matai Registration Statute, A.S.C.A. §§ 1.0101 et seq, is to be availed only where the traditional matai selection process has failed to select a new matai in the customary manner. In Re Matai Title Taliaaueafe, 3 A.S.R.3d 225 (Land & Titles Div. 1999).

Where a family meeting has not yet been called, it is premature for family members to file claims under the Matai Registration Statute, A.S.C.A. §§ 1.0101 et seq, with Territorial Registrar's office. In Re Matai Title Taliaaueafe, 3 A.S.R.3d 225 (Land & Titles Div. 1999).

The registration process under the Matai Registration Statute, A.S.C.A. §§ 1.0101 et seq, should not supplant and displace the traditional matai selection process, and the registration process and the Court should be involved only when a family proves unable to reach agreement on a matai after the family has had a meaningful opportunity to thoroughly confront the issue. In Re Matai Title Taliaaueafe, 3 A.S.R.3d 225 (Land & Titles Div. 1999).

There is no matai title dispute for certification to the Land and Titles Division until the Territorial Registrar is first satisfied that a family meeting has been called and held for the purpose of selecting a successor matai according to the traditions of the family and that the family was not able to select a new titleholder. In Re Matai Title Taliaaueafe, 3 A.S.R.3d 225 (Land & Titles Div. 1999).

The holder of the sa`o matai title heads the family, the key unit of Samoan society. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

The Samoan way of life has twin cornerstones, the matai system and communal land tenure. Fanene v. Fanene, 6 A.S.R.3d 333 (Land & Titles Div. 2002).

The Utofili family consists of two distinct family branches, or clans. In re Matai Title "Utofili", 6 A.S.R.3d 347 (Land & Titles Div. 2002).

§ 8(2) —General Pule or Authority

Generally, a matai is a representative of a family who votes and acts on the family's behalf and while members of the family have the power to state their opinions and make suggestions they have no right to exercise themselves the representative powers of the matai. Aumavae v. Moefaauo, 1 A.S.R. 38.

Matai is presumed to possess all powers usually possessed by virtue of such status until the contrary is shown by positive evidence. Tupua v. Aumavae, 1 A.S.R. 231.

Matai, as head of family, is in charge of family affairs and looked to by family for advice and direction. Sagapolu v. Tanielu, 1 A.S.R. 331.

Matai has obligation to be leader of family, to influence family to live peaceably and happily together, and to conduct himself in manner that warrants respect of members of his family and people in other families. Asuega Family v. Asuega, 1 A.S.R. 581.

Matai has obligation to treat family with kindness and should not display attitude of animosity toward them, and where matai fails in this obligation, he cannot evict family member for failure to render service, but upon filing of statement with court that he is willing to accept service from family member, it will then be duty of family member to begin rendering service to matai. Vaotuua Family v. Puletele, 3 A.S.R. 145.

Matai title holder has responsibility to get his family to live together in peace and harmony. Tali v. Tupeona, 4 A.S.R. 199.

Matai must reimburse family member who pays obligation out of his own funds, if obligation is legal and moral obligation of family as a whole. Leapaga v. Leapaga, 4 A.S.R. 470.

Court asked to intervene in family dispute will not substitute its judgment for that of the senior matai absent clear abuse of discretion. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

In Samoan custom it is possible for a chief to be recognized as having authority over other chiefs and yet for the other chiefs to own their own land; some chiefs have political authority over a whole village or district but do not have a proprietary interest in the communal lands of other families. Seva`aetasi v. Fanene, 9 A.S.R.2d 118.

Obligation of senior matai to discuss family decisions with family members cannot be reduced to a formula. Gi v. Temu, 11 A.S.R.2d 137.

Matai has no inherent power to govern ecclesiastic organization simply by virtue of the traditional and secular office of the matai. Tele`a v. Savea, 11 A.S.R.2d 110.

In the context of Samoa in 1911, it would have been inconceivable that the term "and his successors or assignees" in a grant of land from one ranking chief to another was intended to give subject possessory rights to the control of an untitled heir of the grantee. Mose v. Tufele, 12 A.S.R.2d 31.

A family member may, in certain circumstances, seek judicial review of matai action, and the court will enjoin arbitrary, capricious, or illegal actions or those in which there has been an abuse of discretion on the part of the of the matai. Pen v. Lavata`i, 25 A.S.R.2d 164.

The sa`o of a family is entrusted with grave responsibilities for the protection and management of the family's communally-owned lands and the family's affairs. Kruse v. Am. Samoa Gov't, 6 A.S.R.3d 318 (Land & Titles Div. 2002).

§ 8(3) —Pule over Communal Lands

SEE REAL PROPERTY § 2(3) – COMMUNAL LANDS, ROLE OF MATAI

§ 8(4) —Family's Obligation of Service

SEE ALSO REAL PROPERTY § 2(4)(f) –COMMUNAL LANDS, TAUTUA (SERVICE) OBLIGATION

Member of family living on family land is obligated to render service to matai, and matai has obligation to protect family member against wrongdoings by other members of family, and only matai who performs this obligation is entitled to service. Vaotuua Family v. Puletele, 3 A.S.R. 145.

Under Samoan custom if there are two matais in family and one dies, surviving matai represents entire family in village counsel and receives service as representative of deceased matai until he has successor, which means that person owing services to deceased matai should render such service to his successor. Fuga v. Olive, 4 A.S.R. 283.

Service to matai and family under Samoan custom is not a contractual obligation and compensation is available under contractual theory. Malaga v. Alaga, 4 A.S.R. 735.

The concept of tautua (service) varies from family to family and is best defined by the family rather than the court. Toleafoa v. Tiapula, 7 A.S.R.2d 117.

§ 8(5) —Removal

SEE MATAI TITLE DISPUTES § 10 – REMOVAL OF MATAI

§ 8(6) —Title Disputes

SEE MATAI TITLE DISPUTES

§ 9 Elections

SEE ELECTIONS

A decision reached "in accordance with Samoan custom" need not receive unanimous support. Eseroma v. Faresa, 31 A.S.R.2d 169.

SECURED TRANSACTIONS

§ 1 Common Law
1(1) —General Provisions
1(2) —Common Law Pledge
2 Security Interests & Priority of Claims
3 Election of Remedies Rule
4 Debtor Default
4(1) —General Provisions
4(2) —Acceleration Clause
4(3) —Debtor Fraud
4(4) —Debtor Defenses
5 Repossession of Property
5(1) —General Provisions
5(2) —Creditor's Retention of Repossessed Collateral
6 Creditor Sale
7 Garnishment of Funds
8 Guaranty
9 Third Party Debtor
10 Letter of Credit Transactions
11 Mortgages
12 Uniform Customs and Practice for Documentary Credits
13 Banking and Loans
13(1) —In General
13(2) —Suits Against Bank
13(3) —Student Loans
14 National Credit Union Administration Board

§ 1 Common Law

§ 1(1) —General Provisions

Secured transactions in American Samoa are governed by common law principles except where those principles have been modified by statute or are otherwise inappropriate to local conditions. A.S.C.A. § 1.0201. Development Bank v. Reed, 5 A.S.R.2d 135.

In American Samoa secured transactions are governed by the common law except where those principles have been modified by statute or are otherwise inappropriate to local conditions. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

The common law rule that title passes as soon as the bargain is struck is ill-suited for determining when the transfer of title occurs in today's sophisticated global economy. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

§ 1(2) —Common Law Pledge

A transaction may be secured by common law pledge in American Samoa. Development Bank v. Reed, 5 A.S.R.2d 135.

A common law pledge arises when a debtor transfers possession of property to a creditor in order to secure the debt but retains title to the property. Development Bank v. Reed, 5 A.S.R.2d 135.

Intangibles, such as funds in a savings account, can be the subject of a pledge provided that the pledgee can demonstrate "possession" of them, either by obtaining from the pledgor an "indispensable instrument" that stands for the right to the intangible or by otherwise establishing that pledgee had actual control over the intangible to the exclusion of the pledgor. Development Bank v. Reed, 5 A.S.R.2d 135.

Creditor bank had "possession" of funds in debtor's savings account sufficient to sustain a common law pledge where loan contract required the debtor to pay regular installments due on the loan and to maintain an additional balance in the account,

within the exclusive control of the bank, as security. Development Bank v. Reed, 5 A.S.R.2d 135.

Pledgee bank's unrecorded lien on pledged funds in bank account within exclusive control of bank is not invalid since, unlike non-possessory security devices such as mortgage, creditor's exclusive possession and control of the funds provide sufficient notice to third parties that debtor may not have the absolute right to dispose of them. Development Bank v. Reed, 5 A.S.R.2d 135.

Pledgee bank did not give pledgor "constructive possession" of pledged funds and thereby forfeit its pledge by permitting pledgor to use those funds to pay off the loan secured by the pledge; this transaction amounted to a bookkeeping entry rather than a real transfer of assets, neither enriching the pledgor nor injuring his third-party creditors. Development Bank v. Reed, 5 A.S.R.2d 135.

Pledgee bank, which, after receiving notice of garnishment from third party lienholder, permitted pledgor to withdraw from his account funds that were not part of the pledge would be liable to the third party for amount of withdrawals plus remaining unpledged balance of pledgor's account. Development Bank v. Reed, 5 A.S.R.2d 135.

§ 2 Security Interests & Priority of Claims

As long as a pledgee retains possession of property pledged as security, he has a lien on it superior to those of judgment creditors. Development Bank v. Reed, 5 A.S.R.2d 135.

It is not clear that court has the power to alter the rank or priority of liens by approving an ex parte stipulation to which the lienholders were not parties. S.W. California Production Credit Association v. The Vessel Conquistador (Mem.), 11 A.S.R.2d 7.

Stipulated receivership order stating that vessel should be "deemed" in custodia legis, but purporting not to create any ranking or priority of liens other than that which would otherwise exist, would arguably preserve the rights of those who, in the absence of the order, would have obtained liens on the vessel during period of receivership. S.W. California Production Credit Association v. The Vessel Conquistador (Mem.), 11 A.S.R.2d 7.

Claims for costs incurred in securing vessel while it was in custodia legis prior to judicial sale are recoverable from the proceeds of the sale and have priority over the claims of the litigants. 46 U.S.C. § 31326. United Airlines Employee Credit Union v. M/V Sans End, 15 A.S.R.2d 95.

Upon judicial sale in a civil action in rem brought to enforce a preferred mortgage lien, the preferred mortgage lien has priority over all claims against the proceeds, except for (1) expenses and fees allowed by the court, (2) costs imposed by the court, and (3) preferred maritime liens, which include those for damages arising out of maritime tort. 46 U.S.C. §§ 31325, 31301(5)(B). United Airlines Employee Credit Union v. M/V Sans End, 15 A.S.R.2d 95.

Creditor who already obtained a judgment and a writ of execution and levied upon the property of judgment creditor prior to the notice of ASG's tax lien, prevails against the ASG as a judgment lien creditor with respect to such property. 26 U.S.C. § 6323(a); A.S.C.A. § 11.0401 et seq. Shantilal Brothers, Ltd. v. KMST Wholesale, 15 A.S.R.2d 115.

The holder of a security interest, in the form of a chattel mortgage duly registered, prevails over the tax lien of ASG with respect to the proceeds of the sale of those items covered by its mortgage on the date the tax lien became effective. 26 U.S.C. § 6323(a); A.S.C.A. § 11.0401 et seq. Shantilal Brothers, Ltd. v. KMST Wholesale, 15 A.S.R.2d 115.

The general rule of lien priorities is that first in time is first in right. Shantilal Brothers, Ltd. v. KMST Wholesale, 15 A.S.R.2d 115.

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.

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.

In order to perfect a chattel mortgage or other security agreement, the agreement (1) must be in writing signed by the person to be bound and attested to by at least one witness; (2) must be filed with the territorial registrar within 10 days after its execution; and (3) must truly state the consideration upon which it was based or the debt or liability which it was intended to secure, and contain a description of the specific article, articles, or land sold or mortgaged. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

One cannot grant a chattel mortgage or security interest in property without first having some rights in that property. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

A "buyer in the ordinary course of business" is a U.C.C. term and is defined as a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

Under the U.C.C., a buyer in ordinary course of business takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer know of its existence. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

Rule regarding "buyer in the ordinary course of business" did not apply against seller-defendants were they were not in the business of selling buses, were not licensed bus dealers, and did not hold themselves out to the general public as bus dealers. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

Where security holder waited until over eight months after debtor transferred possession and title of chattel to third party to assert its interest, such delay was unreasonable and estopped security holder from asserting said interest. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

Fact that bus was of a different model year and had different VIN number was of no consequence since all parties knew that particular bus was to be covered by the security agreement. Bank of Hawaii v. Neru, 1 A.S.R.3d 51 (Trial Div. 1997).

A security agreement can secure after acquired property. Bank of Hawaii v. Neru, 1 A.S.R.3d 69 (Trial Div. 1997).

Inclusion of an erroneous serial number has no effect on the validity of a security agreement when the property is otherwise adequately described. Bank of Hawaii v. Neru, 1 A.S.R.3d 69 (Trial Div. 1997).

A conditional sale which is not a consignment leaves the seller with a security interest. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

A security interest or mortgage is not valid against another creditor unless that creditor is put on actual notice of the transaction or the interest is properly recorded with the Territorial Registrar. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

§ 3 Election of Remedies Rule

Uniform Commercial Code permits a secured creditor to enforce his security interest through judicial process, to repossess the goods and resell them in a commercially reasonable manner and to recover any deficiency after resale, or to retain the goods in satisfaction of the debt. U.C.C. §§ 9-501(1), 9-503, 9-504, 9-505(2). Theo H. Davies & Co. v. Pacific Development Co., 6 A.S.R.2d 5.

Secured creditor is not required upon default to select only one of the several remedies provided by the Uniform Commercial Code, but may not pursue conflicting remedies simultaneously in a harassing or commercially unreasonable manner. U.C.C. § 9-501(1). Theo H. Davies & Co. v. Pacific Development Co., 6 A.S.R.2d 5.

Under common law "election of remedies" rule, a secured creditor could choose only one of the available remedies for default by debtor, whether or not cumulative remedies would have been fair or commercially reasonable under the circumstances. Theo H. Davies & Co. v. Pacific Development Co., 6 A.S.R.2d 5.

§ 4 Debtor Default

§ 4(1) —General Provisions

The law favors installment payments where it would be inequitable to force petitioner to pay the whole judgment all at once, not that he should be allowed to evade payment altogether. This relief should be available even where the judgment debtor does not have "clean hands." Carpenters Fiji, Ltd. v. Pen, 29 A.S.R.2d 58.

Samoan law provides that interest shall be presumed on all overdue debts. Korea Deep Sea Fisheries Assn. v. Ho Pyo Hong d/b/a Koreansa Shipping Agency, 3 A.S.R.3d 24 (App. Div. 1999).

The presumption of interest on overdue debts is a rebuttable one. Korea Deep Sea Fisheries Assn. v. Ho Pyo Hong d/b/a Koreansa Shipping Agency, 3 A.S.R.3d 24 (App. Div. 1999).

Where creditor sought prejudgment interest on uncertain debt but creditor was largely responsible for uncertainty of debt and delay in resolution of case, Court's refusal to award such interest was proper. Korea Deep Sea Fisheries Assn. v. Ho Pyo Hong d/b/a Koreansa Shipping Agency, 3 A.S.R.3d 24 (App. Div. 1999).

§ 4(2) —Acceleration Clause

Acceleration clauses, which make payment of an entire debt payable upon the debtor's default in making installment payments, are not uncommon, and they normally create an option in the creditor whether to demand payment in full upon

the debtor's default. Pago Petroleum Products, Inc. v. Ye Ahn Moolsoan, Ltd., 29 A.S.R.2d 34.

A party may exercise its option on an acceleration clause by bringing suit. The ability to demand payment by bringing suit, however, is limited by the statute of limitations, and must otherwise occur within a reasonable time. Filing suit within two years of default, where the statute of limitations is 10 years, is reasonable. Pago Petroleum Products, Inc. v. Ye Ahn Moolsoan, Ltd., 29 A.S.R.2d 34.

§ 4(3) —Debtor Fraud

Purposes of territorial statute requiring recordation of non-possessory liens are (1) to protect those who might otherwise extend credit to others in the mistaken belief that the borrowers' possessions are likely to be available as security for any unpaid debts; and (2) to foil fraudulent assertions by judgment debtors that property in their possession actually does not belong to them but has been purchased by or hypothecated to friends or relatives. A.S.C.A. § 27.1510. Development Bank v. Reed, 5 A.S.R.2d 135.

Security agreement between close relatives would not defeat the right of a judgment creditor to the proceeds of the collateral unless evidence established that the security agreement was concluded at arm's length and was not a sham transaction to defeat the interests of other creditors. Landrigan v. Opelle, 5 A.S.R.2d 155.

Court did not deprive attorney of life, liberty, or property without due process of law, either by injury to his reputation or otherwise, where (1) attorney had represented judgment debtor; (2) attorney also represented other members of judgment debtor's family; (3) after judgment, the judgment debtor and her family had agreed to changes in the record ownership of property formerly recorded as property of the judgment debtor, had arranged for the sale of the property, and had removed themselves from the territorial jurisdiction of the court; (4) attorney had in his possession the proceeds of the sale, which judgment creditor alleged to be the property of the debtor but which debtor and other family members claimed to be the property of other family members; (5) court had held the funds to be the property of the judgment debtor and subject to seizure by the judgment creditor; and (6) court ordered the funds to be deposited in the registry of the court pending further proceedings. In re Guardianship of Tedrow, 7 A.S.R. 2d 72.

Although a transfer of exempt assets generally cannot constitute a fraud upon creditors, trial court properly found that an arrangement including a transfer from a judgment debtor to her children and a subsequent resale by the children was intended to accomplish indirectly that which could not have been accomplished by the judgment debtor directly --- the sale of the property for cash without rendering the proceeds susceptible to levy by the judgment creditor --- and that the transaction as a whole was fraudulent as to the judgment creditor. Tedrow v. Manuma, 12 A.S.R.2d 51.

Where a judgment debtor caused her equitable interest in property to be conveyed to her children, who paid no consideration, and the judgment debtor apparently held no other assets to satisfy her debt and had successfully avoided her creditor's attempts at collection, there were sufficient badges of fraud to permit the trial court to find that the entire arrangement was fraudulent as to the judgment creditor. Tedrow v. Manuma, 12 A.S.R.2d 51.

A "transferor" in a fraudulent transaction need not actually possess the asset prior to a conveyance or hold legal title to the asset prior to the transfer. G.H.C. Reid & Co., Inc. v. K.M.S.T., 1 A.S.R.3d 106 (Trial Div. 1997).

Where one person has equitable or legal possession of an asset, and is able vest the asset in the legal possession of another so as to avoid judgment creditors, a fraudulent conveyance has occurred. G.H.C. Reid & Co., Inc. v. K.M.S.T., 1 A.S.R.3d 106 (Trial Div. 1997).

Equitable principles mandate that the law of “fraudulent conveyance” be extended to the sham business ownership situation. G.H.C. Reid & Co., Inc. v. K.M.S.T., 1 A.S.R.3d 106 (Trial Div. 1997).

Where a court finds (1) that a lender and borrower conspired to place loan proceeds in the name of a family member, (2) that the loan proceeds were actually used by the borrower to generate income, and (3) that the scheme was marked by "badges of fraud" indicating intent to place the borrower's assets and income beyond the reach of other judgment creditors, the court may properly conclude that the loan and its fruits are the property of the borrower and subject to satisfaction of judgments against the borrower. G.H.C. Reid & Co., Inc. v. K.M.S.T., 1 A.S.R.3d 106 (Trial Div. 1997).

Where action involves fraud, direct proof of the parties’ fraudulent intent is impossible. G.H.C. Reid & Co., Inc. v. K.M.S.T., 1 A.S.R.3d 106 (Trial Div. 1997).

In fraudulent transfer cases, proof indicative of fraud must come by inference from the circumstances surrounding the transaction, including the relationship and interests of the parties. G.H.C. Reid & Co., Inc. v. K.M.S.T., 1 A.S.R.3d 106 (Trial Div. 1997).

Adequate circumstantial evidence existed to prove fraud where judgment debtor’s spouse could not speak English or Samoan and did not possess sufficient business experience to run a store, where judgment debtor conceived of the business plan, ran the business, and received considerable non-cash compensation, and where other aspects of the business’ operation were tainted with fraud. G.H.C. Reid & Co., Inc. v. K.M.S.T., 1 A.S.R.3d 106 (Trial Div. 1997).

Although a judgment debtor's spouse has a right to work, he or she may not create a business in his or her name only, where the business is not actually that of the debtor's spouse, but instead only a device to keep the debtor's income from the judgment creditors. G.H.C. Reid & Co., Inc. v. K.M.S.T., 1 A.S.R.3d 106 (Trial Div. 1997).

Fraud shall not prevail, substance shall not give way to form, and technical considerations will not prevent substantial justice from being done. Where a transaction is "festooned" with the "badges of fraud," the court may set aside the fraudulent conveyance, and permit the plaintiff creditor to satisfy partially its judgment from the asset. G.H.C. Reid & Co. v. K.M.S.T., 1 A.S.R.3d 82 (Trial Div. 1997).

As a matter of equity, the court will not remain idle and implicitly condone a fraudulent attempt to hide assets from creditors. To hold otherwise would encourage a proliferation of asset transfers from debtors to friends and family members, and seriously undermine the stability of the local economy. G.H.C. Reid & Co. v. K.M.S.T., 1 A.S.R.3d 82 (Trial Div. 1997).

§ 4(4) —Debtor Defenses

Where debtor did not plead usury as a defense to action on debt, court need not decide whether statutory penalty of forfeiture can be invoked in a civil action. A.S.C.A. § 28.1510. Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc., 9 A.S.R. 2d 62.

The legislative aims of the usury law are best satisfied by reading the ambiguous forfeiture provision as creating a defense for debtors in civil court. Shantilal Brothers Ltd. v. Samoa Misc., Inc. 29 A.S.R.2d 207.

§ 5 Repossession of Property

§ 5(1) —General Provisions

Foreigner does not have cause of action for debt against Samoan and therefore cannot transfer alleged cause of action to native. Toomata v. Railey, 1 A.S.R. 623.

Regulation prohibited foreigners from bringing actions against Samoans for goods or cash supplied on credit. Toomata v. Railey, 1 A.S.R. 623.

Village court must dismiss action for debt against Samoan brought by foreigner or on behalf of foreigner because it does not have jurisdiction. Toomata v. Railey, 1 A.S.R. 623.

Where Samoan wife brings action on behalf of husband, who is foreigner, for debt of another Samoan, court finds this is fraud to defeat regulation prohibiting husband from bringing such action. Toomata v. Railey, 1 A.S.R. 623.

When a judgment creditor moves to seize property of the judgment debtor and the Court has determined that the property does belong to the judgment debtor, the property should ordinarily be held by the Court rather than by the creditor, the debtor, or the person previously in possession pending judicial determination of the creditor's right to seize it. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

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.

§ 5(2) —Creditor's Retention of Repossessed Collateral

Under the Uniform Commercial Code, a secured creditor's election to retain the goods subject to the security interest results in a complete discharge of the underlying obligation. U.C.C. § 9-505. Theo H. Davies & Co. v. Pacific Development Co., 6 A.S.R.2d 5.

At common law, as under the Uniform Commercial Code, a secured creditor may not retain repossessed collateral indefinitely while simultaneously maintaining an action on the debt. Theo H. Davies & Co. v. Pacific Development Co., 6 A.S.R.2d 5.

Secured creditor seeking a deficiency judgment after repossessing sold goods was not entitled to the difference between the contract price and the current value of the goods when evidence showed that the goods had been severely damaged since the time the creditor had repossessed them. Theo H. Davies & Co. v. Pacific Development Co., 6 A.S.R.2d 5.

Where bus owner allowed creditor to hold his bus as security for repayment of the debt, and the creditor subsequently operated the bus at a profit equal to or greater than the amount of the debt, the debt was discharged and the creditor's continued refusal to return the bus to its owner would amount to conversion. Chan Kau v. Samasoni, 7 A.S.R.2d 21.

§ 6 Creditor Sale

Obligation to exercise good faith in the execution of contracts requires creditor who seizes and sells collateral to exercise due diligence to secure a fair price for it. Development Bank v. Ilalio, 5 A.S.R.2d 1.

Creditor bank that repossessed and sold collateral under commercially unreasonable circumstances for far less than its apparent market value would be held to have done so in full payment of the debt, either under the principle of accord and satisfaction or because in the absence of circumstances ensuring a fair appraisal of its value the thing is presumed to

be worth the amount paid for it. Development Bank v. Ilalio, 5 A.S.R.2d 1.

Secured creditor who had repossessed sold goods after default and had retained the down payment was not entitled to repossess and sell additional collateral in the absence of a showing that creditor had made commercially reasonable efforts to resell the goods it had already repossessed, since court had no evidence on which to conclude that creditor's damages had not already been fully redressed. Theo H. Davies & Co. v. Pacific Development Co., 6 A.S.R.2d 5.

§ 7 Garnishment of Funds

SEE CIVIL PROCEDURE § 14 – GARNISHMENT

Where owner of mortgaged property retained the right to use and possession of the property until default, and where there was no evidence of default on the debt secured by the mortgage, garnishment by unsecured judgment creditor of rents derived from the property did not interfere with the rights of the mortgagee. A.S.C.A. § 37.1005. Landrigan v. Opelle, 5 A.S.R.2d 155.

Where evidence established that debtor retained most of the proceeds of property given to secure obligation to creditor rather than using the proceeds to repay the obligation, garnishment of those proceeds to satisfy debt to a third party judgment creditor would not interfere with the rights of the secured creditor. Landrigan v. Opelle, 5 A.S.R.2d 155.
Funds that are in the judgment debtor's possession, freely available for his personal expenses and actually used by him for such expenses, are similarly available for garnishment and the satisfaction of his debts. United Airlines v. Pritchard, 15 A.S.R.2d 56.

A judgment creditor's rights do not depend upon whether the debtor has obtained money by earning it or because it was lent or given to him. United Airlines v. Pritchard, 15 A.S.R.2d 56.

Garnishment may not be evaded by placing in the debtor's hands possession and control of a fund freely available to him but not to his creditors. United Airlines v. Pritchard, 15 A.S.R.2d 56.

Where writs of execution and garnishment did not conform to and follow the judgment, Clerk of Courts properly directed to strike surplusage before issuing them. Nelson & Robertson Pty. Ltd v. K.M.S.T., Inc., 1 A.S.R.3d 87 (Trial Div. 1997).

Judgment may not be rendered against garnishee who has not been notified of controversion pleading and of time and place of trial. Coffelt v. Pacific Rim Consulting & Inspecting Corp., 5 A.S.R.3d 168 (Trial Div. 2001).

Judgment may not be entered against garnishee until principal debtor defendant on underlying debt has been given seven days' written notice of controversion proceeding and trial date. Coffelt v. Pacific Rim Consulting & Inspecting Corp., 5 A.S.R.3d 168 (Trial Div. 2001).

Where Court found principal defendant controlled garnishee as his alter ego, based on organizational and operational history of corporate garnishee, and principal defendant's general authority to handle affairs of purported sole owner and operator of garnishee, service of controversion pleading and notice of trial on principal defendant satisfied requirement of notification to garnishee. Coffelt v. Pacific Rim Consulting & Inspecting Corp., 5 A.S.R.3d 168 (Trial Div. 2001).

Where Judgment creditor failed to prove by preponderance of evidence that garnishee was indebted to principal defendant or had any of principal defendant's property at time writ of garnishment was served on garnishee, Court properly dismissed judgment creditor's controversion proceeding and terminated his garnishment proceeding. Coffelt v. Pacific Rim Consulting & Inspecting Corp., 5 A.S.R.3d 168 (Trial Div. 2001).

§ 8 Guaranty

Consideration sufficient to support a guaranty need not flow directly to the guarantor, and may take the form of delivery of goods to a third party on the faith of the guarantor's assurance of payment. Development Bank v. Reed, 5 A.S.R.2d 135.

Trial court's conclusion that a loan guaranty from which the name of the principal debtor had been omitted was intended to secure particular loans was supported by substantial evidence where circumstances surrounding the execution of the guaranty demonstrated the intent of the parties. Pritchard v. Amerika Samoa Bank, 8 A.S.R.2d 157.

Argument that a written guaranty contract which omitted the name of the principal debtor was missing an essential term and thus was unenforceable as a matter of law was without merit, where the intention of the parties with regard to the missing term appeared from other evidence. Pritchard v. Amerika Samoa Bank, 8 A.S.R.2d 157.

A surety holds a legal but not a beneficial interest in property. Pen v. Pen, 30 A.S.R.2d 119.

A guaranty is a contract and the rights of guarantors must be determined from the language of the contract. Development Bank of Am. Samoa v. HAJ Corporation, 31 A.S.R.2d 60.

A guaranty of payment, unlike a guaranty of collection, is an absolute promise by the guarantor to pay the debt, when due, if it is not paid by the borrower. Upon the borrower's default, the guaranty of payment enables the creditor to collect debt from the guarantor without seeking collection from the borrower. Development Bank of Am. Samoa v. HAJ Corporation, 31 A.S.R.2d 60.

§ 9 Third Party Debtor

When lending bank cancelled a certificate of deposit given by guarantor bank to secure third party's debt and "wrote off" the underlying debt, third party debtor remained liable for the debt to either the lending bank or the guarantor bank, depending upon whether the lending bank was within its rights in cancelling the certificate. Development Bank v. Pritchard, 6 A.S.R.2d 125.

§ 10 Letter of Credit Transactions

Letter of credit exists independently of the obligations of the underlying contract and must be paid when the required documents are presented, regardless of the transactions between the buyer and seller. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Letter of credit transactions contain three separate contracts: 1) between the bank who agrees to issue the letter and its customer; 2) between the customer and the beneficiary who agree to use a letter; and 3) between the issuing bank that promises to pay conforming drafts against the letter and the beneficiary. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Independence of a letter of credit from its underlying transactions preserves its usefulness as a commercial device and reflects a policy decision that disputes regarding the underlying facts should be resolved after the letter is paid. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

UCC provision reducing damages for wrongful dishonor of a letter of credit by any amount realized by resale or other use or disposition of the subject matter of the transaction does not apply to situations such as guaranty letters of credit. UCC § 5-115. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Letter of credit requiring only a beneficiary's signed statement and a notice of default of invoice rather than an attached copy of the invoice for the goods for which it guaranteed payment might not be governed by UCC provision reducing damages for wrongful dishonor of a letter of credit by the amount realized by resale of the subject matter of the transaction, since the letter might not identify the goods sufficiently to enable the court to trace their resale without referring to the underlying contracts. UCC § 5-115. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

Since the issuer of a letter of credit or its customer has the opportunity to draft any desired protections into the letter, a court will not infer added protections which were not clearly conveyed to the beneficiary. Amerika Samoa Bank v. Pacific Reliant Industries, 20 A.S.R.2d 102.

The distinction between a standby letter of credit and a true guaranty is that the letter of credit is a direct obligation to pay upon presentation of specified documents showing a default and the guaranty is a secondary obligation requiring proof of the fact of default. Amerika Samoa Bank v. Pacific Reliant Industries, 20 A.S.R.2d 102.

The great weight of authority requires strict compliance (rather than substantial compliance) with the terms of a letter of credit. Amerika Samoa Bank v. Pacific Reliant Industries, 20 A.S.R.2d 102.

§ 11 Mortgages

SEE ADMIRALTY § 3 – PREFERRED SHIP MORTGAGES AND MARITIME LIENS

SEE PROPERTY § 9(4) – MORTGAGES

Statute which states that no instrument shall be effective to create a security interest unless it contains a description of items to be mortgaged prevents the creation of a "general mortgage" and reinforces the statutory prohibition against mortgages on after-acquired real property and fixtures, as well as security interests in personal property. A.S.C.A. §§ 27.1510(c), 37.1003. Shantilal Brothers, Ltd. v. KMST Wholesale, 15 A.S.R.2d 115.

Chattel mortgages in American Samoa create a lien rather than pass legal title. A.S.C.A. § 37.1502. Shantilal Brothers, Ltd. v. KMST Wholesale, 15 A.S.R.2d 115.

The general rule against mortgages of after-acquired real property contains an important exception for cases in which the property to be acquired is described in the mortgage document. A.S.C.A. § 37.1003. Shantilal Brothers, Ltd. v. KMST Wholesale, Inc., 16 A.S.R.2d 103.

American Samoa's chattel mortgage statute requires not just that the mortgage contain some language sufficient to put third parties on inquiry, but that it contain a "description" of the "specific" article or articles mortgaged. A.S.C.A. § 27.1510. Shantilal Brothers, Ltd. v. KMST Wholesale, Inc., 16 A.S.R.2d 103.

The general rule appears to be that notice of an unrecorded mortgage, given to a creditor who has already "fastened his lien upon the property by judgment," comes too late regardless of whether a writ of execution has issued. Shantilal Brothers, Ltd. v. KMST Wholesale, Inc., 16 A.S.R.2d 103.

In American Samoa, unlike jurisdictions which follow the Uniform Commercial Code, reference in a mortgage to all of a mortgagor's property within a certain class does not amount to a description of each item within the class, sufficient to create a mortgage interest in that property. A.S.C.A. § 43.1510.

Diocese of American Samoa Pago Pago v. K.M.S.T., Inc., 18 A.S.R.2d 67.

A judgment creditor at common law who acquired knowledge of an unrecorded mortgage at any time before executing upon specific property of the debtor would have been bound by the mortgage, unless the jurisdiction had statutory judgment liens; American Samoa has no such statutory judgment liens. Diocese of American Samoa Pago Pago v. K.M.S.T., Inc., 18 A.S.R.2d 67.

Where a mortgage document does not describe with sufficient specificity the property mortgaged, no amount of knowledge that the deficient mortgage exists can cure the deficiency; subsequent creditors with knowledge of the deficient mortgage are not bound thereby. Diocese of American Samoa Pago Pago v. K.M.S.T., Inc., 18 A.S.R.2d 67.

Although a mortgage must truly describe the property secured by the mortgage, a description is sufficient if it furnishes a reasonable basis for identification, even though it is not specific enough to fully identify the property by itself. Bank of Hawaii v. Neru, 1 A.S.R.3d 69 (Trial Div. 1997).

The requirement that mortgage creditors be paid according to the priority of their liens is statutorily mandated. Administrator v. Amerika Samoa Bank, 3 A.S.R.3d 146 (Trial Div. 1999).

Where entity was not initial party to foreclosure proceedings, but subsequently intervened, and where it had waited five years before bringing its own suit on delinquent debt, court found delay to be unduly dilatory and denied it prejudgment interest. Administrator v. Amerika Samoa Bank, 3 A.S.R.3d 146 (Trial Div. 1999).

A security interest or mortgage is not valid against another creditor unless that creditor is put on actual notice of the transaction or the interest is properly recorded with the Territorial Registrar. Jiang v. Daewoosa Samoa, Ltd., 6 A.S.R.3d 91 (Trial Div. 2002).

§ 12 Uniform Customs and Practice for Documentary Credits

Under the Uniform Customs and Practice for Documentary Credits ("UCP"), a bank asked to pay a letter of credit has a reasonable time to examine the documents, but if it decides not to pay, must promptly notify the presenter or beneficiary of the discrepancies on which refusal is based and whether it is holding documents for the presenter or returning them. UCP arts. 16(c), 16(d). Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

UCP provisions requiring a bank which refuses to pay a letter of credit to promptly notify the presenter of the grounds for refusal promote the cure of documentary deficiencies before the letter of credit expires. Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

Issuing bank which has not promptly notified a party presenting a letter of credit of deficiencies in the documents and whether it is holding them for presenter or returning them may not use such deficiencies as a basis for refusing to pay the letter of credit. Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

"Reasonable time" to examine documents under the UCP is three banking days. Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

Notice to a presenter stating that a letter of credit was being refused but not specifying discrepancies in the documents or what was being done with the documents is inadequate notice under UCP. Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

UCP provisions are designed to deter banks issuing letters of credit from failing to timely assert any deficiencies in the related documents. UCP arts. 16(c), 16(d), and 16(e). Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

UCP provisions are meant to ensure that stalling and waffling of banks issuing letters of credit does not blunt the effectiveness of such important tools of international commerce. UCP arts. 16(c), 16(d), and 16(e). Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

UCP art. 16(d) requires a bank which refuses to pay a letter of credit to notify the party which actually submitted the documents of its refusal; it does not divest the party in whose favor the letter was issued of its rights under the UCP. UCP art. 16(d). Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

Customer for whose benefit a bank issued a letter of credit can waive any nonconformities in the related documents. Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

UCP art. 12(e) does not provide a basis for awarding attorney's fees. Pacific Reliant Industies, Inc., v. Amerika Samoa Bank, 14 A.S.R.2d 41.

UCC provision reducing damages for wrongful dishonor of a letter of credit by the amount realized by resale or other use or disposition of the subject matter of the transaction did not apply to a letter governed by the Uniform Customs and Practice for Documentary Credits (UCP) where: 1) the UCP was unambiguous (though not explicit) regarding damages since it clearly implied that the dishonoring party was liable for the face amount of the letter; 2) the UCC provision was not an apparent rule of general law since no cases construed it to

reduce damages below the face amount of the letter; and 3) reducing damages below the face amount would reduce the commercial utility of such letters since disputes concerning the fact and amount of resale could obscure the exact amount owed and hinder prompt payment. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

UCC provision reducing damages for wrongful dishonor of a letter of credit by the amount realized by resale or other use or disposition of the subject matter of the transaction would not apply to a letter governed by the UCP which may not have identified the goods in enough detail to enable the court to trace their resale without referring to the underlying contracts. UCC § 5-115. Pacific Reliant Industries, Inc. v. Amerika Samoa Bank, 16 A.S.R.2d 57.

The Uniform Customs and Practice for Documentary Credits embodies an effort by international bankers at consensual regulation. Amerika Samoa Bank v. Pacific Reliant Industries, 20 A.S.R.2d 102.

The Uniform Customs and Practice for Documentary Credits (UCP) 16(e) addresses only notice, and does not limit the issuing bank's liability to the party which actually presents the documents. Amerika Samoa Bank v. Pacific Reliant Industries, 20 A.S.R.2d 102.

§ 13 Banking and Loans

§ 13(1) —General Provisions

Territorial statute providing that no debtor can be charged interest in excess of 6% unless the amount "is in writing and is signed by the party to be charged" precluded court from holding debtor liable to pay interest at a higher rate in the absence of a signed agreement, even when debtor knew bank would charge creditor a higher rate of interest on amounts not timely paid by debtor. A.S.C.A. § 28.1501(a). Meridian Breckwoldt Samoa, Ltd., v. Max Haleck, Inc., 7 A.S.R. 2d 95.

Since in the absence of a written agreement specifying the rate of interest applicable to a promissory note the statutory rate of 6% will apply, where a note specified an interest rate of 12.5% "until maturity" the rate after maturity was 6%. A.S.C.A. § 28.1501. Pritchard v. Amerika Samoa Bank, 8 A.S.R. 2d 157.

Under statute providing that interest on business loans may not exceed 18 per cent annually, creditor whose contract specified 20 per cent interest would have judgment for only 18 per cent. A.S.C.A. § 28.1503. Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc., 9 A.S.R. 2d 62.

The statutory rate of six percent interest is presumed on overdue debts for which no contractual interest rate is specified. A.S.C.A. § 28.1501(a). Ghiselli Bros., Inc. v. Ryan, Inc., 22 A.S.R.2d 57.

The maximum interest rate for business purposes is 18 percent, pursuant to A.S.C.A. 28.1503, but interest rates greater than six percent must be in writing to be enforceable, pursuant to A.S.C.A. § 28.1501. Jessop v. Hisatake, 25 A.S.R.2d 12.

The relationship of a bank to its general depositors is that of debtor to creditor. Passi v. Amerika Samoa Bank, 28 A.S.R.2d 130.

An assignment passes title from the assignor to the assignee, so that the latter is normally the real party in interest for purposes of T.C.R.C.P. 17(a). American Samoa Gov't Employees Federal Credit Union v. Mailo, 29 A.S.R.2d 163.

A.S.C.A. § 28.1501(a), establishing an interest rate of 6% in the absence of a writing stating otherwise, applies to business loans, and does not permit the imposition of a rate of 18% as otherwise allowed by A.S.C.A. § 28.1503. Shantilal Brothers Ltd. v. Samoa Misc., Inc. 29 A.S.R.2d 207.

Where no written agreement accompanies a loan, a 6% interest rate is inferred. Johnson v. Coulter, 30 A.S.R.2d 130.

The forfeiture provision of A.S.C.A. § 28.1510 creates a defense for debtors in civil court, not third parties not in privity with the creditor. Pacific N. Marine Fuels, Inc. v. M/V Clover #7, 30 A.S.R.2d 152.

The maximum reasonable interest rate on an oral contract for indebtedness is 6%. Pacific N. Marine Fuels, Inc. v. M/V Clover #7, 30 A.S.R.2d 152.

A debt incurred as a regular part of debtor's business activities may fall squarely within the ambit of debt incurred "for the purpose of . . carrying on or acquiring a business," A.S.C.A. § 28.1503, and as such a maximum 18% rate of interest to such loans is statutorily allowed. However, this rate is still subject to the requirement of § 28.1501(a) that agreements for an interest rate higher than 6% be documented by a writing signed by the party to be charged. Donovan v. Coffin, 31 A.S.R.2d 70.

A debtor is not excused from repayment of a loan, even if a creditor mishandled, but later corrected, interest adjustments. Development Bank of American Samoa v. Tuika, 7 A.S.R.3d 86 (Trial Div. 2003).

Neither alleged misconduct by a lending bank's personnel, nor a stormy relationship between the debtor and such personnel, excuses a debtor from repaying a loan, if there is no relevant relationship between such problems and the loan's collection. Development Bank of American Samoa v. Tuika, 7 A.S.R.3d 86 (Trial Div. 2003).

§ 13(2) —Suits Against Bank

The general rule for recovery when a bank is negligent in collecting a draft is that the bank is liable for the actual loss suffered by the owner of the commercial paper as a result of the negligent misconduct of the bank; however, only nominal damages are recoverable when it appears that the paper remains collectible. Ghiselli Bros., Inc. v. Ryan, Inc., 22 A.S.R.2d 57.

In order for a depositor to recover deposited funds against a bank, he must make a prima facie showing that he deposited the money in question with the bank and demanded the same from it. If a depositor has met this burden or if no controversy between the parties exists over the fact that a depositor placed funds to his credit with the bank, then the bank, seeking to avoid recovery by the depositor, is charged with the burden of proving payment to the depositor by a preponderance of the evidence. Passi v. Amerika Samoa Bank, 28 A.S.R.2d 130.

The Federal Depositor's Insurance Act requires federally insured banks to retain records since the information may be valuable in litigation. It is not a mandate to banks to destroy records in order to avoid liability or relax a burden of proof. Passi v. Amerika Samoa Bank, 28 A.S.R.2d 130.

In actions by depositors to recover funds from a bank, the statute of limitations does not accrue until the depositor has made a demand and the bank has refused to pay. Passi v. Amerika Samoa Bank, 28 A.S.R.2d 130.

Actions to recover bank deposits evidenced by entries in a depositor's account passbook are governed by statutes relating to actions on oral contracts, and not on written contracts, unless the passbook is signed by an authorized bank employee and contains a definite promise to pay. Passi v. Amerika Samoa Bank, 28 A.S.R.2d 130.

§ 13(3) —Student Loans

Requirement of federally insured student loan program that local lending institutions make loans without security and without binding third parties as sureties except under particular circumstances defeated lending bank's attempt to recover defaulted student loan debt from borrower's wife, even though she cosigned loan application and promissory notes. 20 U.S.C. §§ 1071 et seq.; 34 C.F.R. 682.509. Development Bank v. Fa'alevao, 6 A.S.R.2d 81.

§ 14 National Credit Union Administration Board

The National Credit Union Administration Board determines the interest rates charged by federal lending institutions. ASG Employees Federal Credit Union v. Galea`i, 26 A.S.R.2d 74.

The Board of the National Credit Union Administration has exclusive authority to regulate terms of federal credit union loans, and this authority preempts any American Samoan laws affecting such interest rates. Therefore, the ceiling of 15% provided for in A.S.C.A. § 28.1501 is preempted by the federal rate established by the NCUA. ASG Employees Federal Credit Union v. Galea`i, 26 ASR2d 74.

Once the National Credit Union Administration Board become a conservator, it stands in the shoes of the mortgagee. ASG Employees Federal Credit Union v. Gurr, 26 A.S.R.2d 87.

TAXATION

§ 1 Incorporation of Federal Tax Law
2 Procedural Issues
2(1) —General Provisions
2(2) —Statutes of Limitations
2(3) —Jurisdiction
2(4) —Taxpayer Interviews
3 Specific Taxes
3(1) —Estate Taxes
3(2) —Excise Taxes
3(3) —Gift Taxes
3(4) —Income Tax
3(5) —Property Taxes
3(6) —Taxation of Awards or Settlements
4 Collection
5 Refunds & Credits
5(1) —Refunds
5(2) —Credits
6 Power of Levy, Distraint & Tax Liens
7 Marital Deduction
8 Sovereign Immunity
8(1) —Prohibited Suits
8(2) —Permitted Suits
8(3) —Required Procedure
9 Taxpayer Offenses
9(1) — Failure to File
9(2) — Failure to Pay
9(3) — Taxpayer Omissions
9(4) —Reliance on Professional Advice
10 Deficiency Proceedings
10(1) —Generally
10(2) —Notice Requirement
11 Industrial Incentive Act
11(1) —Tax Exemption Policy Generally
11(2) —Authority of Governor, Board
11(3) —Proof of Public Interest
11(4) —Constitutionality

§ 1 Incorporation of Federal Tax Law

SEE AMERICAN SAMOA GOVERNMENT § 1 – THE FEDERAL GOVERNMENT, CONSTITUTION, & LAWS OF AMERICAN SAMOA

Congress has delegated all powers of governance of American Samoa, including the power to tax, to the President. Mahoney v. Am. Samoa Gov't, 2 A.S.R.2d 74 (Trial Div. 1985).

Since Congress has entrusted the governance of this Territory to the Department of the Interior, which has approved the Territory's Constitution and all the laws promulgated under it, there is no need for special Congressional authorization of the power to tax. Mahoney v. Am. Samoa Gov't, 2 A.S.R.2d 74 (Trial Div. 1985).

Territorial legislature has incorporated by reference the United States Internal Revenue Code, 26 U.S.C., for income taxation in American Samoa. A.S.C.A. § 11.0403. Klauk v. American Samoa Government, 13 A.S.R.2d 52.

Employers and employees within American Samoa must pay U.S. Social Security taxes, as the Federal Insurance Contributions Act applies to any employment performed within the United States or to any employment performed outside the United States by her citizens or residents for an American employer. 26 U.S.C. §§ 3101-3128. Alamoana Recipe Inc. v. American Samoa Government, 24 A.S.R.2d 156.

American Samoa's income tax law does not conflict with or purport to supplant federal tax laws, but it merely creates an additional, territorial tax modelled on the federal tax law. A.S.C.A. § 11.0403. Alamoana Recipe Inc. v. American Samoa Government, 24 A.S.R.2d 156.

Suits to restrain assessment or collection of any federal tax in any court are prohibited by the federal Anti-Injunction Act. 26 U.S.C. § 7421(a). Alamoana Recipe Inc. v. American Samoa Government, 24 A.S.R.2d 156.

The Federal Anti-Injunction Act prevents the High Court, at any level, from restraining the assessment of collection of any federal tax. 26 U.S.C. §§ 876, 7421(a). Alamoana Recipe Inc., v. American Samoa Gov't, 25 A.S.R.2d 46.

The Federal Anti-Injunction Act is applicable to temporary, as well as permanent pleas for injunctive relief. Alamoana Recipe Inc., v. American Samoa Gov't, 25 A.S.R.2d 46.

Federal FICA applies to any employment performed within the U.S. or outside the U.S. if performed by U.S. citizens or residents, pursuant to 26 U.S.C. § 3121(b), and applies specifically to American Samoa, pursuant to 26 U.S.C. § 3121(e). Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 97.

Federal laws need not be passed by the American Samoa legislature, since Congress has the constitutional power to make rules and regulations for the territories, pursuant to U.S. Const. art. VI, and the federal Constitution and laws are the supreme law of the land, pursuant to U.S. Const. art. IV, § 3. Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 97.

A.S.C.A. § 11.0408 confers jurisdiction on the High Court with respect to disputes concerning the American Samoa income tax, and A.S.C.A. § 11.0403 incorporates by reference the United States Internal Revenue Code, 26 U.S.C. § 1 et seq., for income taxation in American Samoa. Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

Actions pertaining to improperly assessed tax deficiencies and penalties in American Samoa are subject to the statutory requirements applicable to such actions brought in a Tax Court under the United States internal revenue code. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

A.S.C.A. § 11.0403 does supplant federal tax laws, but it merely creates an additional, territorial tax modeled on the federal tax. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

American Samoa has adopted certain income tax laws and rules of the United States through A.S.C.A. § 11.0403(a). Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

The Samoan Income Tax Act consists of chapters 4 and 5 of the American Samoa Code and the provisions of the United States Internal Revenue Code adopted by § 11.0403(a). Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

By rejecting the Governor's several proposals to remove the child tax credit from the Samoan Income Tax Act, the Legislature has evidenced clear intent to recognize the child tax credit as the law of American Samoa. Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

The Legislature has enacted the child tax credit as the law of American Samoa and only the Legislature may remove the credit from the Samoan Income Tax Act. Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

In cases where the language of Samoan Income Tax Act is ambiguous and conflicts with the Internal Revenue Code, the Court must determine whether the Legislature intended to "de-link" the Samoan Income Tax Act section. Boral Gas of American Samoa, Inc. v. Iaulualo, 7 A.S.R.3d 57 (Trial Div. 2003).

§ 2 Procedural Issues

§ 2(1) —General Provisions

Order staying payment of taxes pending litigation on tax exemption is not authorized by Federal Rules. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Court will allow amendment of petition substituting Governor for Director of Tax Office as respondent in challenge to alleged tax deficiency, despite running of 90 days statutory period for amendment, since High Court will hear matter in any event and denial of amendment would result in injustice. Patu v. Westervelt, 4 A.S.R. 818.

Equal Protection guarantees forbid statute unnecessarily penalizing United States citizenship as between similarly situated taxpayers one of whom is a citizen and one of whom is a national even though they may both be American Samoans. Where the substitution of terms renders referential legislation ambiguous, court will not favor meaning that is inconsistent with constitutional rights. Naber v. Am. Samoa Gov't, 1 A.S.R.2d 109 (Trial Div. 1983).

All hearings of the tax exemption board, when considering a request for tax exemption, must be open to the public. Samoa Packing Co. v. Am. Samoa Gov't, 2 A.S.R.2d 56 (App. Div. 1985).

Under rules governing tax litigation, a party may amend pleadings by leave of court which shall be given freely when justice requires. Tax Court Rule 41. King v. Commissioner of Revenue, 7 A.S.R.2d 90.

In proceeding involving issue of fraudulent intent to evade tax, government bears burden of proof by clear and convincing evidence. 26 U.S.C. § 7454. Ah San v. Lutali, 4 A.S.R.2d 177.

When the High Court sits as a Tax Court, it follows the tax court rules and procedures set forth in the Internal Revenue Code. Boral Gas of American Samoa, Inc. v. Iaulualo, 7 A.S.R.3d 57 (Trial Div. 2003).

Review of a decision of the High Court, sitting as the Tax Court, shall be obtained by filing a notice of appeal with the clerk of the High Court within 90 days after the decision is entered. Boral Gas of American Samoa, Inc. v. Iaulualo, 7 A.S.R.3d 57 (Trial Div. 2003).

Absent an express rule to the contrary, a motion for reconsideration of a Tax Court decision terminates the running of the ninety day limitations period within which to file an appeal, and, in effect, restarts the clock for appealing if and when the motion is denied. Boral Gas of American Samoa, Inc. v. Iaulualo, 7 A.S.R.3d 57 (Trial Div. 2003).

§ 2(2) —Statutes of Limitations

Normal three-year statute of limitations for collection of delinquent taxes expands to six years when taxpayer failed to report over 25 percent of his includible gross income in tax return. 26 U.S.C. § 6501(e)(1)(A). Ah San v. Lutali, 4 A.S.R.2d 177.

The limitation period for the government to bring an action seeking assessment of additional income taxes, penalties, or interest under the Samoan Income Tax Act is three years from the date that the taxpayer files the tax return. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

§ 2(3) —Jurisdiction

SEE CIVIL PROCEDURE § 1 – JURISDICTION

High Court sits as Tax Court if petition is timely filed challenging notice of deficiency, otherwise High Court sits as District Court to hear refund claim. Patu v. Westervelt, 4 A.S.R. 818.

High Court of American Samoa has exclusive and original jurisdiction over territorial income tax proceedings, sitting as a District Court in refund cases and a Tax Court in deficiency proceedings. A.S.C.A. §§ 11.0401, 11.0408. Klauk v. American Samoa Government, 13 A.S.R.2d 52.

According to Tax Court rule, a 90-day notice must have been issued for the court to have jurisdiction in a deficiency proceeding initiated by a taxpayer. United States Tax Court Rule 13(a). Klauk v. American Samoa Government, 13 A.S.R.2d 52.

For a court to have jurisdiction over a suit to recover taxes erroneously or illegally assessed or collected, the government must have assessed such taxes and the taxpayer must have timely filed a refund claim with the Tax Office. 26 U.S.C. § 7422. Klauk v. American Samoa Government, 13 A.S.R.2d 52.

Statutory requirement that petition for redetermination of deficiency of income taxes be made within 90 days after notice of deficiency was mailed is jurisdictional. 26 U.S.C. § 6213(a); A.S.C.A. § 11.0401. Stephens v. American Samoa Government, 15 A.S.R.2d 87.

The High Court, while sitting as a Tax Court for deficiency proceedings, does not have jurisdiction to hear such a deficiency proceeding unless it was filed within the statutory deadline; while sitting as a District Court for refund cases, it lacks jurisdiction until there has been payment or collection of disputed taxes. 26 U.S.C. § 7422; A.S.C.A. § 11.0409. Stephens v. American Samoa Government, 15 A.S.R.2d 87.

The High Court lacks jurisdiction to block enforcement of federal tax laws. Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 97.

The High Court lacks jurisdiction to grant relief for unauthorized tax collection by the IRS, since such actions must be brought in a district court of the United States, pursuant to 26 U.S.C. § 7433(a). Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 97.

American Samoans may litigate unauthorized tax collections in the federal district court where the defendant resides, where a substantial part of the claim arose, or where a substantial part of the relevant property is situated. Alamoana Recipe, Inc., v. American Samoa Government, 25 A.S.R.2d 97.

A.S.C.A. § 11.0408 confers jurisdiction on the High Court with respect to disputes concerning the American Samoa income tax, and A.S.C.A. § 11.0403 incorporates by reference the United States Internal Revenue Code, 26 U.S.C. § 1 et seq., for income taxation in American Samoa. Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

The High Court, Trial Division, has exclusive, original jurisdiction over all judicial proceedings in American Samoa, both criminal and civil, with respect to the Samoan Income Tax Act. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

In tax deficiency proceedings, the High Court sits as a Tax Court. Boral Gas of American Samoa, Inc. v. Iaulualo, 7 A.S.R.3d 57 (Trial Div. 2003).

§ 2(4) —Taxpayer Interviews

26 U.S.C. § 7521(b), which describes procedures involving taxpayer interviews, does not give rise to a cause of action for a failure to abide by its requirements, and the Court will not enjoin the tax office from investigations when it appears that a plaintiff has independently apprised himself of his rights and is exercising them. Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

§ 3 Specific Taxes

§ 3(1) —Estate Taxes

RESERVED

§ 3(2) —Excise Taxes

Fono has power to impose excise tax on incidental importation of used motor vehicles, even if Hawaii and California have legislatively chosen not to do so. Letuli v. Government, 4 A.S.R. 830.

Statute imposing excise tax on imported motor vehicles applies whether or not vehicle imported is used and imported incidental to change of residence by owner. 34 A.S.C. §§ 401, 402(a)(3)(C). Letuli v. Government, 4 A.S.R. 830.

In order for goods to fall under an exception to the excise tax that the goods were imported for export sale for consumption outside American Samoa, the goods must be packaged and stored according to the requirements under A.S.C.A. § 11.1002(c). YRT, Inc. v. Progressive Ins. Co., 6 A.S.R.3d 108 (Trial Div. 2002).

§ 3(3) —Gift Taxes

RESERVED

§ 3(4) —Income Tax

Income tax law provides that employer is liable for employee's tax liability unless portion of earnings are retained, even as to foreign corporation entering territory for a single business transaction; however, tax liability does not accrue until after taxable year. Pacific Salvage v. Am. Samoa Gov't, 1 A.S.R.2d 107 (Trial Div. 1983).

§ 3(5) —Property Taxes

Language of tax statute which uses property and land interchangeably cannot be construed to include tax on leased houses. Government v. Bird, 2 A.S.R. 102.

Court takes judicial notice that Attorney-General construed tax on leased property not to include lease of houses. Government v. Bird, 2 A.S.R. 102.

Admission of ownership of land for tax purposes by Samoan usually means admission of right to use family lands assigned to him by matai. Government v. Bird, 2 A.S.R. 102.

§ 3(6) —Taxation of Awards or Settlements

An award or settlement can be exempt from government taxation only if: (1) the claim was based on tort or tort type rights and (2) the damages were received on account of personal physical injuries or physical sickness. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

§ 4 Collection

Government must issue a statutory notice of deficiency (90-day letter) by registered mail before assessing or collecting any deficiency, and is expressly prohibited from such assessment or collection until it has done so. 26 U.S.C. §§ 6212(a), 6213(a). Klauk v. American Samoa Government, 13 A.S.R.2d 52.

§ 5 Refunds & Credits

§ 5(1) —Refunds

The American Samoa Government does not have, and cannot obtain, any ownership interest in the monies representing income tax refunds. The Senate v. Lutali, 27 A.S.R.2d 157.

The American Samoa Government collects income taxes, through wage withholdings, periodic estimated payments and other means, with the clear-cut statutory obligation to pay refunds for overpayments. 26 U.S.C.A. § 6402; A.S.C.A. § 11.0403(a). The Senate v. Lutali, 27 A.S.R.2d 157.

Refund monies are the taxpayers' private funds. The Senate v. Lutali, 27 A.S.R.2d 157.

The American Samoa Government holds tax refund monies with the fiduciary duty to account for and refund those monies to the taxpayers as the rightful owners, with interest if not timely paid. The Senate v. Lutali, 27 A.S.R.2d 157.

The American Samoa Government's fiduciary obligations regarding income tax refunds are absolute, regardless of the tax year in which the government assumes responsibility to return to its taxpayers their excess tax payments in the government's possession. The Senate v. Lutali, 27 A.S.R.2d 157.

Tax credit refunds need not be expressly funded by appropriations since the government does not have, and cannot obtain, any ownership interest in monies representing tax refunds. Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

The government holds tax credit refund monies with a fiduciary duty to account for and refund those monies to the taxpayers as the rightful owner, with interest if not timely paid. Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

Because legislative appropriations to pay tax refunds are unnecessary, the entire appropriation process is irrelevant to an action seeking payment of tax refunds. Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

Taxpayers that prevailed in action against government for recovery of tax refund entitled to court costs and reasonable attorney fees. Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

§ 5(2) —Credits

For a taxpayer claiming the child tax credit and having one or two children, the credit is nonrefundable, meaning the taxpayer can only offset income tax liability in excess of the mandated alternative minimum tax for all American Samoa taxpayers, but not recover any refund for the amount of the credit over the amount of tax liability. Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

For a taxpayer claiming the child tax credit and having three or more children, a portion of the credit is treated as refundable. Dameworth v. Am. Samoa Gov't, 6 A.S.R.3d 242 (Trial Div. 2002).

§ 6 Power of Levy, Distraint & Tax Liens

Leins to secure the payment of taxes may only be established by statute or some act of the legislature. Moimoi v. Howden, 1 A.S.R. 3.

When Board of Assessors established a "Sa" pursuant to an order of the Commandant of the Naval Station, valid tax lien was created. Moimoi v. Howden, 1 A.S.R. 3.

Samoan custom of "Sa" establishes a lien on property for purposes of taxation. Moimoi v. Howden, 1 A.S.R. 3.

Before the government can distrain and seize a taxpayer's property, it must validly assess a deficiency by preparing and sending a 90-day statutory notice to the taxpayer before the statute of limitations expires. 26 U.S.C. §§ 6212(a), 6501(a). Klauk v. American Samoa Government, 13 A.S.R.2d 52.

A taxpayer may sue and enjoin the government from levying on, distraining, or seizing property under the authority of purported deficiency assessments where the government did not issue a 90-day statutory notice of deficiency. 26 U.S.C. § 6213(a). Klauk v. American Samoa Government, 13 A.S.R.2d 52.

Tax laws permitting the seizure and sale of property must be strictly construed. Klauk v. American Samoa Government, 13 A.S.R.2d 52.

Government violates due process when it seizes a taxpayer's property for unpaid taxes without following the procedures mandated by the Internal Revenue Code for distraint and levy. Klauk v. American Samoa Government, 13 A.S.R.2d 52.

Where government failed to issue a 90-day statutory notice of deficiency before seizing plaintiff's property for unpaid taxes, it was enjoined from depriving plaintiff of his right to due process, either by continuing to deprive him of his rights under the Internal Revenue Code to challenge and contest income tax deficiencies or by withholding the property it had seized from plaintiff, until it complied with the applicable Code provisions pertaining to distraint and levy. Klauk v. American Samoa Government, 13 A.S.R.2d 52.

Power of levy and distraint over a taxpayer's property may be invoked without intervention of judicial process, on the theory that the taxpayer has already had the opportunity to invoke administrative and judicial remedies. 26 U.S.C. § 6331(a). Klauk v. American Samoa Government, 13 A.S.R.2d 52.

Under 26 U.S.C.A. § 6331, the government may levy the property of a delinquent taxpayer to satisfy the taxpayers debt; and because each party to a joint bank account has the right to withdraw all of the funds from the account, the funds in a jointly held bank account are considered the taxpayer's property, and are subject to levy. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

§ 7 Marital Deduction

The "marital deduction" is a deduction from a decedent's gross estate allowed in computing the estate's liability for federal estate tax. 26 U.S.C. § 2056. Beaver v. Craven, 19 A.S.R.2d 14.

The "marital deduction" was intended to equalize the treatment of estates of married decedents in community property and common law states. 26 U.S.C. § 2056. Beaver v. Craven, 19 A.S.R.2d 14.

Intended to permit marital property to be taxed in two stages and not to allow a tax-exempt transfer to succeeding generations, the "marital deduction" is generally restricted to the transfer of property interests that will (unless disposed of or consumed) ultimately be included in the surviving spouse's estate. 26 U.S.C. § 2056. Beaver v. Craven, 19 A.S.R.2d 14.

No "marital deduction" is allowed for most terminable interests which perish at the survivor's death and would not be included in her taxable estate or for property which passes to the survivor without having first been included in decedent's gross estate. 26 U.S.C. § 2056. Beaver v. Craven, 19 A.S.R.2d 14.

The "marital deduction" allows a couple to arrange their affairs so that their combined wealth is divided between their estates in a manner that achieves the lowest net total tax. 26 U.S.C. § 2056. Beaver v. Craven, 19 A.S.R.2d 14.

The essence of a "life estate power of appointment" trust, qualifying for the "marital deduction," is the combination of income for life and a general power to appoint, both vested in the surviving spouse. Beaver v. Craven, 19 A.S.R.2d 14.

Distributions from decedent's estate to a "power of appointment" trust qualify for the "marital deduction" if they are first included in the gross estate, but the survivor's power to appoint must be quite broad to qualify for the marital deduction. 26 U.S.C. § 2056(a). Beaver v. Craven, 19 A.S.R.2d 14.

§ 8 Sovereign Immunity

SEE AMERICAN SAMOA GOVERNMENT § 6 – SOVEREIGN RIGHTS

SEE TORTS § 10 – GOVERNMENT TORT LIABILITY ACT

§ 8(1) —Prohibited Suits

26 U.S.C. § 7421(a)—the Anti-Injunction Act—prohibits suits against the tax office for its actions in assessing and collecting taxes, and this section does not permit a court to enjoin a summons. Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

§ 8(2) —Permitted Suits

Sovereign immunity does not bar a taxpayer's suit to recover property seized by the government for unpaid taxes where the government failed to comply with the procedures of the Internal Revenue Code, because Congress deliberately waived sovereign immunity by providing for deficiency hearings and refund suits. Klauk v. American Samoa Government, 13 A.S.R.2d 52.

When the tax office concludes that taxes are owed, it must issue a notice of deficiency under 26 U.S.C. § 6212 as a prerequisite to assessment, and it is at that point that a challenge to the deficiency can be made by petitioning this Court under 26 U.S.C. § 6213, which provides for an exception to the general prohibition on suits contained in 26 U.S.C. § 7421(a). Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

In the case of tax proceedings, Congress deliberately waived sovereign immunity by providing for deficiency hearings and refund suits; and as an alternative to naming the Tax Office and the Director of the Tax Office, a plaintiff may name the American Samoa Government ("ASG") as a defendant in a suit founded on valid claims. Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

§ 8(3) —Required Procedure

Under 26 U.S.C.A. §§ 6532(a) and 7422(a), before filing a suit for the recovery of taxes erroneously or illegally assessed or collected, a plaintiff must file a claim for a refund or credit and this claim must be either denied or ignored for six months. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

§ 9 Taxpayer Offenses

§ 9(1) —Failure to File

Willful failure to file return requires prosecution to prove only deliberate intention not to file returns which defendant knew ought to have been filed. Government v. King, 4 A.S.R. 785

Failure to file income tax return, although knowledgeable is not willful is not deliberate, intentional and is based upon reliance on Government agent who failed to prepare return. Government v. King, 4 A.S.R. 785.

§ 9(2) —Failure to Pay

Willful failure to pay tax requires Government to meet stronger burden than willful failure to file a return. Government v. King, 4 A.S.R. 785.

Willful failure to pay income tax requires prosecution to prove that defendant had a bad purpose or evil motive in not paying. Government v. King, 4 A.S.R. 785.

Failure to pay income tax timely with intent to deprive Government of payment as time required is prompted by bad purpose and thus willful. Government v. King, 4 A.S.R. 785.

It is not defense to a charge of failure to pay income tax that defendant has made voluntary partial payment. Government v. King, 4 A.S.R. 785.

It is not defense to a charge of failure to pay income tax that defendant objects to Government or detests its activities. Government v. King, 4 A.S.R. 785.

§ 9(3) —Taxpayer Omissions

In determination whether taxpayer omitted 25 percent or more of gross income from return, in order to trigger special six-year statute of limitation, an item is not "omitted" if taxpayer did not include the item in gross income but referred to it elsewhere in the return or in an attachment in a matter sufficient to apprise the government of its nature and amount. 26 U.S.C. § 6501(e)(1)(A). Ah San v. Lutali, 4 A.S.R.2d 177.

Where government's own documents indicate that taxpayer included allegedly omitted items on return, but simply did not include them in calculation of gross income, items were not "omitted" so as to justify special six-year limitation of actions to remedy taxpayer omissions of over 25 percent of gross income. 26 U.S.C. § 6501(e)(1)(A). Ah San v. Lutali, 4 A.S.R.2d 177.

§ 9(4) —Reliance on Professional Advice

While hiring an attorney or accountant does not insulate the taxpayer from negligence penalties, good faith reliance on professional advice concerning tax laws is a defense. Boral Gas of American Samoa, Inc. v. Iaulualo, 6 A.S.R.3d 232 (Trial Div. 2002).

§ 10 Deficiency Proceedings

§ 10(1) —Generally

Deficiency proceedings, which allow a taxpayer to litigate the government's determination of a deficiency before paying such deficiency, are an essential part of the statutory scheme. 26 U.S.C. § 6213(a). Klauk v. American Samoa Government, 13 A.S.R.2d 52.

§ 10(2) —Notice Requirement

The deficiency procedures referred to in 26 U.S.C. § 6201(d) require that a notice of deficiency be issued before attempting to assess the same, but such notice is not required to be given at any specific point in an audit. Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

When the tax office concludes that taxes are owed, it must issue a notice of deficiency under 26 U.S.C. § 6212 as a prerequisite to assessment, and it is at that point that a challenge to the deficiency can be made by petitioning this Court under 26 U.S.C. § 6213, which provides for an exception to the general prohibition on suits contained in 26 U.S.C. § 7421(a). Ames v. Dept. of Treasury, 4 A.S.R.3d 78 (Trial Div. 2000).

§ 11 Industrial Incentive Act

§ 11(1) —Tax Exemption Policy Generally

Samoa Industrial Incentive Act empowers Governor to grant tax exemptions for new businesses which are in public interest on recommendation of Tax Exemption Board. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

A primary objective of Industrial Incentive Act is to establish firm foundation for self-government and to attain maximum possible self-support, and this is construction to be given term "public interest." Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

§ 11(2) —Authority of Governor, Board

SEE AMERICAN SAMOA GOVERNMENT § 4 – THE EXECUTIVE

Under provisions of Industrial Incentive Act, if tax exemption board and Governor find applicant is new business, fill tax exemption must be granted unless Governor makes affirmative finding that new business is not in public interest. A.S.C. 1961, Ch. 26.01. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Questions of Governor's approving or disapproving application for tax exemption under Industrial Incentive Act, on grounds of public interest, is discretionary, and courts have no power to interfere with Governor's authority on questions involving his discretion and judgment. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Determination as to whether business is in public interest is function of Governor. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Governor's decision to permit tax exemption for initial capital investment which would benefit local economy, but not to permit exemption for imported materials which would not, was reasonable. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Industrial Incentive Act required Governor to grant or deny tax exemption and did not authorize discretion to grant partial tax exemption. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 938.

Governor's granting tax exemption on initial capital investment in plant and equipment only was disapproval of application of industry for full tax exemption. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Tax Exemption Board is not required by statute to make recommendation to Governor nor to grant tax exemption, but such recommendation is not illegal. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Trial Division erred in holding that appellant Bottling Corporation was not entitled to full tax exemption, under provisions of Industrial Incentive Act. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 938.

§ 11(3) —Proof of Public Interest

When challenging disapproval by Governor, burden of proof is on industry to show it is in public interest and therefore entitled to tax exemption under Industrial Incentive Act. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Five local employees and a few shareholders do not necessarily mean business is in public interest. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

Governor's decision to consider industry which takes money out of economy for non-necessity not in public interest was reasonable. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

§ 11(4) —Constitutionality

If Industrial Incentive Act gives Governor authority to grant partial tax exemptions without prescribing guidelines or standards, then it is unconstitutional. Bottling Corporation of Samoa v. Lee, 4 A.S.R. 499.

TORTS

§ 1 Negligence
1(1) —Generally
1(2) —Duty
1(2)(a) —General Provisions
1(2)(b) —Relating to Vehicles & Accidents
1(2)(c) —Relating to Medical Profession
1(2)(d) —Relating to Land
1(2)(e) —Relating to Schools & Students
1(2)(f) —Relating to Admiralty
1(2)(g) —Relating to Alcohol Consumption
1(2)(h) —Relating to Prison
1(2)(i) —Relating to Power Company
1(3) —Breach of Duty
1(4) —Causation
1(5) —Negligence Per Se
1(6) —Res Ipsa Loquitur
2 Intentional Torts
2(1) —General Provisions
2(2) —Defamation
2(3) —Trespass
2(4) —Malicious Prosecution
2(5) —Conversion
2(6) —Intentional Infliction of Emotional Distress
3 Strict Liability
4 Nuisance
5 Attractive Nuisance
6 Liability for Animals
7 Malpractice
7(1) —General Provisions
7(2) —Legal Profession
7(3) —Architects
7(4) —Medical Profession
8 Vicarious Liability
8(1) —Vehicle Owners
8(2) —Family Purpose Doctrine
8(3) —Compulsory Insurance Act
8(4) —Employers
9 Common Carrier Liability
10 Government Tort Liability Act
10(1) —General Provisions
10(2) —Relation to Government Employee Suit
10(3) —Statute of Limitations
10(4) —Administrative Claim Requirement
11 Wrongful Death
12 Loss of Filial Consortium

13 Bailments
13(1) —Rights, Duties & Liabilities Between Bailor and Bailee
13(2) —Rights and Duties Between Bailor or Bailee & Third Person
13(3) —Conversion of Subject Matter
14 Comparative & Contributory Negligence
15 Joint and Several Liability
15(1) —General Provisions
15(2) —Effect of Release of One Tortfeasor
15(3) —Determining Liability
15(4) —Compensation by One Defendant
16 Indemnity
17 Subrogation
18 Damages
18(1) —General Provisions
18(2) —Pain and Suffering
18(3) —Medical Expenses
18(4) —Lost Wages and Profits
18(5) —Damages to Personal Property
18(6) —Mitigation of Damages
18(7) —Punitive or Special Damages
18(8) —Interest
18(9) —Collateral Source Rule
18(10) —Effect of Preexisting Conditions
18(11) —Compensatory Damages
18(12) —Nominal Damages
18(13) —Restoration Cost Damages
18(14) —Treble Damages
18(15) —Attorney Fees
19 Statutes of Limitations
19(1) —General Provisions
19(2) —Accrual of Cause of Action
19(3) —Personal Injuries
19(4) —Minors and Insane Persons
20 Burden of Proof
21 Act of God

§ 1 Negligence

§ 1(1) —Generally

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.

Failure to use ordinary or reasonable care is negligence. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

To establish a cause of action for negligence a party must prove duty, breach, causation, and damages. Lang v. American Samoa Gov't, 1 A.S.R.3d 148 (Trial Div. 1997).

§ 1(2) —Duty

§ 1(2)(a)—General Provisions

Duties of care toward other people include the duty to take precautions against natural phenomena, which, although unusual and inconvenient, happen often, enough to be reasonably foreseeable. Fonoti v. Nam, 3 A.S.R.2d 58.

§ 1(2)(b)—Relating to Vehicles and Accidents

Driver encountering children or entering an area where they are expected to be present is under a special duty of care to drive in a manner anticipating possible unexpected, imprudent childish behavior. Lauoletolo v. Setenaisilao, 14 A.S.R.2d 37.

Driver is not under a special duty of care to drive in a manner anticipating small unsupervised children where the accident occurred on a rainy evening near a shopping area with heavy holiday traffic. Lauoletolo v. Setenaisilao, 14 A.S.R.2d 37.

Fact that a child crossed from the opposite side of a straight stretch of road before being struck by an auto did not prove that the driver breached his general duty of care to keep a proper lookout where the accident occurred on a rainy evening near a shopping area with glare from artificial lighting and heavy holiday traffic. Lauoletolo v. Setenaisilao, 14 A.S.R.2d 37.

Both motorists and pedestrians have a duty to exercise care on the roadway. A.S.C.A. §§ 22.0403, 22.0406, 22.0701. Alofipo v. Va, 20 A.S.R.2d 119.

Drivers have an overriding duty to pedestrians, especially children, and a duty to refrain from careless driving. A.S.C.A. §§ 22.0406, 22.0701. Sciascia v. Lutali, 23 A.S.R.2d 38.

Drivers whose conduct might result in injury to a child have a duty to exercise proportional vigilance and caution. Sciascia v. Lutali, 23 A.S.R.2d 38.

People are under a duty to drive their respective motor vehicles with ordinary or reasonable care, which persons of ordinary prudence would use under the circumstances shown by the evidence, in order to avoid injury to themselves or others. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

§ 1(2)(c)—Relating to Medical Profession

RESERVED

§ 1(2)(d)—Relating to Land

Territorial utility had a duty to maintain and operate safely its equipment situated on its customers' property, notwithstanding the special difficulties posed to such efforts in American Samoa. Fa'avae v. American Samoa Power Authority, 5 A.S.R.2d 53.

An owner or possessor of land has a duty to cause no unreasonable risk of harm to others in the vicinity and so is liable for creating or maintaining dangerous artificial conditions. Crispin v. American Samoa Gov't, 21 A.S.R.2d 60.

A land possessor is not an insurer of the safety of its invitees against the acts of third persons, but it has duty to exercise reasonable care in providing them protection, and there being a sufficient history of violence at drinking establishments in American Samoa to warrant adequate security, the defendant, as such an establishment, owed a duty to the plaintiff to provide a reasonable number of security personnel to afford patrons reasonable protection. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

In American Samoa, a land occupant's duty of care is not governed by abstract classifications of those persons who enter the land such as invitee, licensee, and trespasser; but is instead based on ordinary principles of negligence. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

The owner of land is under a duty to exercise ordinary care in the maintenance of these premises in order to avoid exposing persons to an unreasonable risk of harm caused by unsafe conditions on its premises. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

Ordinary care is that care which persons of ordinary prudence would use to preclude injury to themselves or others under these or similar circumstances. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

When an unreasonable and foreseeable risk is the product of a dangerous condition existing on land, the duty of ordinary care is breached if the owner had knowledge of the dangerous condition or if the condition existed for such a length of time that the owner, by using reasonable care in inspecting the premises, would have discovered the condition in time to remedy it or to give warning before the injury occurred. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

Knowledge of a dangerous condition acquired by an owner's employee in the course and scope of his or her employment is imputed to the owner from the time the employee created or discovered, or should have discovered, the condition. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

Where floor was wet and dirty from water, human waste, and debris, and maggots were present, it was properly inferred that a dangerous, slippery condition had existed for a substantial period of time. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

§ 1(2)(e)—Relating to Schools and Students

Where employee charged with supervision of children specifically violated her employer's instructions in pursuance of a private arrangement with a child's parents, she did not thereby automatically remove herself from the course and scope of her duty, where at the time of her negligent acts she was still at her place of work performing her duties as an employee and the negligence was clearly related to these

duties. Saufo`i v. American Samoa Government, 14 A.S.R.2d 15.

Constant and unremitting scrutiny of students on school premises in order to prevent injury has not been expected of school officials and teachers. Motu v. American Samoa Gov't, 28 A.S.R.2d 3.

§ 1(2)(f)—Relating to Admiralty

The duty of the shipowner to provide for the ill or injured seaman can be traced as far back as the Sea Codes of the Middle Ages. This right, to recover maintenance and cure without regard to fault, is among the most pervasive incidents of the responsibility anciently imposed upon a shipowner. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

§ 1(2)(g)—Relating to Alcohol Consumption

Under common law, a seller of alcohol does not owe any duty based solely on the serving of alcoholic beverages to an obviously intoxicated consumer. Absent statute, no cause of action may lay against the seller of alcohol in favor of those injured by the intoxicated consumer. Masaniai v. Tedrick, 31 A.S.R.2d 186.

A duty may be established by a safety statute if it is intended, exclusively or in part, (a) to protect a class of consumers which includes the one whose interest is invaded, and (b) to protect the particular interest which is invaded, and (c) to protect that interest against the kind of harm which has resulted, and (d) to protect that interest against the particular hazard from which the harm results. Masaniai v. Tedrick, 31 A.S.R.2d 186.

A.S.C.A. § 27.0531 is clearly a safety statute. Masaniai v. Tedrick, 31 A.S.R.2d 186.

A.S.C.A. § 27.0531(a)(2) imposes a duty on the seller of alcohol to act with reasonable care in providing alcohol to intoxicated person, and the intoxicated persons are within the protected class created by the statute. Thus, A.S.C.A. § 27.0531 creates an action wherein a commercial supplier can be held accountable for injuries to an intoxicated person occasioned by the supplier's failure to refrain from providing liquor to that intoxicated person. Masaniai v. Tedrick, 31 A.S.R.2d 186.

A land possessor is not an insurer of the safety of its invitees against the acts of third persons, but it has duty to exercise reasonable care in providing them protection, and there being a sufficient history of violence at drinking establishments in American Samoa to warrant adequate security, the defendant, as such an establishment, owed a duty to the plaintiff to provide a reasonable number of security personnel to afford patrons reasonable protection. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

A drinking establishment would be vicariously liable for the negligence of its employees only if it discovers, or in the exercise of reasonable care should discover, an impending or occurring accidental, negligent, or intentionally harmful act of a third person. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

Security guard employees of a drinking establishment have a duty to act reasonably under the circumstances, but do not have a duty to risk their lives, or a duty to act perfectly; for liability to attach, the evidence must show that they acted unreasonably in trying to prevent a fight, to protect a patron, or in rendering aid to the patron. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

Under A.S.C.A. § 27.0531 (a) and (f), a drinking establishment has a duty to refuse entry and service to an intoxicated person, and this duty is breached when alcohol is served to a person who, by his staggering, slurred speech, spitting while talking, glazed eye, and not making sense, is obviously intoxicated, and should have been reasonably discernible to the establishment's employees. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

§ 1(2)(h)—Relating to Prison

The duty to exercise ordinary diligence to keep prisoners safe and free from harm prescribes a duty to act in the face of a known danger. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

When prison officials are aware that an inmate is suicidal, a non-discretionary duty to act arises, and the government does not have immunity from liability for its officers' or employees' actions when such duty is breached. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

The duty to use reasonable care in protecting inmates extends to protecting inmates from self-inflicted injury. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

§ 1(2)(i)—Relating to Power Company

Power company has no duty to insure that load bearing appliances and circuit breakers in a premises are turned off prior to reconnection of power supply. It is the responsibility of utility consumers to ensure that their safety switches, circuit breakers, wiring, and all other components of their respective electrical systems are adequately designed, sized, and put in place. Seva`aetasi v. Am. Samoa Power Auth., 5 A.S.R.3d 91 (Trial Div. 2001).

§ 1(3) —Breach of Duty

A storekeeper who requested and paid for the construction of a porch over his parking lot was responsible for damage caused

when the defectively built porch fell on a customer's car. Fonoti v. Nam, 3 A.S.R.2d 58.

Evidence that automobile struck a pedestrian, without more, does not constitute proof that driver was negligent. Matalolo v. Penitusi, 4 A.S.R.2d 46.

Forklift operator was negligent where it was proven that he was driving with a load that partly obstructed his view in the direction the forklift was moving, that he paid undue attention to the sides of his load with a corresponding lack of attention to what was in front of the forklift, and that he was going slowly enough to have been able to avoid an accident if he had been paying attention. Kim v. Star-Kist Samoa, Inc., 7 A.S.R.2d 11.

Seasoned fisherman who should know of the haphazard movements of forklifts near the docks, who was conversing with other fishermen on the dock adjacent to the forklift traffic, and who was injured by slow moving forklift, was negligent. Kim v. Star-Kist Samoa, Inc., 7 A.S.R.2d 11.

Where record reflected only that fisherman was engaged in conversation while standing on dock, started to walk away, and was struck by forklift, evidence was insufficient to support trial court finding that fisherman was negligent. Kim v. Star-Kist Samoa, Inc., 8 A.S.R.2d 146.

In the absence of evidence of specific negligent conduct by person who was struck by forklift, attribution of negligence on the ground that victim was a seasoned fisherman and ranking deck hand who should have been familiar with dangers attendant to unloading fish on a wharf was not a finding of fact or an inference from the facts, but amounted to the imposition of strict liability. Kim v. Star-Kist Samoa, Inc., 8 A.S.R.2d 146.

Since issue of negligence depends on the reasonableness of a party's conduct, it cannot ordinarily be disposed of by summary judgment. Utu v. National Pacific Insurance Co., 9 A.S.R.2d 88.

Where the operator of backhoe, operating near or on the road and without a flagman, did not see a bus being operated on the road in the proper lane and therefore struck the bus, the backhoe's operator was negligent for failure to keep a proper lookout. Bohanak v. Samoa Maritime, Inc., 11 A.S.R.2d 12.

Government was not negligent in placing early childhood education classes in a private home in a high traffic area without posting the area as a school zone, where government was forced to choose between having such classes in private homes or not having them at all, and adopted a variety of safeguards which were at least as effective as the designation and posting of a school zone. Saufo`i v. American Samoa Government, 14 A.S.R.2d 15.

Fact that a child was struck by an auto does not necessarily mean that the driver was negligent. Lauoletolo v. Setenaisilao, 14 A.S.R.2d 37.

Defendant acted negligently where he failed to reasonably anticipate oncoming traffic approaching a blind curve and slow his speed accordingly, but instead drove so fast around the curve that he drifted into the oncoming lane and hit a vehicle there. Puailoa v. Barber, 17 A.S.R.2d 21.

A trial court's finding of parents' negligent entrustment was not supported by the record when no evidence showed that the teacher, albeit a relative, was the sort of person who could not be entrusted with the minor's safety or suggested that the teacher's want of care at the critical moment was other than an isolated lapse in attention. Saufo'i v. American Samoa Gov't, 19 A.S.R.2d 54.

A trial court's finding of negligence based on a school's violating a rule regarding the pickup and delivery of children is unsupported when no evidence showed that compliance with the rule would have prevented the accident. Saufo'i v. American Samoa Gov't, 19 A.S.R.2d 54.

Negligence, without contribution, is found on the part of the government when its employee allowed an eleven-year-old to ride on the doorway steps of an overcrowded bus with a faulty door, and allowed the child to bound off and on the bus as it made its stops. Utu v. American Samoa Government, 20 A.S.R.2d 53.

A reasonably prudent school bus driver would not abandon the driver's station of the bus with the engine running and students aboard, thereby inviting a student to operate the bus, regardless of whether he knew that doing so was a violation of the Pupil Transportation Program's written policy. Tuufuli v. American Samoa Government, 25 A.S.R.2d 24.

An ordinarily prudent school bus driver would not alight from a crowded bus to control student exit from the outside, even if the engine of the bus were turned off. Tuufuli v. American Samoa Government, 25 A.S.R.2d 24.

While a few students exiting the bus through the rear emergency exit may have been an attractive diversion, it did not justify the bus driver leaving his post while students were disembarking from the authorized exit. Tuufuli v. American Samoa Government, 25 A.S.R.2d 24.

The fact that adolescent youth and younger children are often thoughtless and impulsive only increases the degree of vigilance and caution which a school bus driver ought to exercise toward student passengers. Tuufuli v. American Samoa Government, 25 A.S.R.2d 24.

A trial court's determination of negligence is reviewed under the "clearly erroneous" standard, not by a de novo re-

weighing of the evidence at the appellate level. The test for clear error is not whether a dissatisfied litigant has presented evidence of superior evidentiary support to sustain his version of the facts, but whether the trial court's findings are substantially supported. Moananu v. Alofipo, 25 A.S.R.2d 37.

Failure to use ordinary or reasonable care is negligence. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

A drinking establishment breaches its duty under A.S.C.A. § 27.0531(f) when its employees allow an intoxicated person to enter its premises. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

When an unreasonable and foreseeable risk is the product of a dangerous condition existing on land, the duty of ordinary care is breached if the owner had knowledge of the dangerous condition or if the condition existed for such a length of time that the owner, by using reasonable care in inspecting the premises, would have discovered the condition in time to remedy it or to give warning before the injury occurred. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

ASG will only have breached its duty of care if it knew or should have known of the risk of suicide to a prisoner and fails to take reasonable measures to prevent it. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

Where correctional officers were aware that inmate had attempted suicide and also knew enough to search for dangerous items, but either failed to inspect inmate's cot or did not do so thoroughly, such was sufficient for a finding of negligence. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

ASG is not liable for all harm that comes to prisoners. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

§ 1(4) —Causation

Trial court's finding that proximate cause of motor vehicle collision was negligence of defendant driver was not error. Faatamala v. Haleck, 4 A.S.R. 888.

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.

Negligence of a landowner or land occupier is not a substantial factor proximately causing harm if the harm would have occurred despite the negligence of the landowner or land occupier. Crispin v. American Samoa Gov't, 21 A.S.R.2d 60.

In determining proximate cause for tort cases in admiralty, American Samoa adopts the approach of weighing all of plaintiff's conduct, defendant's liability, and all other factors causing the loss or injury. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

In a tort suit, plaintiff must furnish evidence which affords a reasonable basis for the conclusion that defendant's conduct was, more likely than not, the cause-in-fact of the injury; mere possibilities are not enough. Ale v. Peter E. Reid Stevedoring, Inc., 24 A.S.R.2d 42.

A court will not attempt to reach a conclusion as to an injury's cause when circumstances from which causation can be determined are not within common knowledge and when experts have not provided a basis for such a conclusion. Ale v. Peter E. Reid Stevedoring, Inc., 24 A.S.R.2d 42.

Negligence of a landowner or occupant is not a substantial factor proximately causing harm, if harm would have occurred anyway, despite the negligence of the landowner or occupant. Crispin v. American Samoa Government, 25 A.S.R.2d 49.

The question of whether a litigant's conduct was a substantial factor is for the trial court to determine unless testimony is so undisputed and uncontradictory that reasonable men could not differ. Crispin v. American Samoa Government, 25 A.S.R.2d 49.

To recover for symptoms resulting from conversion reaction, a victim must establish that the negligence of the defendant is the proximate cause of the symptoms. Ale v. Peter E. Reid Stevedoring, Inc., 25 A.S.R.2d 142.

A plaintiff bears the burden to prove that, more likely than not, the defendant's conduct is the proximate cause of the relevant injury. The trial court has the duty to make definite findings as to causation. Ale v. Peter E. Reid Stevedoring, Inc., 25 A.S.R.2d 142.

The phrase "the proximate cause of the death" in A.S.C.A. § 22.0706 refers to the legal cause of the death, as distinguished from other causes in fact. American Samoa Government v. Mase, 26 A.S.R.2d 119.

Injured persons are entitled to compensation when a defendant's negligence is the proximate cause of the injury. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

When injured persons would not have been injured but for defendant's negligence, defendant's conduct is the proximate cause of the injuries. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

Where two parties' conduct contributed concurrently as proximate causes of injuries, one party cannot be relieved of responsibility simply because the other party was not joined as

a defendant in the action. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

Plaintiff has the burden of proof to establish a reasonable basis for the conclusion that the accident was, more probable than not, the proximate cause of his symptoms. Mere possibilities are not enough. Ale v. Peter E. Reid Stevedoring, Inc., 28 A.S.R.2d 161.

Nearness in time or space is not the proper test of cause in fact. A causal chain can continue for a great deal of time into the future or through many intervening occurrences. Thus, if A causes B, B causes C, and C causes D, then A, B, and C are all causes in fact of D, though each may not necessarily be a proximate cause. Clifton v. Voyager, 31 A.S.R.2d 12.

The question of proximate cause considers temporal and spatial proximity, incorporates the foreseeability of a plaintiff's injury, and distinguishes natural and ordinary consequences from extraordinary consequences. Clifton v. Voyager, 31 A.S.R.2d 12.

The Defendant is entitled to judgment in its favor where the trier of fact can do no more than speculate as to which of several possible causes was the actual cause of the injury in question. Lang v. American Samoa Gov't, 1 A.S.R.3d 148 (Trial Div. 1997).

Negligent conduct is the legal cause of harm to another if the conduct is a substantial factor in bringing about the harm, but the negligent serving of alcohol to a person is not a substantial factor in that person's injuries where no evidence shows that he drank it. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

Allowing an intoxicated person to enter a drinking establishment increases the foreseeable and predictable risk that the person will be involved in a drunken altercation, and the establishment is not excused from liability when that person suffers injuries during such an altercation with employees and other patrons, and the establishment is therefore liable for its proportionate share of those injuries. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

A plaintiff seeking damages for injuries has the burden of proving by a preponderance of the evidence that a defendant acted to cause harmful contact with him. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

A legal cause of an injury is something that is a substantial factor in bringing about an injury. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

To be liable for negligent conduct, a party's actions must be a substantial factor in bringing about the harm. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

It is foreseeable that a prisoner who has attempted suicide will attempt to do so again. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

Where inmate attempted suicide the previous night, his death the following day, by suicide, was foreseeable, and failure of correctional officers to adequately protect him from harming himself was found to be a proximate cause of his death. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

In order to be liable for negligent conduct, a party's actions must be a substantial factor in bringing about the harm. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

Even when another party's actions are a cause of harm, a defendant is not absolved of responsibility if its negligent action creates the foreseeable risk of harm and is a substantial factor in causing the harm. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

If plaintiff was healthy prior to the incident and the injury appeared shortly afterward, her disability is presumed to have been caused by the incident if she can prove a causal nexus between the incident and her illness. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

§ 1(5) —Negligence Per Se

That a legislature has imposed a criminal sanction on certain conduct does not always mean that it also intended to give persons injured by such conduct the right to recover in tort. Foma'i v. Samana, 4 A.S.R.2d 102.

Where a statute restates, reinforces, or gives rise to a community standard, and when it is reasonably foreseeable that the failure to observe this standard will cause a particular kind of harm to a particular kind of victim, such a victim can generally recover damages in tort when he suffers such harm. Foma'i v. Samana, 4 A.S.R.2d 102.

An act which constitutes careless driving in violation of A.S.C.A. § 22.0701, prohibited overtaking in violation of A.S.C.A. § 22.0209, and hazardous passing in violation of A.S.C.A. § 22.0307(e)(1), is, for any or all of these reasons, negligence per se. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

§ 1(6) —Res Ipsa Loquitur

The doctrine of res ipsa loquitur, when applicable, merely establishes a permissive inference of negligence, which the factfinder is not required to adopt. Iosia v. National Pacific Insurance Ltd., 20 A.S.R.2d 123.

The doctrine of res ipsa loquitur applies to an accident only under the following conditions: (1) it ordinarily does not occur without someone's negligence, (2) it was caused by an agency or instrumentality within defendant's exclusive control, and (3) it was not due to a voluntary action by the plaintiff. Lang v. American Samoa Government, 24 A.S.R.2d 59.

The evidentiary value of a plaintiff's case is always buttressed by the absence of credible evidence to the contrary. The court will find negligence not because a defendant failed to disprove elements of a plaintiff's claim, but because a plaintiff's evidence, as viewed in light of a defendant's failure to present contradictory evidence, supported such a finding. Clifton v. Voyager, 31 A.S.R.2d 12.

Whether trial court employed term, res ipsa loquitur, with pristine acuity is not important, so long as there was sufficient evidence to support the trial court's findings. Meredith & Associates v. Blue Pacific Management Corp., 1 A.S.R.3d 4 (App. Div. 1997).

The doctrine of res ipsa loquitur permits the factfinder to infer negligence from circumstantial evidence. Meredith & Associates v. Blue Pacific Management Corp., 1 A.S.R.3d 4 (App. Div. 1997).

Res ipsa loquitur is applicable when (1) the event is of a kind which ordinarily does not occur in the absence of someone's negligence; (2) it was caused by an agency or instrumentality within the exclusive control of the defendant; (3) it was not due to any voluntary action or contribution on the part of the plaintiff. Lang v. American Samoa Gov't, 1 A.S.R.3d 148 (Trial Div. 1997).

Res ipsa loquitur applies to the consequences of professional treatment if such consequences would not ordinarily occur in the absence of the allegedly culpable conduct. Lang v. American Samoa Gov't, 1 A.S.R.3d 148 (Trial Div. 1997).

The mere fact that an injury occurred is not evidence of negligence. Lang v. American Samoa Gov't, 1 A.S.R.3d 148 (Trial Div. 1997).

Plaintiff not entitled to the permissive inference of negligence that res ipsa loquitur affords without demonstrating that the medical consequences she suffered would not have otherwise occurred. Lang v. American Samoa Gov't, 1 A.S.R.3d 148 (Trial Div. 1997).

Where res ipsa loquitur is inapplicable, plaintiffs must produce some medical proof of causation. Lang v. American Samoa Gov't, 1 A.S.R.3d 148 (Trial Div. 1997).

The doctrine of res ipsa loquitur applies when an accident's nature is such that past experience has shown that it probably resulted from someone's negligence and that the defendant is probably responsible. Seva`aetasi v. Am. Samoa Power Auth., 5 A.S.R.3d 91 (Trial Div. 2001).

The doctrine of res ipsa loquitur applies to an accident only under the following conditions: (1) it ordinarily does not occur without someone's negligence, (2) it was caused by an agency or instrumentality within defendant's exclusive control, and 3) it was not due to a voluntary action by the plaintiff. Seva`aetasi v. Am. Samoa Power Auth., 5 A.S.R.3d 91 (Trial Div. 2001).

The doctrine of res ipsa loquitur, when applicable, merely establishes a permissive inference of negligence which the fact finder is not required to adopt. Seva`aetasi v. Am. Samoa Power Auth., 5 A.S.R.3d 91 (Trial Div. 2001).

Evidence was insufficient to sustain inference of negligence on the part of power company where house fire started from electrical panel located on opposite side of wall where meter was located and electricity had been recently re-connected by utility. There was nothing particularly involved, or untoward, in the utility employee's disconnecting and reconnecting power supply which would suggest negligence. Seva`aetasi v. Am. Samoa Power Auth., 5 A.S.R.3d 91 (Trial Div. 2001).

§ 2 Intentional Torts

§ 2(1) —General Provisions

Consent, by words and actions, to an intentional tort bars recovery. Fetui v. Am. Samoa Gov't, 2 A.S.R.2d 52 (Trial Div. 1985).

Where bus owner allowed creditor to hold his bus as security for repayment of the debt, and the creditor subsequently operated the bus at a profit equal to or greater than the amount of the debt, the debt was discharged and the creditor's continued refusal to return the bus to its owner would amount to conversion. Chan Kau v. Samasoni, 7 A.S.R.2d 21.

Because third-degree assault can be committed "recklessly" or even "with criminal negligence," a guilty plea does not establish what injuries, if any, were inflicted upon plaintiff, nor does it establish that defendant acted intentionally, an essential element of the tort of battery. A.S.C.A. § 46.3522(a)(1) & (4). Galea`i v. Atofau, 16 A.S.R.2d 76.

Although plaintiff's consent to a fist fight will ordinarily bar his recovery for injuries suffered in the fight, the majority rule is that when mutual combat is conducted with weapons calculated to cause death or serious physical injury, consent is no defense to civil liability. Galea`i v. Atofau, 16 A.S.R.2d 76.

A suit against police officers for assault, unlawful entry, and wrongful arrest was dismissed when hospital records showed a minor's injuries took place four months after the complaint was filed and when the credible evidence showed that his

mother consented to the search of the house and that the minor was brought to the police station by another youth. Sepulona v. Mau, 22 A.S.R.2d 90.

Even if apportionment of damages among joint tortfeasors can be reasonably applied, joint and several liability remains the rule for intentional torts. Fiaui v. Faumuina, 27 A.S.R.2d 36.

Damages for intentional infliction of emotional distress are usually only awarded for mental suffering so extraordinary, vindictive, extreme, or outrageous as to give rise to a cause of action for intentional infliction of emotional distress. Fiaui v. Faumuina, 27 A.S.R.2d 36.

A right of action for personal injuries survives both the tortfeasor's and the injured person's death. A.S.C.A. §§ 43.5001 and 43.5002. Newton v. Taleka, 30 A.S.R.2d 86.

§ 2(2) —Defamation

Slanderous remarks and assault and battery by one party against another cannot be considered by courts in interpreting trust, but do constitute crimes and torts, and court may give warning to that effect to offending party. Tolivale v. Ufanua, 3 A.S.R. 196.

Publication of defamatory statements requires that statements be heard and understood by third person. Dwyer v. McDonald, 1 A.S.R. 652.

When Governor of American Samoa is investigating in his official capacity, statements made to him are privileged and, as such, cannot form the basis for actionable slander. Dwyer v. McDonald, 1 A.S.R. 652.

Statements published in connection with litigation enjoy judicial privilege and may not form the basis of a tort recovery for defamation. Rose v. Hall, 1 A.S.R.2d 17 (Trial Div. 1980).

Defamatory statement must be one of fact and not of opinion. King v. Ala`ilima, 16 A.S.R.2d 6.

Whether a statement is one of opinion or rhetorical hyperbole or of fact is a question of law. King v. Ala`ilima, 16 A.S.R.2d 6.

Whether a statement is one of opinion or rhetorical hyperbole or of fact is determined from the perspective of an ordinary reader. King v. Ala`ilima, 16 A.S.R.2d 6.

Court must examine both the allegedly defamatory language and its context in determining whether it is a statement of fact or a statement of opinion, since language which taken alone might seem to be a statement of fact may be a statement of opinion when viewed in context. King v. Ala`ilima, 16 A.S.R.2d 6.

Attorney's published letter held to be a statement of opinion not actionable in a suit for defamation, where the letter arose from a public controversy regarding a labor dispute, was in the form of an attorney's demand letter, and used language indicating the statements contained within were opinions rather than facts. King v. Ala`ilima, 16 A.S.R.2d 6.

Statements which would typically be considered slander constitute libel when said in association with a libelous act. Fou v. Talofa Video, 2 A.S.R.3d 132 (Trial Div. 1998).

Libel may occur where a defamatory writing is read aloud. Fou v. Talofa Video, 2 A.S.R.3d 132 (Trial Div. 1998).

Posting defamatory material so that it is viewable by third persons constitutes publication. Fou v. Talofa Video, 2 A.S.R.3d 132 (Trial Div. 1998).

Publication of a defamatory statement can be done intentionally or negligently. Fou v. Talofa Video, 2 A.S.R.3d 132 (Trial Div. 1998).

A communication is defamatory if it so harms the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. Fou v. Talofa Video, 2 A.S.R.3d 132 (Trial Div. 1998).

Where store posted a patron’s properly drafted, but out-of-state, check for its employees to see as “unacceptable”, where check was placed in public view, and where store employees told others that it was posted because of its “unacceptable” nature, the obvious implication was that the drafter had drawn the check on insufficient funds and thus such actions constituted libel. Fou v. Talofa Video, 2 A.S.R.3d 132 (Trial Div. 1998).

A written or printed imputation of any crime of moral turpitude or punishable by confinement is libelous per se. Fou v. Talofa Video, 2 A.S.R.3d 132 (Trial Div. 1998).

Where libel per se is shown, actual damages need not be proven. Fou v. Talofa Video, 2 A.S.R.3d 132 (Trial Div. 1998).

Libel is a form of defamation and is defined as a false and unprivileged publication by writing 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. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

The following elements are required in order to establish liability for defamation: (1) A false; (2) and defamatory; (3) statement concerning the plaintiff; (4) that is unprivileged; (5) made to a third party; (6) with fault amounting to at least negligence on the part of the publisher; (7) and either actionability of the statement irrespective of special harm or

the existence of special harm caused by the publication of the statement. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

In the case of a private plaintiff in a matter not of public concern and not involving the news media, the defendant has the burden of proving the truth of a defamatory statement as an affirmative defense. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

Where a defendant repeats a statement attributed to another, he must establish the truth of the statement repeated because one who repeats a defamatory statement endorses it. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

To discern whether a statement is defamatory, a court looks to the impression it would naturally produce in the average reader among whom it was intended to reach. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

Statements made by employers that attack the honesty, integrity, or competence of employees are defamatory, and can give rise to an action for defamation if not true or protected by privilege. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

The common interest privilege is a defense to defamation and applies where a statement contained in a communication is made without malice to a person interested therein by one who is also interested. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

The common interest privilege is conditional, and may be lost upon a showing of abuse, malice, or a reckless disregard for the truth. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

The common interest privilege applies to statements made concerning a current or former employee, but only when the statement is reasonably calculated to protect a common interest of the employer and employees. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

The common interest privilege is forfeited when the statement includes matters that have no bearing on the interest sought to be protected. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

Where supervisor saw employee in a truck with fish and heard from employee's coworker that employee had taken some fish, but made no effort to ascertain whether employee or driver of truck had actually taken fish, how many fish were taken, or whether any of the fish were sold, Court found that supervisor's subsequent statement that employee had illegally taken and sold fish was done with a reckless disregard for its truth. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

There are three categories of damages to which victims of defamation may be entitled: compensatory, nominal, and punitive. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

In an ordinary action for defamation, special damages must be proven before the plaintiff is allowed any recovery. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

A statement that is libel per se is actionable without proof of special damages. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

Irrelevant matter in a communication otherwise privileged may be held libelous per se. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

Where a statement is libelous per se, general damages are presumed. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

Where a statement is libelous per se, punitive damages may be awarded without a showing of actual malice on the part of the defendant. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

Where plaintiff had shown that defendant had published a defamatory statement, which was libelous per se, with a reckless disregard for its truth, Court held such recklessness justified imposition of punitive damages. Matamua v. Carribean Fishing Co., 4 A.S.R.3d 126 (Trial Div. 2000).

§ 2(3) —Trespass

SEE REAL PROPERTY § 14 – PROPERTY TORTS

§ 2(4) —Malicious Prosecution

An action for malicious prosecution may not be asserted by way of cross-complaint or counterclaim in the original proceedings, prior to its termination, since it is essential that the original proceedings shall have previously terminated in favor of the party bringing the malicious prosecution action. Bank of Hawaii v. Randall, 1 A.S.R.3d 141 (Trial Div. 1997).

§ 2(5) —Conversion

The improper guaranteeing of a loan by an officer of the Development Bank of American Samoa for the officer's personal use is a conversion of the Development Bank's credit and constitutes the offense of willful misapplication. Am. Samoa Gov't v. To'oto'o, 2 A.S.R.2d 61 (App. Div. 1985).

In actions for conversion, the cause of action accrues on the date of the conversion, regardless of when the plaintiff discovers the conversion or whether he demanded the return of

the property, unless the case involves fraudulent concealment or other act of deceit designed to hide the defendant's actions from the plaintiff. Pouesi v. American Samoa Gov't, 5 A.S.R.3d 164 (Trial Div. 2001).

§ 2(6) —Intentional Infliction of Emotional Distress

Breach of contract is not such extreme and outrageous conduct as will subject the breacher to liability for reckless or intentional infliction of emotional distress. Rose v. Hall, 1 A.S.R.2d 17 (Trial Div. 1980).

Damages for the intentional infliction of emotional distress are awarded in the context of employment termination only where the employer's method of terminating the employee, or conduct accompanying the termination, is outrageous. Velega v. Legislature of American Samoa, 4 A.S.R.3d 145 (Trial Div. 2000).

As a matter of law, plaintiff's allegations of intentional infliction of emotional distress are insufficient to withstand a motion to dismiss where employer merely questioned a co-worker about employee's fraternization with another employee. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

Actions not directed at the employee have been held insufficient as a matter of law to support an intentional infliction of emotional distress claim. Haleck v. Agaoleatu, 7 A.S.R.3d 203 (Trial Div. 2003).

Claim of emotional distress denied where defendant continued to occupy house that was subject of threats of destruction. Fanene v. Vaona, 7 A.S.R.3d 285 (Land & Titles Div. 2003).

§ 3 Strict Liability

While motorists must be vigilant when encountering children, the fact that an injury occurred does not automatically give rise to strict liability without fault. Estate of Tuilesu v. Asifoa, 20 A.S.R.2d 60.

In general, strict liability looks at the product itself and determines if it is defective, whereas negligence looks at the act of the manufacturer and determines if it exercised ordinary care, although this distinction is not as clear in failure-to-warn cases. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

The widely accepted rule of Restatement (Second) of Torts § 402A, which states that an action for recovery under a theory of strict products liability may be entertained by a court sitting in admiralty, is now accepted in American Samoa. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

Under Restatement (Second) of Torts § 402A, the elements of a strict-liability action are (1) the product is sold in a defective condition which is unreasonably dangerous to the user or consumer or to his property, (2) the seller is engaged in the business of selling such a product, and (3) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

Under Restatement (Second) of Torts § 402A, a seller is not strictly liable when he delivers the product in a safe condition and when subsequent mishandling or other causes make it harmful by the time it is consumed; thus, a plaintiff bears the burden of proving that the product was in a defective condition when it left the seller. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

The general rule is that subsequent changes in the condition of the product do not relieve the seller or manufacturer of strict liability, if the changes were foreseeable and did not unforeseeably render the product unsafe. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

Under Restatement (Second) of Torts § 388, a supplier is liable for physical harm caused by the product's use if the supplier (1) knows or has reason to know that the product's use is likely to be dangerous, (2) has no reason to believe that the product's users will realize its dangerous condition, and (3) fails to exercise reasonable care to inform users of the product's dangerous condition. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

A seller has a duty to warn of the inherent dangers of its products, though the warning's adequacy must take into account the expertise of the consumer to whom the warning is directed. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

Under Restatement (Second) of Torts § 402A, a manufacturer may be strictly liable even if a product is used in an unintended manner and so is not warned against, if the misuse is reasonably foreseeable. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

§ 4 Nuisance

Legislature may declare anything to be nuisance which is detrimental to health, morals, peace or welfare of people, but in absence of legislative determination that coconut leaves and mats used for decoration of inn are nuisance as fire hazard, court will not find that they are. Bank of American Samoa v. Brown, 2 A.S.R. 365.

In order to render building a nuisance by reason of exposure of other buildings to fire, hazardous character of danger must be imminent and leave no doubt as to probability of injurious results, and placing of coconut leaves and mats in inn for decoration does not constitute such danger and is not nuisance. Bank of American Samoa v. Brown, 2 A.S.R. 365.

In order to convict man for letting his pig run at large, prosecution must show willfulness or negligence. American Samoa v. Asuemu, 2 A.S.R. 646.

Court finds that licensee's house does not block passage of air, thereby jeopardizing health and life of licensor. Tago v. Leota, 4 A.S.R. 341.

Foul, sickening, and noxious odors emitted by tuna cannery may form basis of tort recovery for nuisance; damages thereby occasioned for involuntary abandonment of homestead are the fair market value of similar quarters. Siofele v. Van Camp, 1 A.S.R.2d 114 (Trial Div. 1983).

Violation of a statute can constitute a pub1ic nuisance per se. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

In order to civilly prosecute an action for public nuisance, a plaintiff typically must allege and prove a specific injury beyond that suffered by the general public. Muavaefa`atasi v. American Samoa Gov't, 4 A.S.R.3d 184 (Trial Div. 2000).

§ 5 Attractive Nuisance

Resulting in an attractive nuisance, the actions and omissions of a school's employees amounted to a serious breach of their duty to take care for the schoolchildren's safety when they left a long-abandoned trailer on the premises and failed to remove an air-conditioning unit or replace its missing support braces. Moors v. American Samoa Gov't, 19 A.S.R.2d 67.

§ 6 Liability for Animals

Protection from a known and inherently dangerous condition, a wild dog known to bite children, is an operational rather than a discretionary function for which government has no sovereign immunity under statute. Neither may government avail itself of sovereign immunity when acting in a proprietary capacity, as in the rental of housing to its employees. Savage v. Am. Samoa Gov't, 1 A.S.R.2d 102 (Trial Div. 1983).

When the government knows of a dangerous condition, it is liable for damages caused by its failure to attempt to alleviate it. Savage v. Am. Samoa Gov't, 2 A.S.R.2d 6 (App. Div. 1984).

Man could not willfully have let his pig run loose in violation of statute if he was unaware that pig was loose, since willful means intending result which actually comes to pass, not involuntary or accidental. American Samoa v. Asuemu, 2 A.S.R. 646.

Where accused kept pig wall in good condition and it was new and of adequate height, he has not negligently permitted pig to stray if pig gets loose. American Samoa v. Asuemu, 2 A.S.R. 646.

Fact stones are missing from top of pig wall does not necessarily mean that pig is running stray in violation of statute. Government v. Nomura, 2 A.S.R. 658.

Harboring an animal or exercising apparent ownership is enough to create liability for an injury caused by that animal. Gates v. Gebauer, 29 A.S.R.2d 123.

Where a dog bites a person, the owner will be presumed to be at fault. This presumption, however, can be overcome by an affirmative showing on the part of the defendant that the harm was caused by the fault of the plaintiff, the fault of a third person for whom the defendant is not responsible, or by an independent cause. Gates v. Gebauer, 29 A.S.R.2d 123.

The owner of an animal is under a legal obligation to keep the animal under his control and to guard innocent parties from harm by the animal. Gates v. Gebauer, 29 A.S.R.2d 123.

The law in American Samoa prohibits anyone from possessing a live vicious animal. Neufeldt v. Don, 2 A.S.R.3d 183 (Trial Div. 1998).

The owner of an animal is under a legal obligation to keep the animal under his control and to guard innocent parties from harm by the animal. Neufeldt v. Don, 2 A.S.R.3d 183 (Trial Div. 1998).

Where defendants owned multiple, unrestrained dogs which possessed proclivity for harassing passersby and at least one of which had a known disposition towards attacking and biting small children, permanent injunctive relief was proper. Neufeldt v. Don, 2 A.S.R.3d 183 (Trial Div. 1998).

§ 7 Malpractice

§ 7(1) —General Provisions

In a malpractice action, Plaintiff bears the burden of proving, by a preponderance of the evidence, the recognized standard of care. Lang v. American Samoa Gov't, 1 A.S.R.3d 148 (Trial Div. 1997).

§ 7(2) —Legal Profession

SEE LEGAL PROFESSION § 3(3) – MALPRACTICE

§ 7(3) —Architects

An architect is liable for a failure to exercise the reasonable care and diligence exercised by one in the in the profession. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 60.

An architect must be evaluated on the basis of technology available at the time he or she performed the work. G.M.

Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 60.

The existence and scope of an architect's duty to supervise the implementation of plans or work methods must be determined from contractual terms, or, in their absence, from the architect's actual conduct. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 60.

The distinction between the supervision of design implementation and the supervision of work method is a not a meaningful one is therefore not legally recognized. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 60.

The burden to establish the scope of supervision demanded by the profession rests upon the party alleging a breach of the architect's duty. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 60.

The standard of care is ordinarily provided by expert witnesses who testify to the customs or prevailing standards of the profession. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 60.

Expectation damages are the proper measure of damages for an architect's malpractice. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 60.

Hurricanes are a fact of life in American Samoa and architects are expected to design structures to withstand hurricanes of normal strength, knowing that such structures will likely be required to withstand one or more hurricanes during their normal life span. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 204.

Where evidence indicated that skylight did not survive the force of Hurricane Ofa, but replacement skylight survived Hurricane Val, a hurricane of substantially greater force than that of Ofa, there was sufficient evidence for Court to conclude that Appellant’s skylight was negligently designed and constructed. Meredith & Associates v. Blue Pacific Management Corp., 1 A.S.R.3d 4 (App. Div. 1997).

An architect is liable for a failure to exercise the reasonable care and diligence exercised by one in the profession. G.M. Meredith and Assoc. v. Blue Pacific Management Corp., 28 A.S.R.2d 60.

§ 7(4) —Medical Profession

In malpractice actions, the burden is on the plaintiff to prove the recognized standard of medical care in the community, a lack of reasonable and ordinary care by the medical professional, and that the medical professional's negligence was the proximate cause of the injury. Lang v. American Samoa Gov’t, 1 A.S.R.3d 148 (Trial Div. 1997).

Injury, death, or an otherwise unsuccessful result of treatment does not shift the burden of proof in a malpractice action. Lang v. American Samoa Gov’t, 1 A.S.R.3d 148 (Trial Div. 1997).

Injury, death, or an otherwise unsuccessful result of treatment does not give rise to an inference of negligence in a malpractice action. Lang v. American Samoa Gov’t, 1 A.S.R.3d 148 (Trial Div. 1997).

The duty of a medical professional is to act with the standard of care ordinarily exercised under the same or similar circumstances by members of the profession in the same or similar communities. Lang v. American Samoa Gov’t, 1 A.S.R.3d 148 (Trial Div. 1997).

Mere argument, or slight indication, as to the applicable standard of care for a medical professional is not sufficient. Specific evidence should be presented. Lang v. American Samoa Gov’t, 1 A.S.R.3d 148 (Trial Div. 1997).

Unless proved otherwise, a physician is presumed to have carefully and skillfully treated his patient. Lang v. American Samoa Gov’t, 1 A.S.R.3d 148 (Trial Div. 1997).

§ 8 Vicarious Liability

§ 8(1) —Vehicle Owners

Owner's consent to another person's use of a vehicle may be inferred from a past course of conduct or relationship between the parties. Toleafoa v. Sioka, 5 A.S.R.2d 18.

When the driver of a vehicle is a member of the vehicle owner's family or household, it is more likely that the driver has the owner's implied consent to use the vehicle. Toleafoa v. Sioka, 5 A.S.R.2d 18.

Principle that family relationship between driver and vehicle owner suggests owner's implied consent does not apply to Samoan extended communal family. Toleafoa v. Sioka, 5 A.S.R.2d 18.

Vehicle owner was not vicariously liable for injuries caused by another person driving his car under theory of implied consent when evidence indicated that driver acquired the owner's keys through artifice. Toleafoa v. Sioka, 5 A.S.R.2d 18.

When a defective vehicle is driven without the express or implied consent of the owner, the owner cannot be held liable for injuries caused by the defect. Toleafoa v. Sioka, 5 A.S.R.2d 18.

A vehicle owner may limit the time, place, and purpose of the use of his vehicle to which he consents and thereby assume liability only for negligence that occurs within the scope of his consent. A.S.C.A. § 22.2003. Sataua v. Himphill, 5 A.S.R.2d 61.

A vehicle owner cannot restrict his consent to a particular manner of driving in order to escape liability under automobile consent statutes. A.S.C.A. § 22.2003. Sataua v. Himphill, 5 A.S.R.2d 61.

Vehicle owner who took his car to a garage for repairs did not consent, either expressly or implicitly, to use of the car by the repairman or his associate for purposes totally unrelated to the repairs. Sataua v. Himphill, 5 A.S.R.2d 61.

When a vehicle's owner did not insure his car as required by law and the driver was using the car with his permission, the owner is liable to compensate the plaintiff for any losses up to the $10,000 insurance amount he had a duty to provide. A.S.C.A. § 22.2003. Vaiti v. So'oso'o, 19 A.S.R.2d 71.

The liability of an uninsured vehicle's owner is secondary to that of a principal tortfeasor who was driving with the owner's permission; while a plaintiff may collect from either defendant, the vehicle's owner has a right of indemnity and subrogation against the driver. Vaiti v. So'oso'o, 19 A.S.R.2d 71.

When a wife was driving a vehicle with her husband's express or implied knowledge and consent, her negligence in injuring a pedestrian was imputed to him, and he is equally liable. Sciascia v. Lutali, 23 A.S.R.2d 38.

Where company policy gives only three persons permission to drive a company vehicle, and defendant is not one of those persons, defendant does not have "express" permission to drive the vehicle. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

Permission to drive a vehicle may be implied from a failure to take precautions to prevent an individual from driving a vehicle in circumstances where it is reasonably foreseeable that the person might do so. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

Where defendant openly participated in relocating a company, and the company vehicle is entrusted to defendant’s group, it is reasonably foreseeable that defendant would drive the company vehicle. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

A vehicle owner is vicariously liable for accidents caused by the negligence of others driving the vehicle with permission, but has a right to indemnity from the principal tortfeaser when forced to pay damages. Kent Samoa Inc. v. Shimasaki, 29 A.S.R.2d 44

The owner of a rental vehicle is vicariously liable as long as the offending driver operates the vehicle with the rental company's express or implied permission. Foma`i v. Samana, 4 A.S.R.2d 102, 106-07 (Trial Div. 1987). Kent Samoa Inc. v. Shimasaki, 29 A.S.R.2d 44

A person must be at fault in the accident to be considered the principal tortfeasor, causing vicarious liability to attach to the vehicle's owner for third party claims, and for the owner to consequently have a right of indemnity against the driver. Kent Samoa Inc. v. Shimasaki, 29 A.S.R.2d 44.

Where a motor vehicle is driven by unlicensed and inexperienced minor and the vehicle was entrusted to him by a parent, both are jointly and severally liable to a third party whose injuries are proximately caused by the negligence of the minor in operating the vehicle and his parent in negligently entrusting the same to him. Elisara v. Togiola, 1 A.S.R.3d 75 (Trial Div. 1997).

§ 8(2) —Family Purpose Doctrine

Under the family purpose doctrine, hereby adopted by American Samoa, a vehicle's owner may be held liable for the negligence of a driver who is using the vehicle with the former's express or implied permission for the family's purpose. Gibson v. Mulitauaopele, 24 A.S.R.2d 105.

Factors used in determining whether the head of a household furnished the vehicle for a family member's use and so is liable under the family purpose doctrine include the following: (1) who holds legal title to the vehicle, (2) who paid for the vehicle, (3) who controlled the vehicle's use, (4) the intent of the vehicle's buyers and sellers, (5) the intent of the parents and child regarding who was the vehicle's owner, (6) who received delivery of the vehicle, and (7) who exercised property rights in the vehicle between the date of purchase and the date of the accident. Gibson v. Mulitauaopele, 24 A.S.R.2d 105.

Even if an adult, a child residing with the head of household may nonetheless be a family member in regards to the family purpose doctrine. Gibson v. Mulitauaopele, 24 A.S.R.2d 105.

Under the family purpose doctrine, when the head of a family owns, furnishes and maintains a vehicle for the general use, pleasure and convenience of a family, he is liable for the negligence of a member of the family having general authority to drive it while the vehicle is so being used. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

Even though owner of a vehicle is a corporation, family purpose doctrine applies where the owner of the vehicle was motivated by his allegiance to his family and not out of employment obligations to the corporation. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

The fact that the vehicle is owned by the family business or is at times used for business purposes does not preclude the application of the family purpose doctrine. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104.

§ 8(3) —Compulsory Insurance Act

SEE INSURANCE § 2 – AUTOMOBILE INSURANCE

Battery of passenger by taxi driver is liability imposed by statute on liability insurer of taxicab. Tung v. Ah Sam, 4 A.S.R. 764.

Defendant insurer is liable under compulsory motor vehicle liability insurance statute for intentional unauthorized battery by insured's employee, despite policy language to contrary. Tung v. Ah Sam, 4 A.S.R. 764.

Public policy is not violated by protecting insured taxi-owner against unauthorized battery of passenger by his employee, by holding owner's insurer liable. Tung v. Ah Sam, 4 A.S.R. 764.

Statute requiring the owner of a vehicle to purchase and maintain liability insurance for losses inflicted by any person using his vehicle, and related statutes forbidding the operation of uninsured vehicles on the public highway and giving an injured person the right to bring direct action against the insurer, were intended to ensure recovery in tort for victims injured by drivers who could not afford to pay damages. A.S.C.A. §§ 22.1001, 22.2002-03. Foma'i v. Samana, 4 A.S.R.2d 102.

Rental company that allowed its automobile to be operated on the highway without insurance required by law was liable for damages suffered by person injured by negligent driver of company's automobile, up to the amount that would have been covered by insurance if the rental company had not breached its statutory duty to provide insurance. A.S.C.A. §§ 22.1001, 22.2002-03. Foma'i v. Samana, 4 A.S.R.2d 102.

Legislature designed the compulsory insurance statute to facilitate compensation of, and afford a realistic remedy for, victims of negligence. A.S.C.A. § 22.2001 et seq. Pu`u v. Lepule, 8 A.S.R.2d 68.

Compulsory Insurance Act limits recovery to victims who prove actionable fault on the part of a named insured or persons driving the insured vehicle with his express or implied permission. A.S.C.A. § 22.2003(2). Mauga v. National Pacific Insurance, 15 A.S.R.2d 35.

Insurance statute that specifically includes certain losses but does not comprehensively define "liability insurance" does not necessarily exclude all other losses. Holland v. Haleck's Island Motors, 15 A.S.R.2d 44.

§ 8(4) —Employers

SEE EMPLOYMENT LAW § 3 – INDEPENDNET CONTRACTORS

SEE AGENCY & PRINCIPAL § 3 – RIGHTS, DUTIES, AND LIABILITIES

A garageman who had possession of a vehicle in order to repair it and who was outside the direction or control of the owner was an "independent contractor" for whose negligence the owner could not be held liable under a theory of agency or master/servant liability. Sataua v. Himphill, 5 A.S.R.2d 61.

The employer of an independent contractor is generally not liable for physical harm done by the contractor or the contractor's employees; however, an employer is liable when he knows or has reason to know that, in the ordinary course of doing the work in a usual or prescribed manner, the work is likely to result in trespass. Letuli v. Le'i, 22 A.S.R.2d 77.

As a general rule, the employer of an independent contractor is not liable for harm resulting from that contractor's acts or omissions. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

§ 9 Common Carrier Liability

Common carriers are liable for tortuous assault and battery by employee upon passenger whether or not employee was acting in line of duty or scope of authority. Tung v. Ah Sam, 4 A.S.R. 764.

Despite the high standard of care demanded of airlines, liability must be based upon negligence, and the mere fact that an injury occurred is insufficient to raise a presumption of the carrier's negligence. Lang v. American Samoa Government, 24 A.S.R.2d 59.

Under federal common law, carriers may partially limit their liability pursuant to the "released valuation" doctrine, whereby the shipper does not declare a value and the released value. Amerika Samoa Bank v. United Parcel Service, 25 A.S.R.2d 159.

Failure to aid customers in locating missing packages is not the kind of behavior that voids a contract. Amerika Samoa Bank v. United Parcel Service, 25 A.S.R.2d 159.

§ 10 Government Tort Liability Act

SEE AMERICAN SAMOA GOVERNMENT § 6 – SOVEREIGN RIGHTS

§ 10(1) —General Provisions

It is not necessary to file a tort claim against the government prior to bringing a civil rights action. Tuivai v. Suiava, 2 A.S.R.2d 35 (Trial Div. 1984).

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.

In order for a government subdivision to be a separate entity capable of suing or being sued in its own name, such status must bestowed by statute or constitution. Aga v. American Samoa Gov't, 3 A.S.R.2d 130.

Territorial government is not a "person" liable under federal civil rights law for conspiracy to violate federal rights. 42 U.S.C. § 1985. Ferstle v. American Samoa Gov't, 4 A.S.R.2d 160.

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 Gov't, 4 A.S.R.2d 160.

Administrative code provision purporting to free territorial utility from liability for any damages attributable to the presence of the utility's property on consumer's premises, was inconsistent with statute providing that utility could be sued, especially in light of public policy that provisions purporting to absolve the drafting party from liability for its own negligence should be strictly construed. A.S.A.C. § 12.0207(b). Fa'avae v. American Samoa Power Authority, 5 A.S.R.2d 53.

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. Tauiliili v. American Samoa Government, 13 A.S.R.2d 61.

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.

Where a suit filed under the Government Tort Liability Act has a jurisdictional defect which is cured while the suit is pending, the court will not dismiss the suit and require plaintiff to refile since to do so would be a needless and wasteful exercise. Mataipule v. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

"Claim" and "cause of action" are synonymous under the Government Tort Liability Act, though in other situations a "claim" may sometimes be defined as occurring at the time of injury. Mataipule v. Tifaimoana Partnerships, Ltd., 16 A.S.R.2d 48.

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.

Under A.S.C.A. § 43.1201, ASG is subject to a limited waiver of its immunity from suit for actions based in tort. Johnson v. American Samoa Gov't, 2 A.S.R.3d 173 (Trial Div. 1998).

The ASG waives its immunity when it acts in a proprietary fashion, such as when it establishes and operates a bank or acts as a landlord, but immunity is specifically preserved under A.S.C.A. § 43.1203 for claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights. Johnson v. American Samoa Gov't, 2 A.S.R.3d 173 (Trial Div. 1998).

A.S.C.A. § 43.1203(b) does not exclude all intentional torts from the Government Tort Liability Act (GTLA), and a claim for intentional infliction of emotional distress is a proper claim against ASG under the GTLA, and exclusion from the Government Tort Liability Act is limited to the torts specifically enumerated. Johnson v. American Samoa Gov't, 2 A.S.R.3d 173 (Trial Div. 1998).

Under A.S.C.A. §§ 16.2002, 16.2003-.2004, and A.S.C.A. § 4.0301(a)(9), the American Samoa Community College may sue and be sued, the Board of Higher Education is an agency of the ASG that may not sue or be sued, the Land Grant Program is a program and not an agency, and may not sue or be sued, and the Department of Public Safety, as an agency of ASG established under and not being able to sue or be sued, it is not a proper named party under the Government Tort Liability Act. Johnson v. American Samoa Gov't, 2 A.S.R.3d 173 (Trial Div. 1998).

High Court is conferred with exclusive trial jurisdiction over actions under the GTLA. Lagapagatele v. Lagapagatele, 2 A.S.R.3d 195 (Land & Titles Div. 1998).

The doctrine of governmental immunity, which at common law shielded the king from imputation of wrongdoing, has been supplanted in American Samoa by the Government Tort Liability Act, A.S.C.A. § 43.1203 Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

Under A.S.C.A. § 43.1203, the American Samoa Government has voluntarily waived immunity for most tortious acts of misfeasance and nonfeasance, and retains its common law shield against liability only in certain particular circumstances. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

Governmental immunity for any claim based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty of an officer or employee is retained under A.S.C.A. § 43.1203(b)(2). Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

As to discretionary functions under A.S.C.A. § 43.1203(b) (2), a distinction is made between activity that occurs at the executive or planning level and that which occurs at the operational level; the former is immune under the discretionary function exception, while the latter is subject to potential tort liability. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

Day-to-day decisions involved with running a prison are not necessarily operational in nature such that they would lose their cloak of governmental immunity; some are discretionary. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

Although decisions such as whether to move a prisoner to a lower-security unit, how often to conduct bed checks, and how many lights and guards will be posted and where occur at the operational level, such decisions are discretionary. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

Although prison officials are free under A.S.C.A. § 43.1203(b)(2) to use their judgment as to most daily decisions regarding facility administration, there is no discretion involved pertaining to basic security measures. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

Such things as not closing off a hole in a cell wall large enough for an inmate to escape through, a failure to secure a perimeter gate, and generally maintaining a prison in such a sorry state that the warden refers to security as "a joke," are not shielded from immunity as the product of governmental discretion; unlike decisions involving judgment, such basic acts and omissions require none, and so are not exempt from liability under the discretionary function exception to the Government Tort Liability Act. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

The American Samoa Government has a legal obligation to protect fellow inmates and members of the general public from those whom it has taken within its custody, and may be held liable for harm done by an inmate negligently permitted to escape. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

A failure to secure the walls and fencing of a prison is unreasonable, and constitutes a breach of duty of owed by the American Samoa Government to a party living near the prison. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

A prison custodian's duty to third parties is to take reasonable precautions to keep criminals confined so that they may not commit further crimes. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

Where an escapee proceeds within hours to attack a party living next to the prison, especially where such attack is exactly the type of crime in the same area for which he had been convicted, it is clearly foreseeable that the breach of the prison custodian's duty of care–by neglecting to cover huge holes in the prison's walls, by leaving perimeter gates unsecured, by negligently allowing alcohol into the compound, and by generally failing to provide reasonable security measures–could result in such a crime and the injuries to the person attacked. Gibbons v. American Samoa Gov't, 3 A.S.R.3d 135 (Trial Div. 1999).

Under the American Samoa Government Tort Liability Act, the American Samoa Government is generally liable in the same manner and to the same extent as private individuals. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

The American Samoa Government is immune from liability for any claim based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty of an officer or employee. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

In determining whether the government is immune under the "discretionary functions" defense, the Court looks at whether the government's officer or employee, regardless of position or rank, was allowed to make independent policy judgments, or was simply carrying out a legal duty. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

The Government Tort Liability Act and its accompanying procedural requirements are inapplicable to contract actions against the American Samoa Government or its agencies. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

An ASG agency may only be sued in its own name if it is established as an entity separate from ASG by statute or the constitution. McConnell Dowell (Am. Samoa), Ltd. v. Am. Samoa Power Auth., 4 A.S.R.3d 73 (Trial Div. 2000).

The Attorney General's Office is required to defend any civil action or proceeding brought against any employee of the government, or his estate, under the Government Tort Liability Act. Afele-Fa`amuli v. Am. Samoa Cmty. Coll., 4 A.S.R.3d 219 (Trial Div. 2000).

§ 10(2) —Relation to Government Employee Suit

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 Gov't, 5 A.S.R.2d 10.

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 Gov't, 5 A.S.R.2d 10.

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 Gov't, 5 A.S.R.2d 10.

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.

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.

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.

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.

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.

Under A.S.C.A. § 43.1211, a plaintiff may seek recourse against ASG employees individually for false arrest, and a claim for tortious conduct may be pursued against such employees who acted out of their own negligent conduct while acting within the scope of their employment or who acted outside of the scope of the employment. Johnson v. American Samoa Gov't, 2 A.S.R.3d 173 (Trial Div. 1998).

Under A.S.C.A. § 43.1211, an ASG employee may not be sued when a plaintiff elects to pursue a claim under the Government Tort Liability Act, but where a plaintiff chooses not proceed under the Government Tort Liability Act, she is not precluded from suing the employee for negligence. Johnson v. American Samoa Gov't, 2 A.S.R.3d 173 (Trial Div. 1998).

Police officers, as individual employees of ASG, are not proper defendants while a party is pursuing a claim against ASG under the Government Tort Liability Act. Johnson v. American Samoa Gov't, 2 A.S.R.3d 173 (Trial Div. 1998).

§ 10(3) —Statute of Limitations

Under statute barring action against territorial government unless begun within two years after the claim accrues, a party's action against the government was barred when she had discovered her claim against the government no later than 1984, filed a complaint against several defendants in 1985, and named the government as a defendant by amended complaint in 1987. Utu v. National Pacific Insurance Co., 9 A.S.R.2d 88.

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.

An action under the Government Tort Liability Act filed within the statutory limitation period but before the court's subject matter jurisdiction is invoked by exhausting administrative remedies may be incapable of tolling the statute of limitations. Mataipule v. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

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.

Claim under the Government Tort Liability Act accrues when an administrative claim is denied. Mataipule v. Tifaimoana Partnerships, Ltd., 16 A.S.R.2d 48.

Where a cause of action does not accrue until plaintiff first performs a requisite act and the period for performing such act is indefinite or unspecified, the statute of limitations begins to run after a reasonable time for performance lapses; plaintiff cannot indefinitely suspend the running of the limitations period by delaying the required act. Mataipule v. Tifaimoana Partnerships, Ltd., 16 A.S.R.2d 48.

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.

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.

The general rule is that a tort claim accrues when a person has been injured and knows or should have known the essential facts about his injury and its probable cause. Randall v. American Samoa Gov't, 19 A.S.R.2d 111.

The usual reason given for construing statutes of limitation for suits against the United States Government as jurisdictional (i.e., not subject to waiver and/or tolling)--that the limitations are deemed an integral part of the initial waiver of sovereign immunity, which should not be extended by courts beyond the intent of Congress--does not apply to ASG. Randall v. American Samoa Gov't, 19 A.S.R.2d 111.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 estopped 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.

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.

It is not the intent of the Government Tort Liability Act, A.S.C.A. § 43.1202 et seq., to create a four-year limitation period in which the government can be sued in tort. A party may not wait two years to file an administrative clam and then two more years to file a court case. Bradcock v. American Samoa Gov't, 28 A.S.R.2d 182.

In suits against the government, the court should ordinarily limit litigants to some overall period resembling the two-year statute of limitations imposed upon litigants suing private defendants, while taking into account the extra time required for exhausting administrative remedies. Bradcock v. American Samoa Gov't, 28 A.S.R.2d 182.

When a plaintiff files a tort claim with the Attorney General at any time within the two-year period provided by § 43.1204, the running of the two-year period is stayed and the statute is tolled for such time as the Attorney General takes to act upon the claim or until such time as the claim is denied by default. Bradcock v. American Samoa Gov't, 1 A.S.R.3d 42 (App. Div. 1997).

Tort claims against the American Samoa Government are subject to the Government Tort Liability Act, which states that such claims shall be forever barred unless an action on it is begun within 2 years after the claim accrues. Pouesi v. American Samoa Gov't, 5 A.S.R.3d 164 (Trial Div. 2001).

In actions for conversion, the cause of action accrues on the date of the conversion, regardless of when the plaintiff discovers the conversion or whether he demanded the return of the property, unless the case involves fraudulent concealment or other act of deceit designed to hide the defendant's actions from the plaintiff. Pouesi v. American Samoa Gov't, 5 A.S.R.3d 164 (Trial Div. 2001).

§ 10(4) —Administrative Claim Requirement

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.

Requirement that a claimant against a government agency must exhaust administrative remedies before bringing suit comprises both waivable and non-waivable elements. Pago Petroleum Products, Inc. v. American Samoa Power Authority, 10 A.S.R.2d 75.

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. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

Filing of the administrative claim required as a prerequisite to suit under the Government Tort Liability Act may toll the Act's statute of limitations. Mataipule v. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

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.

Requirement that an administrative claim first be filed is a jurisdictional prerequisite to suit under the Government Tort Liability Act. Mataipule v. Tifaimoana Partnerships, Ltd., 16 A.S.R.2d 48.

Cause of action accrues under the Government Tort Liability Act when the administrative remedies under the Act are exhausted, because plaintiff cannot seek judicial relief until then. Mataipule v. Tifaimoana Partnerships, Ltd., 16 A.S.R.2d 48.

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.

Because an injured person cannot sue until he has exhausted his administrative remedy, the Government 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.

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.

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.

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.

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.

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.

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.

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.

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.

Plaintiffs carry a legal duty to file administrative claims within a reasonable time or they will be barred by the doctrine of laches. Bradcock v. American Samoa Gov't, 28 A.S.R.2d 66.

A claimant must first present his claim to the Attorney General and receive a final denial before he may bring an action under the Government Tort Liability Act. Lagapagatele v. Lagapagatele, 2 A.S.R.3d 195 (Land & Titles Div. 1998).

The Attorney General’s failure to make a final disposition of a claim within three months after it is filed may be deemed, at the option of the claimant, a final denial of the claim. Lagapagatele v. Lagapagatele, 2 A.S.R.3d 195 (Land & Titles Div. 1998).

Where plaintiff properly files administrative claim with Attorney General’s office but said office fails to dispose of the claim within the prescribed 90 day time period, the claim is deemed denied and plaintiff has satisfied the prerequisite to exhaust administrative remedies. Afele-Fa`amuli v. Am. Samoa Cmty. Coll., 4 A.S.R.3d 219 (Trial Div. 2000).

§ 11 Wrongful Death

SEE WILLS, TRUSTS & ESTATES § 14 – WRONGFUL DEATH

Court will not reject common law regarding wrongful death. Hsu v. Pratt, 4 A.S.R. 752.

Recovery for wrongful death is dependant wholly upon statutory authority. Hsu v. Pratt, 4 A.S.R. 752.

Court will not legislate wrongful death law which is solely within province of legislature. Hsu v. Pratt, 4 A.S.R. 752.

Lord Campbell’s Act was Parliamentary statute and not part of common law. Hsu v. Pratt, 4 A.S.R. 752.

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.

Parents suing for the wrongful death of their son were entitled to receive the present discounted value of the son's estimated annual financial benefit to them for as long as such benefit could have been expected to continue. Fa'avae v. American Samoa Power Authority, 5 A.S.R.2d 53.

Award of funeral expenses in American Samoa should not include full cost of traditional gifts to persons attending the funeral, since the expectation according to Samoan custom is that the gifts will be reciprocated over time. Fa'avae v. American Samoa Power Authority, 5 A.S.R.2d 53.

Most elements of the award in a wrongful death and survival action, including loss of financial support, companionship, affection, consortium, and parental guidance, devolve directly upon the survivors; only the damages attributable to the pain and suffering of the deceased party ordinarily accrue to the estate. Logoa'i v. South Pacific Island Airways, Inc., 6 A.S.R.2d 28.

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.

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.

"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.

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.

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.

Where plaintiffs in wrongful death action had omitted other potential plaintiffs from their pleadings, amendment of the pleadings after trial to include additional plaintiffs would be permitted only insofar as it would work no prejudice on the defendants. Saufo`i v. American Samoa Government (Mem.), 14 A.S.R.2d 51.

Where damages had been assessed against defendants in wrongful death action, but plaintiffs had omitted other potential beneficiaries from their pleadings and sought to cure the omission by amendment after trial, plaintiffs would be required to share their damage award with their new co-plaintiffs. Saufo`i v. American Samoa Government (Mem.), 14 A.S.R.2d 51.

Experience and precedent suggest that a person is likely to be more deeply affected by the death of his child than of his sibling, and that minor children are far more likely to provide future financial support to their parents than to their brothers and sisters; court has therefore approved wrongful death settlements by which the parents of a deceased child receive substantially more than the brothers and sisters, even though the parents were negotiating for all aggrieved parties. Saufo`i v. American Samoa Government (Mem.), 14 A.S.R.2d 51.

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.

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.

Siblings are ordinarily entitled to recover for wrongful death even though a parent may be living, provided that they can show the requisite injury. Saufo`i v. American Samoa Government, 16 A.S.R.2d 71.

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.

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.

The wrongful death statute did not envision granting relief to every relative who can claim some parental role in the decedent's lifetime while there are surviving parents with compensable loss. Utu v. American Samoa Government, 20 A.S.R.2d 53.

The wrongful death statute is not to be read as allowing recovery for every relative who has a claim to loss of love and affection. Utu v. American Samoa Government, 20 A.S.R.2d 53.

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.

Although a claim under the survival statute was not plead with specificity, the liberal rules of pleading allows the claim when the cause of action was sufficiently noticed. Utu v. American Samoa Government, 20 A.S.R.2d 53.

Award of punitive damages for wrongful death is a statutory creature, and American Samoa law does not allow punitive damages for wrongful death. Newton v. Taleka, 30 A.S.R.2d 86.

The claimants in a wrongful death action may receive compensation for both pecuniary injury and loss of love and affection, including loss of society, companionship, comfort, consortium, or protection; and loss of filial care or attention. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

The claimants' pecuniary loss is the value of the decedent's estimated annual financial benefit to the claimants for as long as such benefit could have been expected to continue. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

In a wrongful death action, parents of the decedent should generally receive a larger share of recovery than siblings based on pecuniary injury because decedents are more likely to support parents than siblings. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

Siblings are ordinarily entitled to recover for wrongful death even though a parent may be living, provided that they can show the requisite injury. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

§ 12 Loss of Filial Consortium

No cause of action for "loss of filial consortium" was recognized at common law, although parents could recover damages for tangible losses such as a child's lost wages and medical expenses. In re Guardianship of Falelua, 13 A.S.R.2d 83.

Although traditional limitation of damages for the injury of one's child to palpable economic losses may reflect an outmoded view of children as mere economic assets, in a territory where the typical tortfeasor has few traceable assets and little or no insurance the recognition of a cause of action for collateral harm to a parent as a result of his child's injuries would almost certainly have the principal effect of reducing the sum available to compensate the child for injuries more palpable, direct, and severe than those suffered by the parent. In re Guardianship of Falelua, 13 A.S.R.2d 83.

Recognition of a cause of action for collateral harm to parent arising out of his minor child's injuries would practically guarantee a conflict of interest in every settlement negotiation arising out of such injuries, since zealous representation of the child's claims would deplete the fund available to compensate the fiduciary. In re Guardianship of Falelua, 13 A.S.R.2d 83.

Case in which (1) child's injuries were unlikely to have a shattering effect on the parent-child relationship; (2) the parent and guardian ad litem might herself have contributed to the injuries; and (3) the parent/guardian had waived any claim in her personal capacity by submitting a stipulated judgment requesting in effect that the entire settlement be deposited in a trust account for the child, was inappropriate for the recognition of a new cause of action for loss of filial companionship. In re Guardianship of Falelua, 13 A.S.R.2d 83.

§ 13 Bailments

SEE CONTRACTS §1(6) – BAILMENT CONTRACTS

§ 13(1) —Rights and Duties Between Bailor and Bailee

Common law concept of "bailment," which would be less likely to result in imposition of liability on a rental company that had put an automobile into the hands of a stranger than on a private individual who had lent a car to a friend, is inappropriate doctrine for the resolution of cases involving automobiles and other dangerous instrumentalities. Foma'i v. Samana, 4 A.S.R.2d 102.

Rental company that puts as many vehicles as possible into the care of strangers should not be judged by less stringent standard of liability than that imposed on employer whose employees use vehicles in the course of his business. Foma'i v. Samana, 4 A.S.R.2d 102.

Bailee exercising "due diligence" in care of bailed property must use the ordinary care which ordinarily prudent persons, as a class, would show in caring for their own property in similar situation. Garcia v. Galea`i, 15 A.S.R.2d 14.

Under doctrine of respondeat superior, a bailee employer is vicariously liable for loss or injury with respect to the bailed property which results from the negligence or wrongful acts or omissions of his employees in executing the bailment within the course and scope of their employment. Garcia v. Galea`i, 15 A.S.R.2d 14.

Bailee may not escape liability for his employee's negligence simply by instructing the employee to exercise due care. Garcia v. Galea`i, 15 A.S.R.2d 14.

Employer/bailee is also contractually liable for the negligence of his employees in executing the bailment, since he cannot receive money for performing a duty and at the same time escape liability for violating such duty by shifting the responsibility to an employee. Garcia v. Galea`i, 15 A.S.R.2d 14.

Bailee/employer was both vicariously and contractually liable for cash missing from bailed luggage, where he offered a luggage transport service to attract customers; his employee picked up the luggage; and both bailee/employer and employee failed to take adequate security precautions to prevent tampering with the luggage. Garcia v. Galea`i, 15 A.S.R.2d 14.

Bailee who fails to return bailed property upon the bailor's demand is prima facie negligent, and must rebut the presumed negligence by showing he used due care in safeguarding the property. Garcia v. Galea`i, 15 A.S.R.2d 14.

It is a well-settled rule of law that an ordinary bailee is not an insurer of bailed property absent statute or express agreement but is liable only for loss resulting from his negligence in caring for and protecting the bailed property. Holland v. Haleck's Island Motors, 18 A.S.R.2d 2.

In the case of a mutual bailment, it has been said that a bailee, in relation to the property bailed, is held to a duty of ordinary care. Holland v. Haleck's Island Motors, 18 A.S.R.2d 2.

In the case of a mutual bailment, many courts have held that a prima facie case of negligence or breach of contract will have been established against the bailee where a bailor has shown: (1) a bailment, (2) delivery of property to the bailee, and (3) failure of the bailee to redeliver the property undamaged. Holland v. Haleck's Island Motors, 18 A.S.R.2d 2.

In the case of a mutual bailment, in order to avoid liability under either a negligence or breach-of-contract theory, a bailor must provide a lawful excuse for non-return of the property or otherwise explain that damage to the property was not owing to his lack of due care. Holland v. Haleck's Island Motors, 18 A.S.R.2d 2.

In a bailment for mutual purposes, a bailee will be held to a higher standard of care if he has either agreed to assume a greater liability or he is one of those special bailees, such as common carriers and innkeepers, upon whom the law has imposed a strict rule of liability on grounds of public policy. Holland v. Haleck's Island Motors, 18 A.S.R.2d 2.

To escape liability in a mutual-bailment situation, a bailee should either go forward with exculpatory evidence accounting for the property or with evidence which exonerates him of fault. Holland v. Haleck's Island Motors, 18 A.S.R.2d 2.

A bailee for mutual purposes is under no legal obligation to insure. Holland v. Haleck's Island Motors, 18 A.S.R.2d 2.

When lessor takes possession of leased premises and its contents to the exclusion of the lessor, the lessee becomes the bailee of such property and thus has a duty to look after it while it remains in his custody. Sala v. Tuika, 18 A.S.R.2d 29.

Where there is no satisfactory explanation or accounting given by the bailee for missing, bailed items, the inference arises that the bailee failed to take due care of the bailor's missing property. Sala v. Tuika, 18 A.S.R.2d 29.

When the defendant stated that a prudent man would have obtained fire insurance for bailed property and when such insurance is custom in the industry, a duty to obtain such insurance existed, and the trial court committed clear error in finding that the bailee's failure to obtain insurance did not violate the prudent-man standard. Holland v. Haleck's Island Motors, 21 A.S.R.2d 106.

In a breach of bailment suit, a plaintiff must make a prima facie case that the bailed object was delivered and not returned; the burden then shifts to the defendant to show why the bailed object was not returned. Holland v. Haleck's Island Motors, 21 A.S.R.2d 106.

§ 13(2)—Rights and Duties Between Bailor or Bailee & Third Person

RESERVED

§ 13(3)—Conversion of Subject Matter

Warehouse owner who contracts to store certain property and then sells it thereby commits conversion, regardless of whether the contract is characterized as a bailment or as a lease of storage space. Purse Seine Inc. v. Lumana`i Development Inc., 11 A.S.R.2d 1.

The conversion doctrine is pertinent only when there has been a true conversion, i.e., where the carrier has appropriated the property for its own use or gain. The carrier may properly limit its liability where the conversion is by third parties or even by its own employees. Amerika Samoa Bank v. United Parcel Service, 25 A.S.R.2d 159.

§ 14 Comparative & Contributory Negligence

Person may recover for interference with his legally protected interests, even if at time of tort he also was committing tort or crime. Tung v. Ah Sam, 4 A.S.R. 764.

Youth who suffered electrocution while climbing a tree to knock down breadfruits with a metal pole, and who knew or should have known that there were electric wires in the immediate vicinity of the tree, was negligent and under comparative negligence statute his negligence would be evaluated as equal to that of utility that had permitted its wires to fray. Fa'avae v. American Samoa Power Authority, 5 A.S.R.2d 53.

Doctrines of last clear chance and intervening negligence are supplanted by comparative fault principles, whereby liability for damage is to be allocated among the parties proportionately to the comparative degree of their fault. United Airlines Employee Credit Union v. M/V Sans End, 15 A.S.R.2d 95.

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.

Having been made applicable by statute to actions for personal injury or property damage and so being compatible with the legislature's will, comparative negligence is properly incorporated into admiralty. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

Rejecting "expert user," assumption of risk, and contributory negligence defenses as barring recovery, American Samoa adopts the comparative-negligence approach in admiralty. Interocean Ships, Inc. v. Samoa Gases, 23 A.S.R.2d 76.

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.

Under the comparative fault doctrine, all parties to an occurrence have their fault determined in one action, even if some parties are absent because they cannot be formally joined or held legally responsible. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 108.

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.

The court may apportion damages among joint tortfeasors instead of applying joint and several liability, but only when it is feasible. Fiaui v. Faumuina, 27 A.S.R.2d 36 (Trial Div. 1994).

Apportionment of damages among joint tortfeasors is feasible when the plaintiff has suffered factually separable or divisible harm that can be allocated among tortfeasors with reasonable certainty. Fiaui v. Faumuina, 27 A.S.R.2d 36 (Trial Div. 1994).

Where injured persons substantially contribute to their injuries by engaging in hazardous conduct, their comparative negligence will not bar recovery, but may limit recovery. A.S.C.A. § 43.5101. Maifea v. National Pacific Insurance Co., 27 A.S.R.2d 104 (Trial Div. 1995).

Where it is possible to apportion liability, the need to invoke joint and several liability is negated. Masaniai v. The Country Club, 2 A.S.R.3d 142 (Trial Div. 1998).

Where it is possible to estimate and assign fault, it is a more equitable and fitting approach than automatically deeming liability “joint and several.” Masaniai v. The Country Club, 2 A.S.R.3d 142 (Trial Div. 1998).

A.S.C.A. § 27.0531(f) was enacted to make establishments that directly benefit financially from the consumption of alcohol accountable to the public, but it was not intended to unfairly penalize businesses, and it is unfair to invoke joint and several liability where it is possible to apportion fault to the parties involved. Masaniai v. The Country Club, 2 A.S.R.3d 142 (Trial Div. 1998).

Under A.S.C.A. § 43.5101, contributory negligence is not a bar to recovery in actions brought for personal injuries; rather, damages are diminished by the court in proportion to the amount of negligence attributable to the person injured, and a person who voluntarily consumes alcohol to the point of intoxication is at least partially responsible for his own injuries. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

A.S.C.A. § 43.5101 abolishes the contributory negligence bar to recovery, but because it is silent on the appropriate application of the principles of joint and several liability or comparative fault in a multiple tortfeasor situation, the court must decide on the proper standard to apply. Masaniai v. The Country Club, 2 A.S.R.3d 142 (Trial Div. 1998).

Operationally, A.S.C.A. § 43.5101 functions as a comparative fault mechanism, and this court has previously affirmed the doctrine of comparative fault in our jurisdiction. Masaniai v. The Country Club, 2 A.S.R.3d 142 (Trial Div. 1998).

American Samoa follows the comparative negligence doctrine. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

When a plaintiff's own negligence is a contributing cause in bringing about his injury, damages must be reduced by the percentage of fault attributable to his actions and recovery may even be eliminated in an appropriate case. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

Where dangerous, slippery condition was obscured by dim lighting and where plaintiff approached and entered room cautiously, he was not contributorily negligent. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

In an action for personal injuries or wrongful death, the fact that the person injured may have been guilty of contributory negligence does not bar recovery, but damages are diminished by the court in proportion to the amount of negligence attributable to the person injured. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

Recovery should be reduced under the rubric of comparative negligence if a party voluntarily and intentionally subjects himself unnecessarily to an unreasonable risk or to a dangerous instrumentality or condition, the peril of which is, or should be, appreciated by the person injured. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

Where decedent-plaintiff committed suicide while housed in a correctional facility, and although previously had attempted suicide, had never been diagnosed with mental illness, Court concluded that he was 50% negligent in causing his own demise. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

In determining whether apportionment of damages is appropriate, the threshold inquiry is whether a plaintiff has "fully recovered" from a pre-existing condition or injury or whether such condition was "dormant" or "latent"—if the plaintiff had not fully recovered, apportionment is proper. If, however, the condition was dormant or latent, then the defendant is liable for all damages legally caused by the incident. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

Apportionment among tortfeasors is appropriate when it is possible to ascertain the parties' relative liability. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

Where inmate escaped from correctional facility and subsequently raped plaintiff, Court determined that apportionment was appropriate, holding that one-third of plaintiff's damages occurred as a result of ASG's negligence, and two-thirds occurred as a result of the intentional acts of the prisoner. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

A trial court does not abuse its discretion by considering apportionment during the damages phase of the trial rather than the liability phase. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

Comparative fault is an appropriate defense in a tort action, not a contract one. American Samoa Power Auth. v. Deutz MWM Far East (PTE) Ltd., 7 A.S.R.3d 178 (Trial Div. 2003).

§ 15 Joint and Several Liability

§ 15(1) —General Provisions

Where one party to litigation, in violation of a court order, had released money to another party which had then spent it, both parties were jointly and severally liable to a third party who was held entitled to the money; as between the two parties who violated the order, the party who received and spent the money would be required to indemnify the party who merely released it. Bank of Hawaii v. Congregational Christian Church, 9 A.S.R. 2d 100.

If court finds third party tortfeasor liable for all, or partial, payments to one who has reached a settlement with injured parties, it must look to the reasonableness of the amounts paid. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

If multiple tortious acts concurrently cause a single indivisible injury, then those who committed the acts are liable as joint tortfeasors, and as joint tortfeasors, they are jointly and severally liable for compensatory damages. Fiaui v. Faumuina, 27 A.S.R.2d 36.

A participant in a tortious act is jointly and severally liable for harm resulting to a third person if the tortious act is done in concert with another, or if the participant knows that another's conduct constitutes a breach of duty and gives substantial assistance or encouragement, whether or not the participant's own conduct, separately considered, constitutes a breach of duty to the third person. Fiaui v. Faumuina, 27 A.S.R.2d 36.

Where a battery by the defendants is not the superseding cause of the plaintiff's injuries, but was the principal cause of his harm, they are jointly and severally liable for their share of the damages to the plaintiff. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

Where different defendants each played a role in the harm suffered by the plaintiff, but the conduct of the defendants was not jointly linked, and the harm is not indivisible and the tortfeasors were not acting in concert as part of one

inextricable, continuous act, the strictures of joint and several liability do not apply. Masaniai v. The Country Club, 2 A.S.R.3d 142 (Trial Div. 1998).

Where it is possible to apportion liability, the need to invoke joint and several liability is negated. Masaniai v. The Country Club, 2 A.S.R.3d 142 (Trial Div. 1998).

A.S.C.A. § 43.5101 abolishes the contributory negligence bar to recovery, but because it is silent on the appropriate application of the principles of joint and several liability or comparative fault in a multiple tortfeasor situation, the court must decide on the proper standard to apply. Masaniai v. The Country Club, 2 A.S.R.3d 142 (Trial Div. 1998).

A.S.C.A. § 27.0531(f) was enacted to make establishments that directly benefit financially from the consumption of alcohol accountable to the public, but it was not intended to unfairly penalize businesses, and it is unfair to invoke joint and several liability where it is possible to apportion fault to the parties involved. Masaniai v. The Country Club, 2 A.S.R.3d 142 (Trial Div. 1998).

The common law rules of joint and several liability are subject to judicial modification in American Samoa, provided the modification is consistent with American Samoan law. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

The trial court's modification of the common law rules of joint and several liability to apportion damages across multiple joint tortfeasors was entirely consistent with American Samoan law. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

Because no statute in American Samoa requires application of the common law rules of joint and several liability, the trial court's apportioning of damages across muliple joint tortfeasors was proper. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

§ 15(2) —Effect of Release of One Tortfeasor

The old common-law rule that the release of one tortfeasor releases all tortfeasors does not apply to workmen's compensation claims because an employer is not a joint tortfeasor and the policy reasons behind a general release are inapplicable. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

Reversing the earlier common-law rules, the modern trend is that a valid release of one tortfeasor from liability, by the injured person, does not discharge others liable for the same harm, unless they agree otherwise. Restatement (Second) of Torts § 885(1) (1979). Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

If only one of several tortfeasors is a party to the litigation, the amount of recovery should be diminished by the amount of settlements with absent tortfeasors and not by percentage of fault. Fiaui v. Faumuina, 27 A.S.R.2d 36.

§ 15(3) —Determining Liability

In the absence of any even minimally probative evidence tending to show that a defendant bore some quantifiable measure of responsibility, the court will decline to arbitrarily guess what that percentage may be. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

Courts should allocate damages liability in proportion to relative fault. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

Because no statute in American Samoa requires application of the common law rules of joint and several liability, the trial court's apportioning of damages across muliple joint tortfeasors was proper. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

§ 15(4) —Compensation by One Defendant

If only one of several tortfeasors is a party to the litigation, then the court must assure that the plaintiff is compensated even if a single defendant must pay all of the damages. Fiaui v. Faumuina, 27 A.S.R.2d 36.

If only one of several tortfeasors is a party to the litigation, then the single defendant has a right of contribution against any absent tortfeasor. Fiaui v. Faumuina, 27 A.S.R.2d 36.

Shifting the burden of recovery to the tortfeasors assures that the injured party is compensated. Fiaui v. Faumuina, 27 A.S.R.2d 36
.
If only one of several tortfeasors is a party to the litigation, the amount of recovery should be diminished by the amount of settlements with absent tortfeasors and not by percentage of fault. Fiaui v. Faumuina, 27 A.S.R.2d 36.

§ 16 Indemnity

A shipowner has a right of indemnity against a third party tortfeasor for maintenance and cure paid to an injured seaman to the extent occasioned by the third party tortfeasor's fault. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

Admiralty law recognizes that even where a party to a lawsuit settles, it may still bring an indemnity action against a joint tortfeasor. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

Even when defendant rejects plaintiff's tender of defense of the personal injury and wrongful death claims, the failure to tender, alone, would not preclude an indemnity claim by

plaintiff, if that claim still presented a valid theory of relief. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

The fact the crew themselves contributed to the injury does not preclude an indemnity claim, if they were liable as well. Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

§ 17 Subrogation

SEE CIVIL PROCEDURE § 9(5) – SUBROGATION

ASG provides free medical attention to American Samoans and qualified residents, but it can, under the equitable principle of subrogation, look to the tortfeasor for reimbursement. A.S.C.A. § 13.0601. Puailoa v. Barber, 19 A.S.R.2d 48.

In regards to subrogation, an insurance company must be joined as a necessary party plaintiff only if it has compensated an insured for his entire loss and if a danger exists that a defendant will face future lawsuits from the insurance company. T.C.R.C.P. 17(a), 19. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 108.

§ 18 Damages

§ 18(1) —General Provisions

Generally, mere fact that damages awarded in original proceeding were excessive will not merit new trial. Jewett v. McMoor, 1 A.S.R. 611.

Party seeking to recover reasonable value of services rendered must produce evidence of value to support recovery. Jt. Holdings and Tr. Ltd. v. P.J. Brennan, Inc., of Samoa, 4 A.S.R. 812.

Fact American Samoa does not have liability and damage insurance does not relieve negligent defendant of liability for damages. Faatamala v. Haleck, 4 A.S.R. 888.

Damages resulting from auto accident were limited to the maximum insurance coverage under defendant's policy where the evidence showed that some pain and suffering resulted from plaintiff's delay in acting on and following up medical recommendations, and her loss of earnings resulted from an unrelated medical condition rather than from the injuries caused by the accident. To`omalatai v. Moliga, 15 A.S.R.2d 77.

Damage awards are subject to wide variation between jurisdictions, therefore American Samoan courts need not be bound by awards rendered in other American jurisdictions. Moors v. American Samoa Government, 20 A.S.R.2d 76.

The general rule for recovery when a bank is negligent in collecting a draft is that the bank is liable for the actual loss suffered by the owner of the commercial paper as a result of the negligent misconduct of the bank; however, only nominal damages are recoverable when it appears that the paper remains collectible. Ghiselli Bros., Inc. v. Ryan, Inc., 22 A.S.R.2d 57.

Civil damages cannot be awarded in the absence of evidence of some reasonable basis of the monetary amount of those damages which can be determined. Reine v. Fiame, 23 A.S.R.2d 25.

A damage award to a minor shall be deposited directly into the depositary of the High Court of American Samoa and placed in an interest-bearing account with the minor as beneficiary; disbursements are to be made only on application by the guardian ad litem and with the approval of one of the Justices. Sciascia v. Lutali, 23 A.S.R.2d 38.

Claims for money damages are seldom moot and are subject to judicial resolution, even if other issues in a lawsuit are moot. Samoana Fellowship, Inc. v. American Samoa Power Authority, 24 A.S.R.2d 71.

Defendant's counterclaim for negligence and shoddy workmanship was not proven where inspection of boat failed to establish "delamination" claim and offer of proof nothing more than an unfounded guess as to damages. Ioane v. Aiga Tautai O Samoa, 1 A.S.R.3d 96 (Trial Div. 1997).

Simply because a business is reasonably successful, it is not necessarily appropriate to apply a "deep-pocket" theory of recovery, and it is appropriate to consider that the injury to the plaintiffs' reputation and their consequential emotional distress is not lasting. Fou v. Talofa Video, 2 A.S.R.3d 152 (Trial Div. 1998).

Although a plaintiff may not recover damages for preexisting conditions and disabilities, he or she is entitled to recover for the exacerbation of such attributable to a subsequent fall. Ala v. American Samoa Gov't, 2 A.S.R.3d 163 (Trial Div. 1998).

In a wrongful death action, parents of the decedent should generally receive a larger share of recovery than siblings based on pecuniary injury because decedents are more likely to support parents than siblings. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

Siblings are ordinarily entitled to recover for wrongful death even though a parent may be living, provided that they can show the requisite injury. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

A defendant cannot be liable for a pre-existing injury, but may be held liable for aggravating it. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

Defendants are entitled to a setoff if the tortious conduct also confers a benefit on the plaintiff. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

The method used by the Ninth Circuit in determining an award for economic loss under the Federal Tort Claims Act is appropriate for determining the same under the American Samoa Government Tort Liability Act. It consists of three steps: (1) compute the value of plaintiff's loss under state law; (2) deduct federal and state taxes from the portion for lost earnings; and (3) discount the total award to present value. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

Deduction of past federal and state income taxes, as well as future federal and state income taxes, was proper where calculation of such taxes was not speculative, and could be determined without significant difficulty. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

§ 18(2) —Pain and Suffering

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.

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.

On the scale of damage awards in American Samoa, fairly mild injuries frequently result in awards or settlements in the range of $10,000, but even the most serious and painful injuries rarely result in awards over $50,000. Moors v. American Samoa Gov't, 19 A.S.R.2d 67.

Pain and suffering resulting from conversion reaction, or physical symptoms resulting from the psychological trauma of an actual injury, are compensable in tort. Ale v. Peter E. Reid Stevedoring, Inc., 25 A.S.R.2d 142.

The right to recover damages for a personal injury is a right which is "relative" to the personal injury. Patau v. Hildre, 27 A.S.R.2d 7.

A cause of action for pain and suffering accrues if a party lives, even for a few moments, after sustaining a fatal injury. Newton v. Taleka, 30 A.S.R.2d 86.

§ 18(3) —Medical Expenses

A plaintiff seeking damages for personal injuries is entitled to recover the reasonable value of medical services rendered to him because of the injury. Puailoa v. Barber, 19 A.S.R.2d 48.

A tortfeasor takes his victims as he finds them, so the actual medical expenses incurred by a particular victim, not the amount that would have been incurred had the defendant been lucky enough to hit some other person, are the measure of damages. Vaiti v. So'oso'o, 19 A.S.R.2d 71.

Damages for projected medical expenses are allowed when permanent and troublesome injuries will probably require medical treatment in the future. Sciascia v. Lutali, 23 A.S.R.2d 38.

Tort plaintiffs may recover medical and related treatment reasonably necessary to minimize an injury or the pain or disability that results from it. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

Plaintiff can recover for expenses associated with reasonable attempts at treatment of injuries, even if some treatments are ineffective. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

§ 18(4) —Lost Wages and Profits

Lost profits are awarded when a defendant's actions are the direct cause of the loss. Additionally, while lost profits do not have to be calculated exactly, they generally must be "proved with reasonable certainty." Interocean Ships v. Samoa Gases, 26 A.S.R.2d 28.

The goal in awarding damages for lost future wages is to replicate as accurately as possible the injured plaintiff's lost stream of future income. Lost stream of income is composed of the difference between what the injured party would have earned had he not been injured and what his forecasted actual earnings will be, given his injuries. Clifton v. Voyager, 31 A.S.R.2d 12.

It is generally foreseeable that an uninjured plaintiff will continue his employment at his current wage rate, in his current position, and for the same number of hours per annum. Clifton v. Voyager, 31 A.S.R.2d 12.

Just as a court may consider foreseeable raises and promotions in determining future earning capacity, courts should also be able to consider foreseeable upgrades in employment status from an unemployed or part-time employee to full-time employee--but only if the evidence at trial reliably demonstrates that it is foreseeable that the individual would have achieved full-time employment status at a particular juncture. While an individual's big break could be "right around the corner", a court cannot, absent reliable evidence presented at trial to the contrary, speculate that the individual would be employed more often than he was employed during

the year prior to the injury. Clifton v. Voyager, 31 A.S.R.2d 12.

The claimants' pecuniary loss is the value of the decedent's estimated annual financial benefit to the claimants for as long as such benefit could have been expected to continue. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

In a wrongful death action, parents of the decedent should generally receive a larger share of recovery than siblings based on pecuniary injury because decedents are more likely to support parents than siblings. Schwenke v. American Samoa Gov't, 4 A.S.R.3d 41 (Trial Div. 2000).

Lost wages, both past and future, are allowed in cases of emotional injury that renders a plaintiff unable to work. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

A party's recovery for lost earnings is reduced by the amount actually earned by the plaintiff. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

A trial court may consider income taxes when determining past and future income damages, since a person's income tax is a relevant factor in determining his or her actual monetary loss. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

An award or settlement can be exempt from government taxation only if: (1) the claim was based on tort or tort type rights and (2) the damages were received on account of personal physical injuries or physical sickness. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

Even if an award for lost wages is not subject to post-judgment taxation, a court may still properly reduce the award by such taxes as the court has a reasonable basis for finding the victim would have owed on those wages. Gibbons v. Am. Samoa Gov't, 6 A.S.R.3d 50 (App. Div. 2002).

§ 18(5) —Damages to Personal Property

Defendant who gave evasive and dilatory answers when asked to repair or replace plaintiff's car, and who was ultimately held liable for the damage to the car, was also held liable for plaintiff's loss of the use of a car during the period between the accident and the time defendant finally admitted he did not plan to pay for the damages. Fonoti v. Nam, 3 A.S.R.2d 58.

Mere possibility that plaintiff's employer may hold him financially responsible for loss of employer's equipment by defendant airline does not entitle plaintiff to recover damages for such loss. American Samoa Government ex rel. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1.

An airline may not limit its liability for provable direct or consequential damage resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $1250 for each passenger. 14 C.F.R. § 254.4. American Samoa Government ex rel. Uikirifi v. Hawaiian Airlines, 13 A.S.R.2d 5.

Federal regulation prohibiting limitation of airline liability to an amount less than $1250 per passenger for "personal property, including baggage" is not limited only to baggage. 14 C.F.R. § 254.4 American Samoa Government ex rel. Uikirifi v. Hawaiian Airlines, 13 A.S.R.2d 5.

The measure of damages to personal property injured but not wholly destroyed is: (a) either: (1) the difference between the value of the property immediately before and after the injury, or (2) at the owner's option when the property is economically repairable, the reasonable cost of repair, with due allowance for any difference between the original value and the value after repairs; and (b) loss of use. Fuia v. Tua, 23 A.S.R.2d 70. Loss of use is based on the use's value or the amount paid for a substitute during the period when the owner is prevented from using his personal property. Fuia v. Tua, 23 A.S.R.2d 70.

§ 18(6) —Mitigation of Damages

In action for damages by husband against seducer of wife, fact that husband knew wife was of loose character does not bar action but goes in mitigation of damages. Jewett v. McMoor, 1 A.S.R. 611.

Plaintiff's failure to mitigate damages by promptly replacing destroyed vehicle is considered in determining damages for loss of vehicle's use. Maulupe v. American International Underwriters, 12 A.S.R.2d 1.

A plaintiff whose personal property was injured has a duty to mitigate damages by undertaking repairs with due diligence; however, this duty may be moderated, and the period may be extended, if delays are encountered because necessary acts are unreasonable or impracticable. Fuia v. Tua, 23 A.S.R.2d 70.

Defendants are entitled to a setoff if the tortious conduct also confers a benefit on the plaintiff. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

§ 18(7)—Punitive, Exemplary, or Special Damages

In action for personal injury it is unnecessary for plaintiff to prove special damages. Jewett v. McMoor, 1 A.S.R. 611.

While special damages need not be averred in cases of seduction or criminal conversation, Court may grant punitive or exemplary damages. Jewett v. McMoor, 1 A.S.R. 611.

Plaintiff's claim for exemplary damages against defendant who allegedly stopped payment on checks as part of a scheme to defraud plaintiff was not supported by the evidence when (1) a letter from the bank indicated that the checks had been dishonored because of insufficient funds and (2) plaintiff had failed to subpoena bank officials or records in support of its contention that defendant had stopped payment. R.P. Porter International, Inc., v. Samoa Roofing and Siding, Inc., 7 A.S.R.2d 54.

Intended to punish a wrongdoer and deter him and others from similar, future misconduct, punitive or exemplary damages may be awarded for outrageous conduct shown by acts done with evil motive or reckless indifference to others' rights; among the circumstances to consider are the character of a defendant's act and the nature and extent of a plaintiff's harm which the defendant caused or intended to cause. Letuli v. Le'i, 22 A.S.R.2d 77.

Punitive damages may be recovered whenever the elements of fraud, malice, gross negligence, or oppression mingle in the controversy in order to punish the defendant and deter others from the commission of similar wrongs. Fiaui v. Faumuina, 27 A.S.R.2d 36.

Punitive damages are appropriate when a person suffers actual harm, or injury, as a result of another person's malicious conduct, regardless of whether actual damages are awarded. Newton v. Taleka, 30 A.S.R.2d 86.

"Malice" includes conduct that is intended to cause injury; or which is despicable by nature, that is, blatantly vile or loathsome to ordinary decent people, and carried on with willful and conscious disregard for the rights or safety of others. Newton v. Taleka, 30 A.S.R.2d 86.

Punitive damages are principally awarded for the sake of example and by way of punishment. Newton v. Taleka, 30 A.S.R.2d 86.

A punitive damage award in addition to criminal conviction is not unreasonable double punishment, but criminal punishment may be properly considered in mitigation of punitive damages. Newton v. Taleka, 30 A.S.R.2d 86.

Award of punitive damages for wrongful death is a statutory creature, and American Samoa law does not allow punitive damages for wrongful death. Newton v. Taleka, 30 A.S.R.2d 86.

Recovery of punitive or exemplary damages are not denied merely because the wrongful act on which the action is based may be criminally punished; punitive damages are awarded for the sake of example and by way of punishment, and are not unreasonable double punishment. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

For punitive or exemplary damages to be awarded, there must exist circumstances of aggravation or outrage which includes malicious conduct, and where a beating exhibited a callous disregard for the value of human life, such damages are appropriate. Masaniai v. The Country Club, 2 A.S.R.3d 120 (Trial Div. 1998).

Where evidence failed to demonstrate malice, a prayer for punitive damages was properly denied. Neufeldt v. Don, 2 A.S.R.3d 183 (Trial Div. 1998).

Punitive or exemplary damages may be awarded whether or not compensatory damages are awarded, in order to punish a wrongdoer as well as to deter other from similar future misconduct which resulted in injury, loss or detriment to another. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

In order to award punitive damages in a trespass action, the trespasser's conduct must have been wantonly reckless or malicious. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Although trespassing parties' actions did not appear to have based on any evil intent, they nonetheless were done with reckless disregard for rights of private property owner, in violation of written contract and public utilities' rules, and despite repeated requests to cease. Consequently, punitive damages were warranted. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

§ 18(8) —Interest

Judgments in tort against the government are subject to interest at the rate of 6% per annum from the entry date of the judgment. Tuufuli v. American Samoa Gov't, 29 A.S.R.2d 56.

Private individuals are subject to payment of post judgment interest on judgments--at the rate of 6% per annum unless a contract calls for a lawful different rate. Tuufuli v. American Samoa Gov't, 29 A.S.R.2d 56.

Interest accrues on judgments in tort as well as in contract. Tuufuli v. American Samoa Gov't, 29 A.S.R.2d 56.

An offer of settlement is not a tender of payment that would stop prejudgment interest from accruing. Johnson v. Coulter, 30 A.S.R.2d 126.

In American Samoa, the decision whether to award prejudgment interest lies soundly within the court's discretion. TCW Special Credits, Inc. v. F/V Kassandra Z, 3 A.S.R.3d 163 (Trial Div. 1999).

The purpose of post-judgment interest is to compensate a judgment creditor from being deprived of the monetary value

of the judgment for the time between the entry of the judgment for damages and the judgment debtor's full payment of the judgment amount. Interocean Ships, Inc. v. Samoa Gases, 3 A.S.R.3d 190 (Trial Div. 1999).

Payment of a judgment stops post-judgment interest from accruing. Interocean Ships, Inc. v. Samoa Gases, 3 A.S.R.3d 190 (Trial Div. 1999).

When a judgment creditor appeals an order vacating judgment in its favor, post-judgment interest does not accrue during the appellate process. Interocean Ships, Inc. v. Samoa Gases, 3 A.S.R.3d 190 (Trial Div. 1999).

A determination by the court regarding the award of prejudgment interest lies soundly within its discretion. TCW Special Credits, Inc. v. F/V Cassandra Z, 4 A.S.R.3d 154 (Trial Div. 2000).

§ 18(9) —Collateral Source Rule

Under the collateral source rule, which applies to torts in admiralty and virtually all other tort cases, an injured party's compensation from a source independent of the tortfeasor is not deducted from damages otherwise collectable from the tortfeasor. Interocean Ships, Inc. v. Samoan Gases, 24 A.S.R.2d 108.

Under the collateral source rule, an injured party's compensation from a source independent of the tortfeasor is not deducted from damages otherwise collectable from the tortfeasor. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

The collateral source rule applies in "virtually all tort cases", id., including cases against the government. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

§ 18(10)—Effect of Preexisting Conditions

Plaintiff was not considered to have pre-existing depression condition where she was not depressed at the time of the injury, had recovered from previous episodes of depression, was not chronically depressed, and did not need therapy or medication during the period immediately preceding the incident at issue. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

A plaintiff may recover for all damages, including those caused by a subsequent aggravation of an injury, if the later aggravation is a likely result of the original injury. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

A tortfeasor takes a victim as he finds that victim, and is liable for the expenses incurred by that particular person, not for what may have been incurred by another. Gibbons v. American Samoa Gov't, 5 A.S.R.3d 36 (Trial Div. 2001).

§ 18(11)—Compensatory Damages

Compensatory damages are designed to compensate for actual injury or loss, and punitive damages are awarded as punishment or deterrence for particularly egregious conduct. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

In trespass actions, compensatory damages are to be measured by (1) diminution in value, i.e., difference between market value of land before and after the harm, or cost of restoration when appropriate, (2) loss of use of the land, and (3) discomfort and annoyance to the occupant of the land. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Where plaintiff in trespass action had testified that defendants had destroyed plants, fences and walls on his land, but had failed to present any evidence regarding the market value of such items, court would not award compensatory damages. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

§ 18(12)—Nominal Damages

The general rule for recovery when a bank is negligent in collecting a draft is that the bank is liable for the actual loss suffered by the owner of the commercial paper as a result of the negligent misconduct of the bank; however, only nominal damages are recoverable when it appears that the paper remains collectible. Ghiselli Bros., Inc. v. Ryan, Inc., 22 A.S.R.2d 57.

In trespass actions, where substantial actual damages are not susceptible to precise proof, the damage entitlement is limited to nominal damages. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

§ 18(13)—Restoration Cost Damages

Although plaintiffs are normally required to prove the market value of items destroyed by a trespass, a "restoration cost exception" exists where the landscaping and vegetation destroyed have intrinsic value to the landowner and are located on a homesite or recreational lot. In such cases, intrinsic value is assumed, and evidentiary support is not required. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

In trespass actions, restoration cost damages may exceed the diminution in market value of the real property on which the vegetation grew. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Where property and vegetation damaged as result of trespass was on rental property, court refused to award restoration cost

damages. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

§ 18(14)—Treble Damages

In trespass cases, damage awards must be trebled where the damage is to timber, young tree growth, products of tree growth, or cultivated grounds without lawful authority or permission. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

§ 18(15)—Attorney Fees

SEE LEGAL PROFESSION §5(2) – LITIGATION EXPENSES

A request for costs is properly denied in a negligence suit sounding in tort because it is not a proceeding "in respect to any claim or compensation order." A.S.C.A. § 32.0639. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

Attorney's fees are not ordinarily recoverable by a prevailing party, but may be awarded when an opposing party has acted in bad faith, wantonly, oppressively or when required by statute. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

Where public agencies and their agents had acted oppressively and in wanton disregard of the valid property claims of an individual citizen, court determined an award of attorney's fees to be proper. American Samoa Gov't v. .145 Acres, 5 A.S.R.3d 61 (Trial Div. 2001).

§ 19 Statutes of Limitations

§ 19(1) —General Provisions

Commencement of an action ordinarily suspends the running of the statute of limitations not only in favor of parties to the action but also in favor of those claiming under them, including lessees. Roberts v. Sesepasara, 8 A.S.R.2d 43.

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.

Tolling is frequently deemed consistent with the purposes of statutes of limitation, particularly when the plaintiff was unable to bring suit due to circumstances that were in the primary control of the defendant. Randall v. American Samoa Gov't, 19 A.S.R.2d 111.

A party cannot deduct from the limitations period applicable to his case the time consumed by the pendency of an action in which he sought to have the matter adjudicated, but which was dismissed without prejudice as to him and if, before he commences a new action after having become nonsuited or having had his action abated or dismissed, the limitation runs, the right to a new action is barred. Pasesa v. Laumatia, 27 A.S.R.2d 88.

Under A.S.C.A. § 43.0210(7), the statute of limitations for torts based on injury to property is generally three years when not asserted against the government, and it begins to run when the damage occurs that gives rise to the cause of action, and a plaintiff must clearly allege a date of such damage which falls within the statute at the time the complaint is filed. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

§ 19(2) —Accrual of Cause of Action

Where a statute or rule of common requires an administrative claim to be presented and prohibits suit until the claim has been rejected or a period for official action has expired, the cause of action does not accrue and the limitation period does not begin to run until the claim is rejected or the stated period expires. Mataipule v. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

Limitations period generally begins to run when the right to file suit accrues. Mataipule v. Tifaimoana Partnership, Ltd. (Mem), 14 A.S.R.2d 100.

If the delay in perfecting a right to sue is out of the plaintiff's control, the cause of action will unquestionably accrue when the right is perfected, but if the plaintiff controls the condition, he must perfect the right within a reasonable time, which is measured using the limitation period as an analogy in the absence of circumstances justifying a longer delay. Bradcock v. American Samoa Gov't, 28 A.S.R.2d 182.

Under A.S.C.A. § 43.0210(7), the statute of limitations for torts based on injury to property is generally three years when not asserted against the government, and it begins to run when the damage occurs that gives rise to the cause of action, and a plaintiff must clearly allege a date of such damage which falls within the statute at the time the complaint is filed. Mulitauaopele v. American Samoa Gov't and Tax Office, 4 A.S.R.3d 86 (Trial Div. 2000).

§ 19(3) —Personal Injuries

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.

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.

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.

Two-year statutory limitation period applies to causes of action for malpractice, because professional negligence that undermines the right to recover personal injury damages is an injury to a "relative right." A.S.C.A. § 43.0210. Patau v. Hildre, 27 A.S.R.2d 7.

§ 19(4) —Minors and Insane Persons

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.

Tolling of the limitation period on account of insanity, incompetence, or mental incapacity does not require violent behavior or a prior adjudication of incompetency. Afatasi v. Ho Ching, 17 A.S.R.2d 173.

A clinical diagnosis of a pathological condition such as dementia or schizophrenia is neither necessary nor sufficient to establish insanity. Afatasi v. Ho Ching, 17 A.S.R.2d 173.

The test of insanity is whether the potential plaintiff suffered, during the statute of limitations period, from a mental disorder which resulted in his inability to manage his affairs. Afatasi v. Ho Ching, 17 A.S.R.2d 173.

The "inability to manage one's affairs" test of legally-defined insanity is a functional one, for which the best evidence is empirical. Afatasi v. Ho Ching, 17 A.S.R.2d 173.

“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.

The term "insane" in statutes providing for the tolling of a limitation period is generally construed as synonymous with terms such as "mentally incompetent." Afatasi v. Ho Ching, 17 A.S.R.2d 173.

The one-year statute of limitations in A.S.C.A. § 43.0126 begins to accrue on the date on which a Guardian Ad Litem is appointed. A.S.C.A. § 43.0126. Pasesa v. Laumatia, 27 A.S.R.2d 88.

§ 20 Burden of Proof

In a civil suit the party with a preponderance of the evidence in his favor ordinarily prevails, and when the evidence does not preponderate in favor of either party the defendant ordinarily prevails. Tuia Suasuai v. Salave'a (Mem.), 3 A.S.R.2d 1.

"Preponderance" standard means that if the parties' contradictory versions of the facts have equal evidentiary support and the plaintiff cannot establish superior credibility, the defendant must prevail. Lafaele v. Continental Insurance Co., 4 A.S.R.2d 131.

Although the law does not automatically hold the driver at fault in every automobile/pedestrian collision, this does not imply that judicial inquiry into every such collision must begin and end with surviving driver's testimony that deceased pedestrian was at fault, especially where this testimony is at variance with the physical evidence. Saufo`i v. American Samoa Government, 14 A.S.R.2d 15.

Testimony of a third-party that plaintiff was in the wrong lane was suspect where both the driver of the struck vehicle and plaintiff testified that defendant was in the wrong lane, the third-party would have had to tailgate defendant to clearly see the accident (yet he avoided the collision), bystanders testified that the third-party arrived after the accident, and defendant knew the third-party and yet did not have him testify in earlier traffic court and civil actions concerning the same incident. Puailoa v. Barber, 17 A.S.R.2d 21.

A party who asserts a monetary claim has the burden of proving each element of the damages sustained with reasonable certainty and by a preponderance of the evidence. Cox v. Williams, 31 A.S.R.2d 110.

§ 21 Act of God

Twenty-eight mile per hour winds in American Samoa, which experienced winds of similar magnitude on 30 different days during the year in which the accident occurred, were not an "act of God" sufficient to excuse a person who would otherwise be liable for damages caused by his porch falling on plaintiff's car. Fonoti v. Nam, 3 A.S.R.2d 58.

An act of God need not be unprecedented in a particular locality, if the event is extraordinary and unexpected. Bryant v. Southwest Marine of Samoa, Inc., 25 A.S.R.2d 18.

No novel obligation exists to protect another's boats in the face of an act of God. Bryant v. Southwest Marine of Samoa, Inc., 25 A.S.R.2d 18.

WILLS, TRUSTS AND ESTATES

§ 1 Execution
1(1) —General Provisions
1(2) —Lost Wills
2 Interpretation
3 Procedural Issues
4 Modification or Change
4(1) —General Provisions
4(2) —Ademption
4(3) —Dependent Relative Revocation
5 Inheritance
5(1) —General Provisions
5(2) —Intestate Succession
5(3) —Adopted Children
5(4) —Marital Inheritance
6 Inter Vivos Conveyance or Gift
7 General Legacies and Devises
7(1) —General Provisions
7(2) —Conditions and Restrictions on Legacies and Devises
8 Individually-Owned Property
9 Administration
9(1) —General Provisions
9(2) —Letters of Administration
9(3) —Trustees & Beneficiaries
10 Taxation
11 Fiduciaries
11(1) —General Provisions
11(2) —Fiduciaries for Minors
11(3) —Related to Trusts
12 Small Estates
13 Future Interests & Rule Against Perpetuities
14 Wrongful Death
15 Power of Attorney

§ 1 Execution

§ 1(1) —General Provisions

Written will is necessary to devise land. Emmelina v. Aneki, 2 A.S.R. 444.

Signed writing executed in the presence of two witnesses, listing author's assets and giving instructions for their disposition after author's death was evidence of testamentary intent and met with statutory criteria for enforcement of a will. A.S.C.A. § 40.0102. Lokan v. Lokan, 6 A.S.R.2d 44.

Widow who signed document conveying house belonging to her late husband had no power to convey the interest of the surviving children of the deceased. Gi v. Temu, 11 A.S.R.2d 137.

Statutory requirement that testator's signature must be witnessed is not satisfied when the "witness" has no idea whether the signature appearing on the will is that of the testator or not. A.S.C.A. § 40.0102. In re Estate of Poiali`i, 15 A.S.R.2d 111.

Proof of testator's signature can be obtained either by the witness's observation of the testator in the act of signing or by the testator's later acknowledgment of the signature; the bare

presence of the testator when the witnesses sign is insufficient. In re Estate of Poiali`i, 15 A.S.R.2d 111.

Provisions of Rule 11 of the Territorial Court Rules of Probate Procedure, which allow proof of a will by other evidence when witnesses are unavailable, requires a showing that the witnesses could not have been located by the exercise of due diligence. In re Estate of Poiali`i, 15 A.S.R.2d 111.

Although the common law recognized holographic wills, when legislation provides for the kind of wills, which may be executed, and the manner of execution, a will failing to meet those statutory requirements is not valid. Estate of Jennings, 24 A.S.R.2d 3.

The testator's signature on any will, except one involving personalty which has a total value of not more than $300, must be witnessed. A.S.C.A. § 40.0102. Estate of Jennings, 24 A.S.R.2d 3.

§ 2 Interpretation

In construing a trust instrument's terms, a court seeks to ascertain and give effect to the settlor's intention by taking into account the document's subject matter, scheme, and plan, as well as the relationship of the parties; favor effectiveness of the instrument and validity of the trust; favor beneficiaries rather than settlors; and give effect to the whole instrument by reconciling repugnancies and avoiding surplusage. Beaver v. Craven, 19 A.S.R.2d 14.

Interpreting a trust instrument to find the settlor's intention is a question of law. Beaver v. Craven, 19 A.S.R.2d 14.

No language in a trust instrument is treated as surplusage as long as any other course is reasonably possible. Beaver v. Craven, 19 A.S.R.2d 14.

§ 3 Procedural Issues

Under Samoan custom, immediate members of dying person’s family are called in to hear testator’s disposition of property. Sapela v. Mageo, 1 A.S.R. 143

Court would allow executor of decedent's estate to be joined as defendant in action concerning title to land even though period for filing claims against estate in separate probate action had expired; judge in probate action, however, would have discretion to distribute decedent's property to heirs without regard to pendency of the land case, and heirs could then be substituted for executor as defendants in land case. Roberts v. Sesepasara, 8 A.S.R.2d 43.

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.

Although a claim under the survival statute was not plead with specificity, the liberal rules of pleading allows the claim when the cause of action was sufficiently noticed. Utu v. American Samoa Government, 20 A.S.R.2d 53.

Potential claimants to an estate's proceeds were to be joined as necessary parties when the complete relief granted by the court would affect the property rights of persons who were not presently parties to the action. T.C.R.C.P. 19. Jennings v. Jennings, 22 A.S.R.2d 10.

In the absence of statutory authorization for privity exceptions in probate proceedings, any claims with respect to the land, lease, and improvements must be determined in an independent action. Estate of Jennings, 24 A.S.R.2d 3.

§ 4 Modification or Change

§ 4(1) —In General

Assertion by devisee that devisor made secret dying, oral bequest of property to devisee will be looked upon with strong suspicion unless good reason can be shown for secret dispotition. Sapela v. Mageo, 1 A.S.R. 143.

Changes to a will that cause a new and distinct testamentary disposition must be attested in order to be valid. Lokan v. Lokan, 6 A.S.R.2d 44.

Attempted revisions that were not signed, dated, or attested would not invalidate will when it appeared that the revision attempted was merely an update of the property inventory that followed a general devise. Lokan v. Lokan, 6 A.S.R.2d 44.

§ 4(2) —Ademption

Ordinarily when a thing devised passes out of the estate before the testator's death it "adeems," leaving the devisee with no right to receive it or the equivalent value in money or other property. Lokan v. Lokan, 6 A.S.R.2d 44.

When a thing devised has, before the death of the testator, changed in name or in form only, there is no ademption and the devisee is entitled to the thing that has replaced the thing devised. Lokan v. Lokan, 6 A.S.R.2d 44.

§ 4(3) —Dependent Relative Revocation

Under the doctrine of "dependent relative revocation," when a testator attempts to change a provision in his will and the attempted change is deemed invalid, the original provision remains in full force unless it appears that the testator would

have preferred a simple deletion of this provision to its unmodified enforcement. Lokan v. Lokan, 6 A.S.R.2d 44.

§ 5 Inheritance

§ 5(1) —In General

Where court has held that one child is not entitled to inheritance property from parent, it could not consistently hold that another child with identical interest is entitled to inheritance. Taliutafa v. Toaga, 2 A.S.R. 218.

Samoan cannot inherit land from ancestor who could not hold title to land under law. Willis v. Willis, 2 A.S.R. 276.

Since at time of conveyance person could not inherit land unless he was at least three-fourths Samoan blood, it was necessary for conveyance benefiting children of non-native father be in form of trust for their benefit. Fruean v. Mageo, 2 A.S.R. 591.

No person can be heir until death of ancestor, and word "heir" cannot be applied to one whose ancestor is still living. Yuhashi v. Lopeti, 3 A.S.R. 322.

In view of prohibition against alienation of native lands, greatest estate that man could lawfully convey to grandson whose father was non-native was estate terminating upon grandson's death. Atufili v. Timoteo, 3 A.S.R. 395.

"Issue of such marriage" in regulation prohibiting alienation of native lands refers only to children and not lineal descendants. Atufili v. Timoteo, 3 A.S.R. 395.

Upon death of record owner of land his children inherit land as co-owners. Ofoia v. Pritchard, 4 A.S.R. 326.

Person who inherits land rights, subject to rights of other co-owners, may occupy and make use of land. Ofoia v. Pritchard, 4 A.S.R. 326.

Where title to land is conveyed to claimant and her children and claimant dies, leaving seven children, land became joint property of seven children in fee simple. Soliai v. Apelu, 4 A.S.R. 349.

Process of defining the term "next of kin" within the meaning of inheritance statute can be restated as an inquiry into whether the legislature intended to adopt the "civil law rule" according to which kinship is determined by a series of steps up and down the genealogical ladder and a person is one step away from his parents and two steps away from his siblings, or the competing "common law rule" according to which a person is related to both his siblings and his parents in the first degree. A.S.C.A. § 40.0201. In re Estate of Ah Mai (Mem.), 14 A.S.R.2d 32.

Although the common law equated illegitimacy with disinheritance and the legitimation of offspring is essentially a statutory development, disinheritance constitutes impermissible discrimination when paternity or maternity is a genuinely established fact. Estate of Fuimaono, 21 A.S.R.2d 121.

§ 5(2) —Intestate Succession

Where decedent dies intestate, children inherit as tenants in common. Bank of American Samoa v. Brown, 2 A.S.R. 365.

Where man dies intestate without wife or children, his undivided interest in land passes to his brother. Foster v. Olotoa, 3 A.S.R. 76.

Under inheritance law, property shall finally descend forever, and lineal descendants of any person shall stand in same place as person himself would have done had he not died. Yuhashi v. Lopeti, 3 A.S.R. 322.

On death of owner of property intestate, descent of property by operation of law to several heirs creates tenancy in common. Yuhashi v. Lopeti, 3 A.S.R. 322.

The Territory's statute governing intestate succession to real property other than communal lands provides only for intestate succession to real property of a decedent with title to such real property, not a mere claim to such land. Tulifua v. Tuitele, 3 A.S.R.3d 54 (App. Div. 1999).

Intestate succession does not occur automatically. The court confers rights of succession upon qualified and eligible heirs after fully complying with the statutes governing the orderly administration of estates. Tulifua v. Tuitele, 3 A.S.R.3d 54 (App. Div. 1999).

§ 5(3) —Adopted Children

Fear of matai that adopted children, who are members of family, will be deprived of family lands is unwarranted since they have redress to Attorney General and Secretary of Native Affairs. Leasiolagi v. Fao, 2 A.S.R. 451.

When parents perform their parental duties towards those acknowledged as their children, and those children perform their filial obligations in return, a de facto right of inheritance should be recognized in principle. Estate of Fuimaono, 21 A.S.R.2d 121.

An "equitable," "virtual," or "de facto" adoption for inheritance purposes exists when a decedent performs parental duties towards a child in his household and that child performs filial obligations in return, exactly equivalent to a formally-adopted child. Estate of Fuimaono, 23 A.S.R.2d 33.

The law of American Samoa may recognize equitable adoption for purposes of inheritance from the individual estate of the equitable adoptive parent. This doctrine may be applied in the absence of proof of a specific contract to adopt. Estate of Fui maono, 25 A.S.R.2d 110.

The cardinal purpose of the doctrine of equitable adoption is to justify the expectations of individuals when their personal relationships fail the test of traditional legal concepts, and to thereby avoid serious hardship. Siufanua v. Estate of Siufanua, 5 A.S.R.3d 221 (Land & Titles Div. 2001).

Courts apply the doctrine of equitable adoption only when de facto relationships are present. Siufanua v. Estate of Siufanua, 5 A.S.R.3d 221 (Land & Titles Div. 2001).

An equitable adoption can be found when a child has stood from an age of tender years in a position exactly equivalent to a formally adopted child. Siufanua v. Estate of Siufanua, 5 A.S.R.3d 221 (Land & Titles Div. 2001).

Where grandparents had raised two biological grandchildren as their own children, where extended family accepted the de facto parent-child relationship, where the biological mother and siblings of the two grandchildren expressly acknowledged the parent-child relationship, where public and church records relating to the births, marriages, and deaths of the two grandchildren stated that the grandparents were their parents, and where recorded document signed by all other children recognized the two grandchildren as the deceased grandparents' children, Court considered circumstances appropriate for application of the equitable adoption doctrine and considered the two grandchildren to be "children" of the grandparents under the deceased grandfather's will. Siufanua v. Estate of Siufanua, 5 A.S.R.3d 221 (Land & Titles Div. 2001).

§ 5(4) —Marital Inheritance

Where there are two tenants in common, each holds one half undivided interest in land which passes to heirs upon death, and wife of one tenant is entitled to one third of undivided on half in dower. Emmelina v. Aneki, 2 A.S.R. 444.

One third in value of all legal and equitable estates in real or personal property possessed by husband at time of his death are to be set apart for his surviving widow in fee simple. Tolivale v. Ufanua, 3 A.S.R. 196.

Where wife's interest in trust estate terminated upon her daughter's reaching age of 21, she then had no interest in trust estate nor any right of dower therein. Tolivale v. Ufanua, 3 A.S.R. 196.

Great weight of authority is that widow is not co-owner with heir upon death of husband but that right of dower is merely right of action. Tolivale v. Ufanua, 3 A.S.R. 196.

Husband of woman who dies intestate, at best acquires a life estate in her real property, known to the common law as courtesy. Willis v. Government, 4 A.S.R. 609.

Holder of life estate in real property by courtesy cannot pass his interest to second wife or children of second marriage. Willis v. Government, 4 A.S.R. 609.

Widow of land owner has undivided one third interest in land by way of dower. (CAS 8.0103.) Puluti v. Muliufi, 4 A.S.R. 672.

Lack of a good-faith belief in the validity of a marriage, in a jurisdiction such as American Samoa that does not recognize common-law marriages, precludes finding a putative marriage for inheritance purposes. Estate of Fuimaono, 21 A.S.R.2d 121.

§ 6 Inter Vivos Conveyance or Gift

Inter vivos trusts are used to pass property at death without the time and cost of a probate proceeding; the trust's assets escape probate but may be subject to federal estate tax. Beaver v. Craven, 19 A.S.R.2d 14.

§ 7 General Legacies and Devises

§ 7(1) —General Provisions

Attempt to will property which does not belong to devisor is of no effect. Faaafe v. Sioeli, 2 A.S.R. 21.

When there is a general devise, property acquired after the execution of the will also passes to the devisee. Lokan v. Lokan, 6 A.S.R.2d 44.

Under American Samoa's Descent and Distribution Statute, court approval is required for the conveyance of any real property belonging to the estate. Gabriel v. Pipili, 2 A.S.R.3d 227 (Land & Titles Div. 1998).

Where spouse of deceased attempted to convey deceased's real property in violation of Statute of Frauds and Descent and Distribution Statute, transaction had no force or effect against the estate but spouse obligated to refund purchase monies received. Gabriel v. Pipili, 2 A.S.R.3d 227 (Land & Titles Div. 1998).

§ 7(2) —Conditions and Restrictions on Legacies and Devises

Where matai attempts to convey fee simple estate to grandson, but law against alientation prevents his conveying more than life estate, there is reversion in grantor upon death of grandson, and upon grandson's death title reverts to grantor or his successor as matai. Atufili v. Timoteo, 3 A.S.R. 395.

In construing language in wills and trusts, a condition is deemed to be a condition subsequent which will divest a vested interest rather than a condition precedent to vesting, unless the language of the instrument forbids such a construction. Beaver v. Craven, 19 A.S.R.2d 14.

§ 8 Individually Owned Property

SEE REAL PROPERTY § 3 – INDIVIDUALLY OWNED LAND

Property that is individually owned descends to children of deceased owner. Tiumalu v. Lutu, 2 A.S.R. 222.

Court finds that matai devised individually owned land to adopted child. Tago v. Sami, 2 A.S.R. 285.

Widow who was entitled to one-third of deceased husband's interest in individually owned property could not be evicted by husband's relatives from possession of a small part of such property. A.S.C.A. § 40.0103. Tuiteleleapaga v. King, 8 A.S.R.2d. 49.

Land registered by its owner as her individual property was subject to laws of inheritance and passed to the individual heirs of the owner. Tuiteleleapaga v. King, 8 A.S.R.2d.

While § 37.0205 allows trusts for individually owned land, a Samoan proprietor must create the trust for the benefit of a son or daughter married to a nonnative, or for grandchildren arising from the mixed-race marriage. Craddick Dev. Inc. v. Craddick, 28 A.S.R.2d 117.

§ 9 Administration

§ 9(1) —General Provisions

Administrators who had administered estate poorly were not entitled to administrative fees and would be required to reimburse estate for fees they had already received. Lokan v. Lokan, 6 A.S.R.2d 133.

Surviving spouse who received funds belonging to deceased husband, under statute providing for the simplified administration of small estates, was required to pay his debts and funeral expenses and to distribute the remainder of the funds to his legal heirs. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26.

Surviving spouse who received funds belonging to deceased husband under statute providing for the simplified administration of small estates, and who used the funds to purchase a pickup truck rather than distributing them to legal heirs, would be required to restore the funds. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26.

Adult heirs were competent to decide whether to seek recovery of their share of decedent's estate from surviving spouse who had spent the funds in the estate, but minor heirs could not waive their share of the estate; accordingly, surviving spouse would be required to restore funds to minors' trust accounts. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26.

Where counsel for plaintiff who died during the litigation did not move to substitute his client's estate, but instead continued to litigate for two years, recovered certain funds, and then moved for distribution of the funds among widow and various unnamed children of the decedent, court would deny the motion and retain the funds pending qualification of an administrator of decedent's estate. Te`o v. Continental Insurance Co. (Mem.), 13 A.S.R.2d 42.

A.S.C.A. § 40.0334 applies only to estates with personal property under $10,000. A.S.C.A. § 40.0335(b) requires that a petition for the transferral of personal property, made under A.S.C.A. § 40.0334, state the total value of the personal property. A petition requesting authority to negotiate all checks made payable to a decedent not to exceed $10,000 leaves undeclared the value of certain checks made payable to the decedent, and makes a mockery of A.S.C.A. § 40.0334, as it would admit estates with personal property in excess of $10,000 by simply limiting an order of transfer to an amount "not to exceed $10,000. In Re Estate of Fa`avi Sefuiva, 29 A.S.R.2d 76.

Under A.S.C.A. § 40.0332, the terms "estate" and "heirs" are not equivalent, rather an estate includes "heirs, legatees, devisees and creditors." Pita v. Garrett, 31 A.S.R.2d 158.

§ 9(2) —Letters of Administration

Territorial statute providing for transfer of small estates to persons entitled thereto without letters of administration was inapplicable to estate with assets in excess of $10,000. A.S.C.A. § 40.0334. In re Estate of Fuimaono, 7 A.S.R.2d 142.

When petitioner had secured the transfer of contents of a safe deposit box belonging to decedent by attesting that the assets in decedent's estate had a total value of less than $10,000, and safe deposit box was subsequently discovered to contain assets whose value was greater than $10,000, the assets could not be distributed or retained by the petitioner without the issuance of letters of administration for decedent's estate. A.S.C.A. § 40.0334. In re Estate of Fuimaono, 7 A.S.R.2d 142.

A surviving spouse is ordinarily entitled to issuance of letters of administration. In Re Estate of Fa`avi Sefuiva, 29 A.S.R.2d 76.

The surviving spouse is entitled in priority to letters of administration with regard to his or her deceased spouse's estate. Pen v. Pen, 30 A.S.R.2d 119.

§ 9(3) —Trustees & Beneficiaries

In litigation involving a trust, beneficiaries have standing to protect their rights and interests. Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

In a trust, trustees hold the legal title to the trust property while the beneficiaries hold the equitable interest. Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

A trust does not fail merely because the trustee is incapable of taking title to the property. Kneubuhl v. Ala'i, 7 A.S.R.3d 272 (Land & Titles Div. 2003).

§ 10 Taxation

SEE TAXATION § 7 - MARITAL DEDUCTION

§11 Fiduciaries

§ 11(1) —General Provisions

Where one party to litigation, in violation of a court order, had released money to another party which had then spent it, both parties were jointly and severally liable to a third party who was held entitled to the money; as between the two parties who violated the order, the party who received and spent the money would be required to indemnify the party who merely released it. Bank of Hawaii v. Congregational Christian Church, 9 A.S.R.2d 100.

§ 11(2) —Fiduciaries for Minors

SEE FAMILY LAW § 3(4) – GUARDIANSHIP & FIDUCIARY DUTIES

Trustee of minor's estate is charged with preserving funds in the estate until the minor reaches adulthood, and should give careful scrutiny to all proposed expenditures. In re Moea'i (Mem.), 3 A.S.R.2d 12.

In deciding whether to approve expenditures recommended by trustee of minor's estate, court considered the amount remaining in the trust, whether the amount requested was a substantial percentage of the amount remaining, the length of time remaining before the minor reaches adulthood, other expenditures likely to be requested, and whether the trustee had carefully scrutinized the proposed expenditure. In re Moea'i (Mem.), 3 A.S.R.2d 12.

Duty of a fiduciary to be zealous in protection of the interests of beneficiaries is at its highest when interests of beneficiaries may compete with personal interests of the fiduciary. Logoa'i v. South Pacific Island Airways, Inc., 6 A.S.R.2d 28.

Guardian of the estate of an incompetent person could not discharge its obligation to account for funds belonging to the estate merely by informing the Court that all the money was gone, even when the guardian was an institution whose management had changed hands since the establishment of the guardianship. In re Estate of Auelua, 7 A.S.R.2d 70.

Court will not ordinarily approve proposed division of property among minors and their guardians without clear and convincing evidence that the proposed division is fair to the minors. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Duty of a guardian or other fiduciary to be zealous in the protection of the interests of those to whom the fiduciary duty is owed is at its highest in situations wherein these interests may compete with the personal interests of the fiduciary. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Although retention of a single attorney to represent the interests of minors and the personal interests of their guardian may sometimes be justified by convenience and financial savings, the guardian and the attorney must carefully consider potential conflicts between the interests of the guardian and those of the minors. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Court's signature on order authorizing guardian to proceed with a transaction and deposit a certain sum to the account of minors did not preclude court from subsequently deciding that the minors were entitled to a greater sum, where (1) guardian was an attorney who also represented another party to the same transaction; (2) the draft order was submitted to the court by the guardian subsequent to a hearing at which the court had given verbal approval of guardian's proposal to proceed with the transaction and hold the proceeds subject to the court's future orders on their disposition; (3) allocation of the proceeds among the minors and other parties to the transaction was not raised at the prior hearing; (4) at a subsequent hearing after the court had signed the order but before the transaction had actually occurred, the guardian did suggest that his other client was entitled to some of the proceeds of the transaction and the court expressed disagreement. In re Guardianship of Tedrow, 7 A.S.R.2d 72.

Legal guardians are not responsible for funds deposited with the Court's registry and need not make periodic reports concerning such funds. Judicial Memorandum No. 1-88, 7 A.S.R.2d 143.

Funds held in trust may be held in interest-bearing accounts outside the registry of the court, but court may require periodic reports, bonding of guardian or trustee, and/or the continued involvement of an attorney in order to protect the interests of

the beneficiary. Judicial Memorandum No. 1-88, 7 A.S.R.2d 143.

Father who spent funds belonging to minor for general family purposes rather than depositing them in court-ordered guardianship account would be required to restore the funds, plus the interest that would have accrued to the minor's estate if the funds had been deposited in the guardianship account. In re Guardianship of Sagapolutele, 8 A.S.R.2d 24.

Adult heirs were competent to decide whether to seek recovery of their share of decedent's estate from surviving spouse who had spent the funds in the estate, but minor heirs could not waive their share of the estate; accordingly, surviving spouse would be required to restore funds to minors' trust accounts. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26.

Case in which (1) child's injuries were unlikely to have a shattering effect on the parent-child relationship; (2) the parent and guardian ad litem might herself have contributed to the injuries; and (3) the parent/guardian had waived any claim in her personal capacity by submitting a stipulated judgment requesting in effect that the entire settlement be deposited in a trust account for the child, was inappropriate for the recognition of a new cause of action for loss of filial companionship. In re Guardianship of Falelua, 13 A.S.R.2d 83.

§ 11(3) —Related to Trusts

Funds held in trust for minors and other incompetents may be deposited in the court's registry, where they will be placed in interest-bearing accounts, no trusteeship fees will be charged, and disbursements will be subject to court approval. Judicial Memorandum No. 1-88, 7 A.S.R.2d 144.

Legal guardians are not responsible for funds deposited with the Court's registry and need not make periodic reports concerning such funds. Judicial Memorandum No. 1-88, 7 A.S.R.2d 144.

Funds held in trust may be held in interest-bearing accounts outside the registry of the court, but court may require periodic reports, bonding of guardian or trustee, and/or the continued involvement of an attorney in order to protect the interests of the beneficiary. Judicial Memorandum No. 1-88, 7 A.S.R.2d 144.

Father who spent funds belonging to minor for general family purposes rather than depositing them in court-ordered guardianship account would be required to restore the funds, plus the interest that would have accrued to the minor's estate if the funds had been deposited in the guardianship account. In re Guardianship of Sagapolutele, 8 A.S.R.2d 24.

Insurance proceeds held in trust for person who had suffered mild brain damage in an accident, but who was able to work, who did in fact work on his family's plantation, and who could expect to live for many years, should not be exhausted through disbursements to his father to be used for general family purposes, but should be reserved for future emergencies related to the continuing medical condition. In re Guardianship of the Estate of Togamau, 14 A.S.R.2d 65.

The essence of a "life estate power of appointment" trust, qualifying for the "marital deduction," is the combination of income for life and a general power to appoint, both vested in the surviving spouse. Beaver v. Craven, 19 A.S.R.2d 14.

Distributions from decedent's estate to a "power of appointment" trust qualify for the "marital deduction" if they are first included in the gross estate, but the survivor's power to appoint must be quite broad to qualify for the marital deduction. 26 U.S.C. § 2056(a). Beaver v. Craven, 19 A.S.R.2d 14.

The general rule, except as provided otherwise by statute or the trust instrument, is that on the death of a trustee and any pending appointment of a new trustee, the trusteeship devolves on any surviving trustees. Beaver v. Craven, 19 A.S.R.2d 14.

Trusts in which the surviving trustor is both beneficiary and trustee are allowed, except where a sole beneficiary is also the sole trustee, on the theory that the legal and equitable titles held as trustee and beneficiary are sufficiently different to prevent the legal estate from merging into the equitable one. Beaver v. Craven, 19 A.S.R.2d 14.

Courts are reluctant to remove trustees, especially those appointed by the settlor. Beaver v. Craven, 19 A.S.R.2d 14.

The general, common-law rule is that trustees must jointly exercise all powers calling for their discretion and judgment. Beaver v. Craven, 19 A.S.R.2d 14.

Legal title to trust property is held in the name of the trustees, not the name of the fictitious trust. Beaver v. Craven, 19 A.S.R.2d 14.

Since trustees must jointly exercise all powers calling for discretion and judgment, if trustees of a trust whose corpus includes corporate stock call a shareholders' meeting without a co-trustee, the meeting is unauthorized, and its proceedings are of no effect. Beaver v. Craven, 19 A.S.R.2d 14.

When two persons, particularly family members, discuss and plan that one will manage the other's property or business affairs while he is away, a fiduciary relationship is established between them in the absence of actual fraud. Jennings v. Jennings, 21 A.S.R.2d 40.

Although 14 C.F.R. § 47.7(c) does not state how one might come to hold legal title to an aircraft in trust, neither does it limit such a prospect. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

Legal title to an aircraft in trust can arise by judicial order under 14 C.F.R. § 47.11(h). Furthermore, this section places no limitations on the situations in which this might occur. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

14 C.F.R. § 47.5(d) does not limit the definition of "owner," but instead provides that, in addition to those persons holding legal title, the term shall include enumerated persons not normally thought of as owners. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

Under 14 C.F.R. § 47 a trustee can clearly be an owner for registration purposes. Samoa Aviation, Inc. v. Bendall, 28 A.S.R.2d 222.

§ 12 Small Estates

Surviving spouse who received funds belonging to deceased husband, under statute providing for the simplified administration of small estates, was required to pay his debts and funeral expenses and to distribute the remainder of the funds to his legal heirs. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26.

Surviving spouse who received funds belonging to deceased husband under statute providing for the simplified administration of small estates, and who used the funds to purchase a pickup truck rather than distributing them to legal heirs, would be required to restore the funds. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26.

§ 13 Future Interests & Rule Against Perpetuities

Under the Rule Against Perpetuities, all future interests must vest or fail no later than twenty-one years after the measuring period of lives-in-being when the interest is created. Beaver v. Craven, 19 A.S.R.2d 14.

The Rule Against Perpetuities applies only to contingent remainders and executory limitations, not present interest or vested remainders (except for interests vested in a class subject to open). Beaver v. Craven, 19 A.S.R.2d 14.

When an interest is vested in a class subject to open, the number of persons who will take and the size of each person's share must also be determined within the measuring period of the Rule Against Perpetuities or the interests of all class members will fail. Beaver v. Craven, 19 A.S.R.2d 14.

Gifts which violate the classic Rule Against Perpetuities may be valid under some modern alterations to the Rule, such as the doctrines of "wait-and-see," separability, cy-pres, and equitable approximation. Beaver v. Craven, 19 A.S.R.2d 14.

Savings clauses are upheld if carefully drafted, so a trust provision creating an interest that could be interpreted as violating Rule Against Perpetuities will not be construed to do so where instrument contains another provision limiting duration of such interests to those permitted by law. Beaver v. Craven, 19 A.S.R.2d 14.

Whether a remainder interest in a trust is contingent, vested, or vested subject to being later divested depends on the intent of the trustor, as determined from the provisions of the trust instrument. Beaver v. Craven, 19 A.S.R.2d 14.

Since the law favors vested interests, remainders will not be construed as contingent when they can be taken as vested, particularly if the trustor's intent is in doubt. Beaver v. Craven, 19 A.S.R.2d 14.

In construing language in wills and trusts, a condition is deemed to be a condition subsequent which will divest a vested interest rather than a condition precedent to vesting, unless the language of the instrument forbids such a construction. Beaver v. Craven, 19 A.S.R.2d 14.

An entire trust will not fail unless the provisions which violate the Rule Against Perpetuities are so inseparable that eliminating them would violate the settlor's main scheme in settling the trust. Beaver v. Craven, 19 A.S.R.2d 14.

In determining whether a trust's provisions which violate the Rule Against Perpetuities are severable, the grantor's intent governs, and the general rule favors severability. Beaver v. Craven, 19 A.S.R.2d 14.

§ 14 Wrongful Death

SEE TORTS § 11 – WRONGFUL DEATH

Most elements of the award in a wrongful death and survival action, including loss of financial support, companionship, affection, consortium, and parental guidance, devolve directly upon the survivors; only the damages attributable to the pain and suffering of the deceased party ordinarily accrue to the estate. Logoa'i v. South Pacific Island Airways, Inc., 6 A.S.R.2d 28.

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.

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.

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.

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.

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.

§ 15 Power of Attorney

SEE AGENCY AND PRINCIPAL § 4 – POWERS OF ATTORNEY

WORKER'S COMPENSATION

§ 1 Purpose and Origin
2 Commission Procedure
3 Injury
3(1) —Date of Injury
3(2) —Type of Injury
4 Compensation Award
4(1) —General Provisions
4(2) —Wages
4(3) —Exclusive Remedy
5 Burden of Proof
6 Employer Liability
6(1) —General Provisions
6(2) —Employer Subrogation
6(3) —Settlement Agreements
6(4) —Release
7 Medical Care
8 Judicial Review
9 Beneficiaries
10 Costs in a Worker's Compensation Proceeding

§ 1 Purpose and Origin

The central policy behind workers' compensation statutes is that compensation should replace what the employee would actually have earned had it not been for the accident, rather than take into account the "deserving" or "undeserving" status of the employer or employee. Enekosi v. Tu'ufuli, 3 A.S.R.2d 81.

The aim of workmen's compensation statutes is to place an employee injured on the job in the position he would have been in had he not lost the wages through injury, rather than to test the fairness of the underlying employment contract. Enekosi v. Moaali'itele, 6 A.S.R.2d 49.

Workmen's Compensation Act of American Samoa is highly similar to, and seems to have been drawn largely from, the federal Longshoremen's and Harbor Workers' Compensation Act. A.S.C.A. §§ 32.0501 et seq; 33 U.S.C. §901 et seq. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

American Samoa's Workmen's Compensation Act seems to have been drawn largely from the federal Longshoremen's and Harbor Workers' Compensation Act. 33 U.S.C. § 933; A.S.C.A. §§ 32.0501 et seq. Patau v. Rosendahl Corp., 19 A.S.R.2d 80.

American Samoa's Workmen's Compensation Act was essentially modeled on the federal Longshoremen and Harbor Workers Compensation Act. 33 U.S.C. §§ 901 et seq.; A.S.C.A. §§ 32.0501 et seq. Vaeao v. Samoa Air, 20 A.S.R.2d 37.

American Samoa's Workmen's Compensation Act is similar to and appears to have been based on the federal Longshoremen and Harbor Workers' Compensation Act. 33 U.S.C. §§ 901 et seq.; A.S.C.A. §§ 32.0501 et seq. Harris v. Commissioner of the American Samoa Government Workmen's Compensation Commission, 24 A.S.R.2d 158.

§ 2 Commission Procedure

24 A.S.C. 458 is statute of limitations which precludes interference with Workmen's Compensation order after expiration of thirty days from entry. Haleck v. Scanlan, 4 A.S.R. 841.

Workmen's Compensation statute does not require the Commission to order an examination, but instead requires the claimant to submit to any examination, which the Commission does order. A.S.C.A. § 32.0638. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

When the medical officer of the Workmen's Compensation Commission was removed on the plaintiff's own motion and in

accordance with statute because the physician was an employee of ASG and ASG was a party to the proceedings, there is nonetheless substantial compliance with the statute. A.S.C.A. § 32.0505. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

The Workmen's Compensation Commissioner shall order a compensation-order hearing upon application of any interested party. A.S.C.A. § 32.0636(b). Harris v. Commissioner of the American Samoa Government Workmen's Compensation Commission, 24 A.S.R.2d 158.

Although a Workmen's Compensation order is "effective" when filed in the Commissioner's office, it does not become "final" until after 30 days; during this period of time, the Commissioner may reconsider his order. A.S.C.A. § 32.0651. Harris v. Commissioner of the American Samoa Government Workmen's Compensation Commission, 24 A.S.R.2d 158.

A.S.C.A. § 4.0604(a) does not vest, in the Office of the Administrative Law Judge, exclusive administrative agency subject matter jurisdiction to hear and decide contested workmen's compensation claims, but only makes the Administrative Law Judge legally available to the Commission to conduct contested claim hearings under existing, statutorily prescribed, rules of administrative practices and procedures. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

A.S.C.A. § 4.0604(a) does not change the statutory authority of the Workmen's Compensation Commission to do all legal things necessary to fulfill its agency mandate. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

It is at the discretion of the Workmen's Compensation Commission how the A.L.J. may be used in contested claim hearings, not the Office of the Administrative law Judge. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The Workmen's Compensation Commissioner is vested with final agency decision-making authority with regard to workmen's compensation claims. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 3 Injury

§ 3(1) —Date of Injury

In occupational disease cases, the best estimate of the "date of injury" will ordinarily be the date on which the progress of the disease made it impossible for the claimant to continue working. A.S.C.A. § 32.0621. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

Even if the "last injurious exposure" rule were not the law in American Samoa, employers and insurers may contractually adopt this rule, which places full liability on the insurer providing coverage at the time of the most recent injury causally related to the disability. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

§ 3(2) —Type of Injury

Although occupational diseases differ from "typical" injuries in that they generally do not have a discrete and readily identifiable instant of occurrence, and although this may give rise to difficulties in the proof of causation, such diseases are injuries under the American Samoa Workmen's Compensation statute. A.S.C.A. § 32.0502(i). Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

§ 4 Compensation Award

§ 4(1) —In General

Trial court properly upheld workmen's compensation commission award to injured employee based on that employee's actual earnings, even though the employee earned less than the statutory minimum hourly wage. Enekosi v. Moaali'itele, 6 A.S.R.2d 49.

Workmen's Compensation Commission has wide discretion in awarding medical and related travel expenses. A.S.C.A. § 32.0619. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

A voluntary payment of workmen's compensation does not constitute an "award in a compensation order," which triggers an assignment of an injured worker's cause of action against a third party to his employer. A.S.C.A. § 32.0669. Patau v. Rosendahl Corp., 19 A.S.R.2d 80.

As a matter of law, a worker who lost his forearm was entitled to 244 weeks of compensation; in addition, the Workmen's Compensation Act also provides for up to 200 weeks of compensation in cases of serious bodily disfigurement. A.S.C.A. §§ 32.0609 (3), (15), 32.0609(20). Patau v. Rosendahl Corp., 19 A.S.R.2d 80.

A motion to stay enforcement of an order awarding worker's compensation benefits will not be granted unless it is shown that irreparable damage must ensue to the employer unless a stay is issued. A.S.C.A. § 32.0652. Star-Kist Samoa, Inc. v. Comm'r of the American Samoa Gov't Workmen's Comp. Comm'n., 1 A.S.R.3d 67 (Trial Div. 1997).

The fact that the employer might have difficulty recovering the repayment of compensation from the employee if the award to the employee is reversed on appeal, is insufficient reason to grant a stay. Star-Kist Samoa, Inc. v. Comm'r of the American Samoa Gov't Workmen's Comp. Comm'n., 1 A.S.R.3d 67 (Trial Div. 1997).

A.S.C.A. § 7.1441(c)(2) unambiguously proscribes the payment of early retirement benefits together with the payment of worker's compensation benefits (double dipping) brought on by same disabling condition at work. American Samoa Gov't v. Am. Samoa Workmen's Comp. Comm'n, 2 A.S.R.3d 160 (Trial Div. 1998).

Where a disabled employee continues to receive retirement benefits, and there is a substantial likelihood that petitioner will prevail on the merits, and there is likelihood of great injury to the petitioner, a preliminary injunction against payment of permanent disability benefits is warranted under A.S.C.A. § 43.1301(j), while payments are continued to be paid into the registry of the Court. American Samoa Gov't v. Am. Samoa Workmen's Comp. Comm'n, 2 A.S.R.3d 160 (Trial Div. 1998).

§ 4(2) —Wages

Bus driver who was paid a certain percentage of his total fares minus certain expenses of operating the bus was paid a wage "fixed by output" within the meaning of workers' compensation statute. A.S.C.A. § 32.0621. Enekosi v. Tu'ufuli, 3 A.S.R.2d 81.

That an employee's wage may have been less than required by the federal minimum wage laws did not make it improper for workmen's compensation commission to base his compensation award on his actual wage in accordance with territorial statute. A.S.C.A. § 32.0261. Enekosi v. Tu'ufuli, 3 A.S.R.2d 81.

Driver who was paid a percentage of bus fare receipts less fuel expenses was properly held to be an employee whose wages are "fixed by output" within the meaning of the workmen's compensation statutes, rather than one whose wages are neither "fixed" nor "ascertainable". A.S.C.A. § 32.0621 (d)(1),(3). Enekosi v. Moaali'itele, 6 A.S.R.2d 49.

Driver's "wage" for workmen's compensation purposes was a fixed percentage of the receipts from his work calculated after, rather than before, deduction by employer of his operating costs. Enekosi v. Moaali'itele, 6 A.S.R.2d 49.

§ 4(3) —Exclusive Remedy

The "exclusive remedy" provision of the Workmen's Compensation Act extinguishes any tortious cause of action against an employer. A.S.C.A. § 32.0522(a). Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

Most jurisdictions recognize only one exception to the "exclusive remedy" provision of workmen's compensation acts--an indemnity action by a third party against an employer--because this is not an action for "damages" but for reimbursement. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

§ 5 Burden of Proof

In regard to casual connection between work and death for purposes of workmen's compensation, presumption of causation shifts the burden of proof to the employer. Hartford Fire Ins. Co. v. Workmen's Comp. Comm'n, 1 A.S.R.2d 57 (App. Div. 1980).

The statutory presumption that an injury is work related requires an employer to rebut the presumption by substantial evidence. Saunoa v. Workmen's Comp. Comm'n, 2 A.S.R.2d 43 (App. Div. 1985).

Workmen's compensation claimant's proof of existence of injury and of employment relationship raises presumption that claim falls within coverage of workmen's compensation laws and shifts to employer the burden of proving by substantial evidence that employment did not cause the injury. A.S.C.A. § 32.0642. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 149.

In order to prevail on a workmen's compensation claim, a claimant must show that her injury or illness "ar[ose] out of and in the course of employment." A.S.C.A. § 32.0520. Once a claimant has shown the existence of an illness and an employment relationship, a presumption arises that the claim lies within the coverage of the workmen's compensation laws. The employer then has the burden of showing by substantial evidence that the illness did not arise from employment. Harris v. Comm. Of the American Samoa Gov't Workmen's Comp., 29 A.S.R.2d 147.

Substantial evidence means more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Harris v. Comm. Of the American Samoa Gov't Workmen's Comp., 29 A.S.R.2d 147.

Although stress and hypertension can contribute to heart disease, a petitioner must submit evidence to show a casual relationship between his stress on the job and any asserted occupational disease. He must also show that the stress inherent in his job is greater than that which all workers are occasionally subjected. Felise v. Workmen's Comp. Commissioner, 31 A.S.R.2d 96.

§ 6 Employer Liability

§ 6(1) —In General

The workmen's compensation statute limits an employer's liability to pay compensation to the amount which the commissioner determines is payable over the amount the employee recovered against a third person, and an employer may maintain an action against the employee for any

overpayment. A.S.C.A. § 32.0669(c). Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

§ 6(2) —Employer Subrogation

American Samoa's Workmen's Compensation Act does not explicitly provide for a right of subrogation where an employee receives compensation without a formal award and then recovers from a third party; however, an employer has an equitable right of subrogation and is entitled to be reimbursed from an employee's net recovery, whether by judgment or settlement, from a third party. A.S.C.A. §§ 32.0501 et seq. Vaeao v. Samoa Air, 20 A.S.R.2d 37.

Accepting a workmen's compensation award in a compensation order assigns to the employer all rights to recover damages against a third person, unless the workman commences an action against the third person within six months after such award. A.S.C.A. § 32.0669. Patau v. Rosendahl Corp., 19 A.S.R.2d 80.

§ 6(3) —Settlement Agreement

Disallowing compromise contracts between the employer and employee, the Workmen's Compensation Act bars an agreement to prevent the employee from receiving or altering the amount of compensation fixed and guaranteed to him by statute. A.S.C.A. §§ 32.0554(b), 32.0672. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

A settlement agreement, which has been approved by the Workmen’s Compensation Commission effectively discharges an employer's liabilities under the Act. A.S.C.A. § 32.0668. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

Because American Samoa's Workmen's Compensation Act disallows compromise contracts between the employer and employee, the employer's liability for workmen's compensation benefits, fixed and guaranteed under the Act, may not be altered by way of contract. A.S.C.A. §§ 32.0554(b), 32.0672. Patau v. Rosendahl Corp., 19 A.S.R.2d 80.

Only those settlements between the parties that have been approved by the Workmen's Compensation Commission have the effect of discharging an employer's liability for compensation. A.S.C.A. § 32.0668. Patau v. Rosendahl Corp., 19 A.S.R.2d 80.

§ 6(4) —Release

A court will not presume that an injured worker settling a workmen's compensation claim clearly intended to release all his future claims against a third party who did not participate in negotiating the contract and apparently paid no consideration for such release. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

When a defendant has provided no showing regarding the context in which a release was signed--the negotiations preceding its execution; the circumstances under which it was signed; whether the underlying payment was a settlement under A.S.C.A. § 32.0668, commuted per A.S.C.A. § 32.0666; or whether the Commissioner had approved such settlement or issued a formal compensation order--an inference of invalidity must be drawn in plaintiff's favor for purposes of summary judgment. A.S.C.A. §§ 32.0668, 32.0666; T.C.R.C.P. 56. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

The old common-law rule that the release of one tortfeasor releases all tortfeasors does not apply to workmen's compensation claims because an employer is not a joint tortfeasor and the policy reasons behind a general release are inapplicable. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.

Since no release is valid except as otherwise provided for by the Workmen's Compensation Act, summary judgment was not available when the record was unclear on whether the release agreement was approved by the Workmen's Compensation Commission. A.S.C.A. § 32.0672; T.C.R.C.P. 56. Patau v. Rosendahl Corp., 19 A.S.R.2d 80.

§ 7 Medical Care

Nothing requires that insured persons go through the process of off-island medical referral; the primary concern of the referral process is the government's expenditure of funds. A.S.C.A. §§ 11.0311(b), 11.0318. National Pacific Insurance Co. v. Commissioner of the American Samoa Government's Workmen's Compensation Commission, 22 A.S.R.2d 15.

§ 8 Judicial Review

24 A.S.C. 459 provides that exclusive appellate remedy for review of Workmen’s Compensation Board decision is injunctive proceedings in High Court—hence, the Administrative Procedure Act appeal provisions are inapplicable. In re Westerlund v. Scanlan, 4 A.S.R. 998.

Workmen's compensation award based on injured employee's actual contractual wage did not preclude employee from attacking the legality of his contract in a separate proceeding. Enekosi v. Moaali'itele, 6 A.S.R.2d 49.

Territorial workmen's compensation statute, under which reviewing court could set aside decision of workmen's compensation commission only if it was "not in accordance with the law," precluded court from reversing a finding of fact by the commission for which there was substantial evidence in the record of the commission's proceeding. A.S.C.A. § 32.0652. Continental Insurance Co. v. Workmen's Compensation Commission, 7 A.S.R.2d 105.

Court reviewing findings of fact by workmen's compensation

would not reverse a finding unless a reasonable person could not have concluded as the commission did from the evidence in the record. A.S.C.A. § 32.0652. Continental Insurance Co. v. Workmen's Compensation Commission, 7 A.S.R.2d 105.

Court would not reverse workmen's compensation commission finding that fatal heart attack "arose out of and in the course of" decedent's employment, even though the heart attack had occurred at home rather than at work, where the commission record reflected that (1) decedent had a history of heart trouble but medical treatment had brought his condition under control in the months preceding his heart attack; (2) decedent had recently been transferred from his job as a night watchman to a highway maintenance job involving physical labor; (3) the punitive and involuntary transfer had created emotional pressures that testifying physician cited as a possible factor in the heart attack; (4) after the transfer decedent's symptoms had taken a drastic turn for the worse; (5) the heart attack had occurred eleven days after decedent had begun work on the road crew. A.S.C.A. §§ 32.0520, 32.0652. Continental Insurance Co. v. Workmen's Compensation Commission, 7 A.S.R.2d 105.

Workmen's compensation commission decision should be overturned on appeal only if it is not in accordance with the law. A.S.C.A. § 32.0652. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 149.

Workmen's compensation commission decision should be upheld by reviewing court if supported by substantial evidence, whether or not the court would have reached the same conclusion from the evidence as the commission did. A.S.C.A. § 32.0652. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 149.

Court will not disturb workmen's compensation commission decision if record contains evidence from which a reasonable person could conclude that the injury and death were work-related and it does not appear that the commission arbitrarily and capriciously disregarded substantial evidence to the contrary. A.S.C.A. §§ 32.0642, 32.0652. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 149.

Appellant's claim that the trial court failed to apply certain evidentiary presumptions was without merit, as in administrative proceedings the agency rather than the court is to weigh the evidence and find facts; evidentiary presumptions used to facilitate fact-finding should be applied at the agency level and not at the level of judicial review. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Decision of workmen's compensation commission may be set aside only if the decision was not made in accordance with law. A.S.C.A. § 32.0652. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Finding by workmen's compensation commission that there was an "injury or death arising out of and in the course of employment" must be supported by substantial evidence. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Trial court correctly applied the substantial evidence standard where it upheld a workmen's compensation commission decision "as long as reasonable people could differ on the facts presented to the Commission." Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Substantial evidence test in judicial review of administrative decision is limited to whether a reasoning mind could reasonably have reached the factual conclusion the agency reached, and reviewing court may neither find its own facts nor substitute its own judgment for that of the agency. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Finding of fact based on no evidence is an error of law and thus a workmen's compensation commission award which is not supported by any evidence will be reversed, but where the commission has statutory power to find the facts its findings must be affirmed even if the reviewing court believes the evidence points the other way. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

Workmen's compensation commission order should be set aside only if it was based on "whimsy evidence"; order should be affirmed if reasonable people might differ as to the weight of the evidence. Continental Insurance Co. v. Workmen's Compensation Commission, 8 A.S.R.2d 152.

The Workmen's Compensation Commission's findings of fact and inferences derived there from are to be upheld by the High Court if supported by "substantial evidence," using a reasonableness standard. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

That a different conclusion might also have been supported by the evidence is insufficient to warrant reversal of the Workmen's Compensation Commission's conclusions. Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130.

A court gives considerable deference to administrative decisions involving an agency's construction of its governing statute and regulations, unless the court deems the interpretation to be inconsistent with a statutory mandate or to frustrate legislative policy. National Pacific Insurance Co. v. Commissioner of the American Samoa Government's Workmen's Compensation Commission, 22 A.S.R.2d 15.

If a Workmen's Compensation Commission's statutory interpretation is permissible under the statutes and regulations,

the court should defer to the Commission's decision; but if that construction is inconsistent with a statutory mandate, frustrates legislative policy, or renders the statutes ineffective, the court must set aside the decision. A.S.C.A. § 32.0652(a). National Pacific Insurance Co. v. Commissioner of the American Samoa Government's Workmen's Compensation Commission, 22 A.S.R.2d 15.

The Workmen's Compensation Commission's decision that the hospital's off-island medical-referral procedure does not apply to those covered by the workmen's compensation statute is a permissible interpretation of applicable statutes and regulations, so the court will defer to that decision. A.S.C.A. § 11.0312. National Pacific Insurance Co. v. Commissioner of the American Samoa Government's Workmen's Compensation Commission, 22 A.S.R.2d 15.

Though mislabeled with an appellate-division rather than a civil-division number and not specifically requesting statutorily-provided injunctive relief, a petition for judicial review of a Workmen's Compensation Commission order was sufficient to toll the statute of limitations and so avoid dismissal. Felise v. Workmen's Compensation Commissioner, 24 A.S.R.2d 95.

Statutory provision providing for judicial review of Workmen's Compensation Commission orders excludes other avenues of judicial review but does not preclude reconsideration proceedings at the administrative level. A.S.C.A. §§ 32.0652-32.0653. Harris v. Commissioner of the American Samoa Government Workmen's Compensation Commission, 24 A.S.R.2d 124.

A court utilizes a "clearly erroneous" standard of review in reviewing Workmen's Compensation Commission orders. Harris v. Commissioner of the American Samoa Government Workmen's Compensation Commission, 24 A.S.R.2d 124.

In reviewing the Commission's order, we are required to look for substantial evidence supporting the order. In this context, the substantial evidence test is limited to whether a reasoning mind reasonably could have reached the factual conclusion the agency reached. This need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment. Harris v. Comm. Of the American Samoa Gov't Workmen's Corp., 29 A.S.R.2d 147.

Where findings of fact are substantially supported by the record, and where those facts directly support the presumption that a worker's injury has occurred as a result of employment, a conclusion by the Workmen's Compensation Commission that the presumption has been overcome is plain error. Harris v. Comm. of the American Samoa Gov't Workmen's Corp., 29 A.S.R.2d 184.

Conclusions of law must follow from the facts which are developed at trial or before the Workmen's Compensation Commission. It is for this reason that appellate courts review findings of fact for clear error but conclusions of law de novo. Harris v. Comm. of the American Samoa Gov't Workmen's Corp., 29 A.S.R.2d 184.

The court reviews a Workmen's Compensation Commission's order to determine if it is "in accordance with the law." A.S.C.A. § 32.0652. Thus, the court will affirm the Commission's order if a "reasoning mind could have reached the factual conclusion the agency reached." Continental Insurance Co. v. Workmen's Compensation Commission, 15 A.S.R.2d 130, 133 (Trial Div. 1990). Felise v. Workmen's Comp. Commissioner, 31 A.S.R.2d 96.

Compensation orders issued by the Workmen's Compensation Commission are immediately reviewable through injunctive proceedings against the Commissioner brought before the Trial Division of the High Court. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

The High Court of American Samoa retains the exclusive and express jurisdiction to review the Workmen's Compensation Commission's compensation orders for legal sufficiency. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

Final agency decisions are subject to limited judicial review in most instances before the Appellate Division of the High Court under sections A.S.C.A. §§ 4.1040-4.1044 of the Administrative Procedures Act or as may be particularly provided in the enabling statutes of a particular agency. Nat'l Pac. Ins. Co., Ltd., v. Comm'r, 5 A.S.R.3d 183 (Trial Div. 2001).

§ 9 Beneficiaries

Adoption of child subsequent to natural parent's injury and death does not affect child's right to receive death benefits under workmen's compensation laws, since legal relationship of natural parent and child existed at time of injury and death. Star-Kist Samoa, Inc., v. Workmen's Compensation Commission, 7 A.S.R.2d 149.

§ 10 Costs in a Worker's Compensation Proceeding

A request for costs is properly denied in a negligence suit sounding in tort because it is not a proceeding "in respect to any claim or compensation order." A.S.C.A. § 32.0639. Etimani v. Samoa Packing Co., 19 A.S.R.2d 1.