

Acknowledgements

It was a privilege to have worked on the District Court Benchbook project.

I would like to acknowledge the assistance and support of the Commonwealth Secretariat, the Federal Court of Australia (especially the research assistance of the Court interns), the Australian Government Solicitor's Office and the VIDA (Volunteers for International Development) program.

Much gratitude goes to the wonderful staff at the Ministry of Justice and Courts Administration – Masinalupe, Tuli, Heinrich, Sera and their staff, for whom nothing was ever too much trouble. And to Hugh Selby at the Australian National University for his editorial assistance with the Coronial chapter of the Benchbook.

It was an honor to have worked with the Fa'amasino Fesoasoani and I thank them for their help and support. The Benchbook was written in accordance with their direction and I hope it serves them well.

Special thanks to the Chief Justice, Patu F M Sapolu, for his support and encouragement, and for his comprehensive commentary and editorial contributions.

Finally the District Court Benchbook is, in large part, attributable to Senior District Court Judge Vaepule Alo Vaemoa Vaai. Vaepule's knowledge of procedure in the District Court provided the substance of the Benchbook, both in terms of structure and content. It was a pleasure, and I feel very fortunate, to have had the opportunity to work with Vaepule.

I wish everyone at the MJCA all the best.

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Foreword from the Chief Justice

This Benchbook was prepared primarily for the Fa'amasino Fesoasoani of the District Court. It is another very important step in the continuing development and strengthening of the Samoan Judiciary. It admirably meets the need for a practice manual to be used as a quick reference guide by the Fa'amasino Fesoasoani in the performance of their daily judicial work in criminal, traffic and civil cases that are within their jurisdiction.

The Benchbook provides a comprehensive practice manual on the procedures that are applicable to cases triable before the Fa'amasino Fesoasoani. But it is not restricted to matters of procedure. The Benchbook also covers the rules of evidence that often apply to the trial of criminal and traffic cases as well as criminal defences and sentencing. In respect of civil cases, the Benchbook also covers the essential elements of a contract and the tort of negligence together with remedies for their breaches. These are the two areas of the civil law where most claims are brought before the Fa'amasino Fesoasoani.

Even though the Benchbook was prepared primarily for the judicial work of Fa'amasino Fesoasoani, its scope expanded to include important sections which also meet the need for a practice manual to be used by the District Court Judges in the performance of their judicial work. These are the sections on the Coroner's Court, the Family Court and the Youth Court.

Since the establishment of the Coroner's Court in 1959, there have been significant developments in the practices and procedures for coronial inquests in other jurisdictions which have gone unnoticed here in Samoa. This Benchbook helps to update the practices and procedures for coronial inquests and facilitate their understanding and application. Undoubtedly, this section on the Coroner's Court will also provide a quick and useful reference tool for the Judges of the Supreme Court who are all coroners. The sections on the Family Court and the Youth Court will also serve to clarify and facilitate understanding and the application of the procedures which are relevant to proceedings before the Family Court and the Youth Court.

The Benchbook has been produced in loose-leaf hard copy form. This makes it easy to use and easy to revise and update when required. Its format and layout also makes it easy to carry around. The Benchbook will also be available to the legal profession and the public free of charge on the Pacific Islands Legal Information Institute (PacLII) website. So the Benchbook is not restricted to the use of the Courts only but will be available for wider use by the public.

In my opinion, this Benchbook is an excellent product. It achieves the objectives of a Benchbook of being easy to follow and understand, easy to use, easy to revise and update, and easy to carry around. It also admirably meets the current practical needs of the Samoan Judiciary.

I would also like to take this opportunity to acknowledge with sincere appreciation and gratitude the outstanding efforts of Rebecca Smith a lawyer and volunteer from the Volunteers for International Development Australia (VIDA) in the preparation and compilation of this Benchbook. Without her expertise and industry, this Benchbook project for the District Court of Samoa; especially its Fa'amasino Fesoasoani, would not have been completed with a high quality product.

I would also like to acknowledge with sincere appreciation and gratitude the assistance that was provided by the Commonwealth Secretariat by way of its support for this project, the Federal Court of Australia for the research assistance provided by its interns, the Australian Government Solicitor's Office for printing and formatting the Benchbook and for their commitment to providing training for Samoan judicial officers in the use of the Benchbook, Mr Hugh Selby a lawyer and academic at the Australian National University for his editorial assistance with the sections of the Benchbook on the Coroners Court and especially the Volunteers for International Development Australia, an AusAID program for all its assistance including the services of Rebecca Smith.

Finally, I would also like to express my sincere thanks to District Court Judge Vaepule Vaemoa Vaai for formulating the methodology for the Benchbook and for being the primary judicial adviser for this project, the Fa'amasino Fesoasoani who acted as consultants in terms of providing editorial and formatting comments during the preparation of the Benchbook, and the Chief Executive Officer, Assistant Chief Executive Officers and the staff of the Ministry of Justice and Courts Administration for providing administrative support and assistance.

Patu F M Sapolu

CHIEF JUSTICE

Supreme Court
Samoa

Foreword from the Australian High Commissioner to Samoa

I am honoured to have been asked to write the foreword to this inaugural Benchbook for the Samoan District Court and, especially for the Fa'amasino Fesoasoani.

This Benchbook is the result of collaboration between the Federal Court of Australia and the Australian Government Solicitor's Office, the Commonwealth Secretariat, the District Court of Samoa including the Fa'amasino Fesoasoani and the Ministry of Justice and Courts Administration in Samoa. It is not intended as a textbook on Samoan Law. Rather, it contains a wealth of practical information to assist presiding officers in the correct application of law and guidance on the Court's procedures. Its primary purpose is to guide users in the application of a fair, thorough and timely judicial process.

This Benchbook is a first. It has been work shopped and written here in Samoa. It has been developed in close consultation with the Fa'amasino Fesoasoani.

While it is always a risk to highlight individuals in a collaborative work of this nature, I nevertheless wish to commend the assistance of the Chief Justice of Supreme Court, Patu F M Sapolu; Senior District Court, Judge Vaepule Alo Vaemoa Vaai; CEO of the Ministry of Justice and Courts Administration, Masinalupe Tusipa and Rebecca Smith, VIDA (Volunteers for International Development Australia) volunteer, coordinator of the Benchbook project and author of the Benchbook.

Yours sincerely,

Matt Anderson
Australian High Commissioner to Samoa

INTRODUCTION AND USER'S GUIDE

This Benchbook was written for use by the Samoan District Court but especially by the Fa'amasino Fesoasoani. It was developed in consultation with the judges from these courts. It is a quick reference guide for use on the bench. It mostly deals with procedural matters.

Natural Justice

This Benchbook was written to help you perform your judicial duties as quickly and accurately as possible.

This is important for reasons of *natural justice*. Natural justice is a principle used in both common law and civil jurisdictions throughout the world. The principle of natural justice holds that: people are entitled to have their cases decided under procedures that are fair to them. People have a right to present their side of a case and a right to address the case against them. People also have a right to have their case decided by someone who has no other interest of their own in the matter.

In Samoa, natural justice applies to make sure that everyone coming before the court is dealt with in a fair and just way. It is the procedures of your court that make this possible. For example making sure you keep written records, declaring conflicts of interest, and ensuring that every defendant who appears before you understands his or her rights under the Constitution.

Notes for Benchbook Users

1. Unless otherwise stated all section numbers refer to the *Criminal Procedure Act 1972*.
2. Sometimes you will see the name of a case written, in *italics*, after a particular point. This means the case is authority for, or proves the point just made.
3. The Benchbook is no substitute for reading the legislation. This means you will often have to look up the relevant Act, work out what it means and then apply this meaning to the facts of the case before you. This process is called *statutory interpretation*.

Sometimes the words of the legislation will have a plain and simple meaning. But often the words are not clear. This means you will have to use rules of statutory interpretation to work out what the law means.

In Samoa statutory interpretation is regulated by the *Acts Interpretation Act 1974* and by a rule known as the "purposive rule", *BOC Gases (Samoa) Ltd v Attorney-General [2000] WSSC 8 (24 May 2000)*.

The purposive rule means that in order to work out what the legislation means you should find out why the law was made in the first place or what was its purpose.

4. Regardless of whether you are going through the mentions list or presiding over a full trial you need to keep written notes so that:
 - (i) the Registrar knows what administrative steps are needed;

- (ii) if one of your decisions is appealed to the District Court or the Supreme Court then the higher court will know what's going on with the case and what are the reasons for your decision; and
 - (iii) the parties in all criminal proceedings can hear the reasons for acquittal or conviction. The parties have a right to this information.
- 5. The decisions you make, about how to manage your courtroom and the cases you hear, are often discretionary. So please note the difference in the Benchbook between procedures you “may” or “can” follow and those you “must” or “should” use.
- 6. You need to know the limits of your jurisdiction. This is important so you do not make orders or issues penalties which are *ultra vires* (or beyond your power). Decisions made outside your jurisdiction are clearly appellable.
 - (a) The civil jurisdiction, of Fa’amasino Fesoasoani, is:
 - (i) \$1000. This means Fa’amasino Fesoasoani can only preside over civil matters where the amount claimed by the plaintiff is \$1000 or less.
 - (ii) The civil jurisdiction of the District Court is \$10 000.
 - (b) The criminal jurisdiction, of Fa’amasino Fesoasoani is:
 - (i) \$1000 or one year’s imprisonment or both. This means you can’t fine anyone more than \$1000 or send them to prison for more than a year, or both.
 - (ii) for theft you cannot preside over matters where the value of the stolen property is more than \$1000.
 - (iii) The criminal jurisdiction of the District Court is a maximum of 5 years imprisonment. Note however that this term increases to 7 years for offences committed under the *Young Offenders Act 2007*.
 - (c) The Table of Offences in this Benchbook gives you the maximum penalty you can order for different offences under Fa’amasino Fesoasoani jurisdiction and under the relevant Act.

Availability and Updating

The Benchbook has been produced in loose-leaf hard copy form. This makes it both easy to use on the bench and easy to update as laws change.

The Samoan District Court Benchbook will also be available electronically. It will become one of the Benchbooks in the Pacific Judicial Development Program series available to both the legal profession and the public, free of charge, on the PacLII (Pacific Islands Legal information Institute) website.

Table of Abbreviations

<i>Alternative Dispute Resolution Act 2007</i>	<i>ADR Act</i>
<i>Community Justice Act 2008</i>	<i>CJA</i>
<i>Coroner's Ordinance 1959</i>	<i>CO</i>
<i>Crimes Ordinance 1961</i>	<i>CO</i>
<i>Criminal Procedure Act 1972</i>	<i>CPA</i>
<i>Infants Ordinance 1961</i>	<i>IO</i>
<i>Maintenance Police Powers Act 2007</i>	<i>MPPA</i>
<i>Maintenance and Affiliation Act 1967</i>	<i>MAA</i>
Ministry Courts and Justice Administration	<i>MJCA</i>
<i>Police Services Act 1977</i>	<i>PSA</i>
<i>Prisons Act 1967</i>	<i>PA</i>

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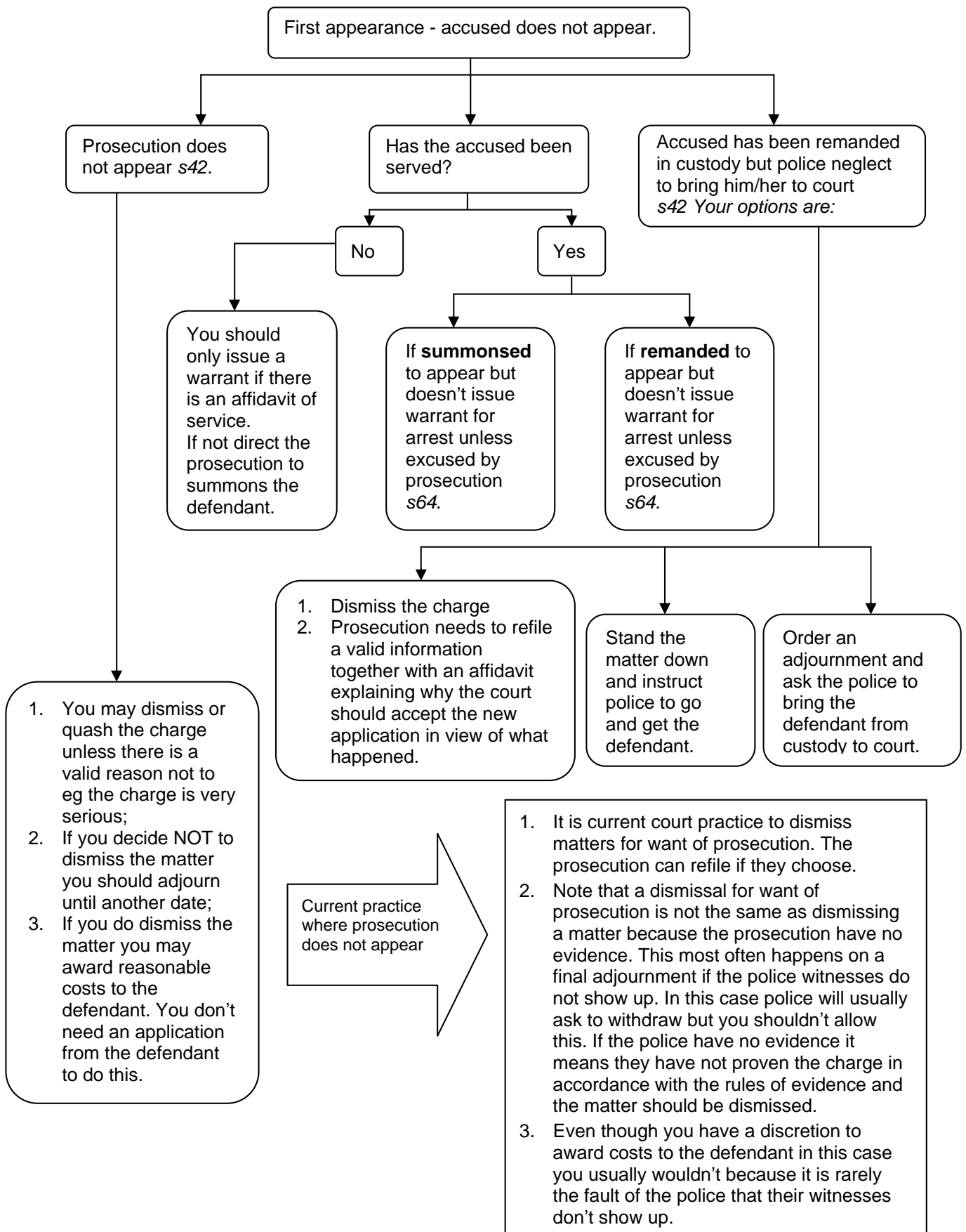
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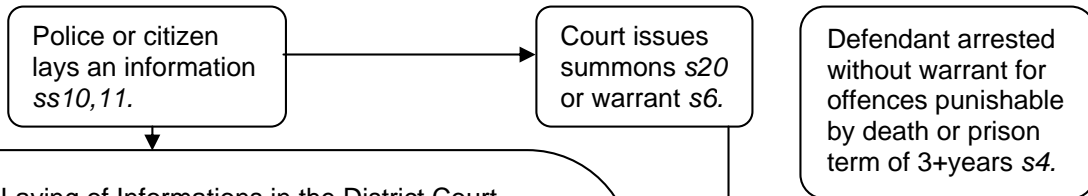
1. CRIMINAL COURT PROCEDURE

First Appearance: Accused does not appear



Commencing Criminal Proceedings or How Matters Come to the District Court

1.1. Unless otherwise stated all section numbers refer to the *Criminal Procedure Act 1972*



Rules for the Laying of Informations in the District Court

1. Information must be on Oath s13 (if not on oath the judge has the discretion to quash the information);
2. Need reasonable belief the offence occurred s11;
3. Can only be for one offence, unless it's an alternative offence eg charge indecent assault with common assault as the alternative s15 (the alternative charge must be lesser than the primary charge);
4. Must include sufficient details so accused knows what, when and how he's done wrong s16 & Art 9(4)(a) *Constitution*;
 - Court can order more details if necessary s17; or
 - if the information is objected too, the court can amend, wipe out or arrest judgment s18 eg for dangerous driving charges police sometimes pull words straight from the statute rather than explaining what was actually dangerous about the defendant's driving. This means the defendant does not know what he or she did wrong and the police should be made to amend the charge. The police must provide sufficient details ie where and how the offence was committed. If the defendant is charged with dangerous driving the police must describe what was so dangerous about the driving.

You should also make sure the police have charged the defendant with an actual offence, if not you should strike the matter out (see also *Art 10 of the Constitution* which states that no person is guilty of an offence if there was no law against the offence at the time it was committed).

A defendant cannot be penalized twice for the same wrong ie the police cannot lay charges for dangerous driving AND failure to give way if the failure to give way WAS the dangerous driving.
5. Two + informations can be heard together;
6. Informations can be withdrawn but only:
 - with court's permission; and
 - only before committal, acquittal or sentencing on a not guilty plea s35.

Deciding whether to issue a warrant or a summons

1. How serious is the offence?
2. Is the defendant likely to show up for hearing?
3. Is the defendant likely to commit further offences if not arrested?
4. Previous criminal record?
5. Is the defendant potentially dangerous?

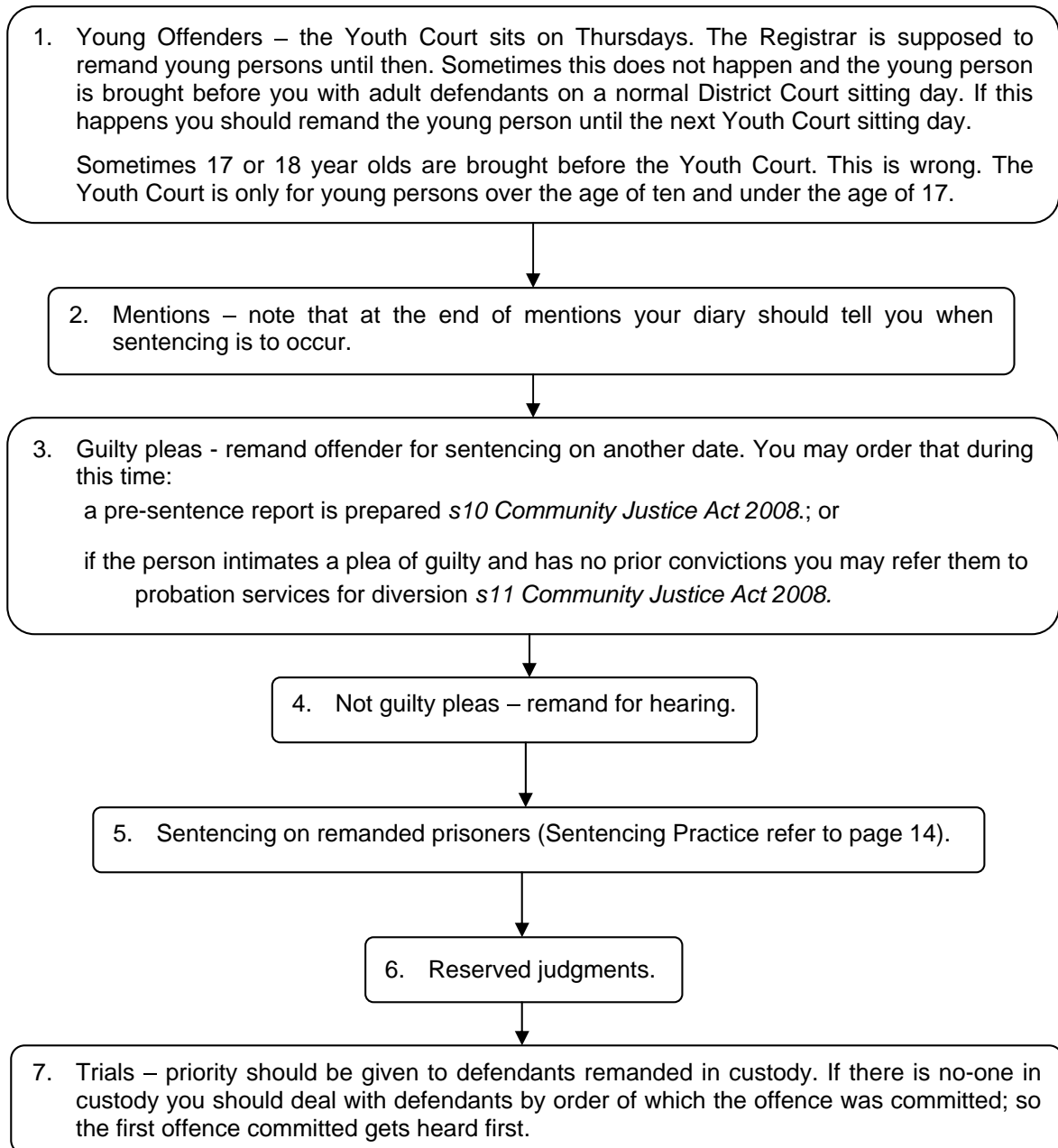
Notes on Current Practice

Remand in Custody: Police apply to Registrar to have defendant remanded. Registrar will both swear the information and, if applicable, will note the reason for remand on the file (the information).

Remand on Summons: The Registrar swears the information and sets the date for mention. If the defendant does not show up for mention you should check that there is an affidavit of service for the summons. If there is an affidavit you should issue a warrant for arrest.

Guide to the Management of Proceedings

Suggested Order of List



Conflicts of Interest

If you find you are closely related to i.e. brother, sister or first cousin, or a very close personal friend of, the defendant and/or you have an interest in the outcome of the case you should declare your conflict and step aside.

If you are related to the defendant but more distantly you should declare the conflict and give the parties the opportunity to consider and raise any objection. If either or both parties object you may have to step aside. If neither objects you may preside.

Make sure you declare the conflict AND the reason for it in writing on the file.

Adjournments: Should you grant or not?

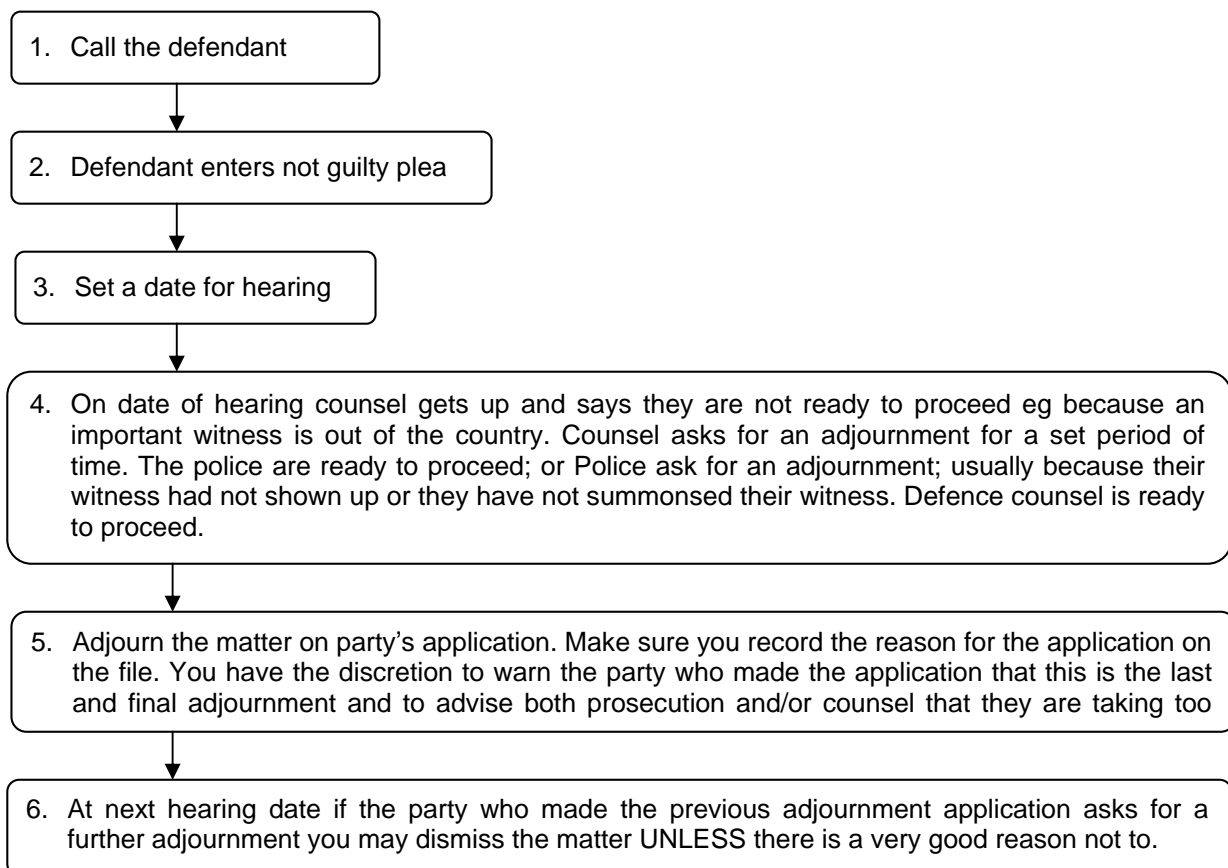
1.2. If the defendant is in custody the hearing needs to be as soon as practicable s68(4).

1.3. For all other defendants it is up to you whether, and for how long, you grant an adjournment.

1.4. Adjournments are usually granted because:

1. one of the parties eg a witness or the police does not appear; or
2. the defendant needs time to get legal advice or a lawyer; or
3. a new issue has been raised and a party needs time to prepare a response.

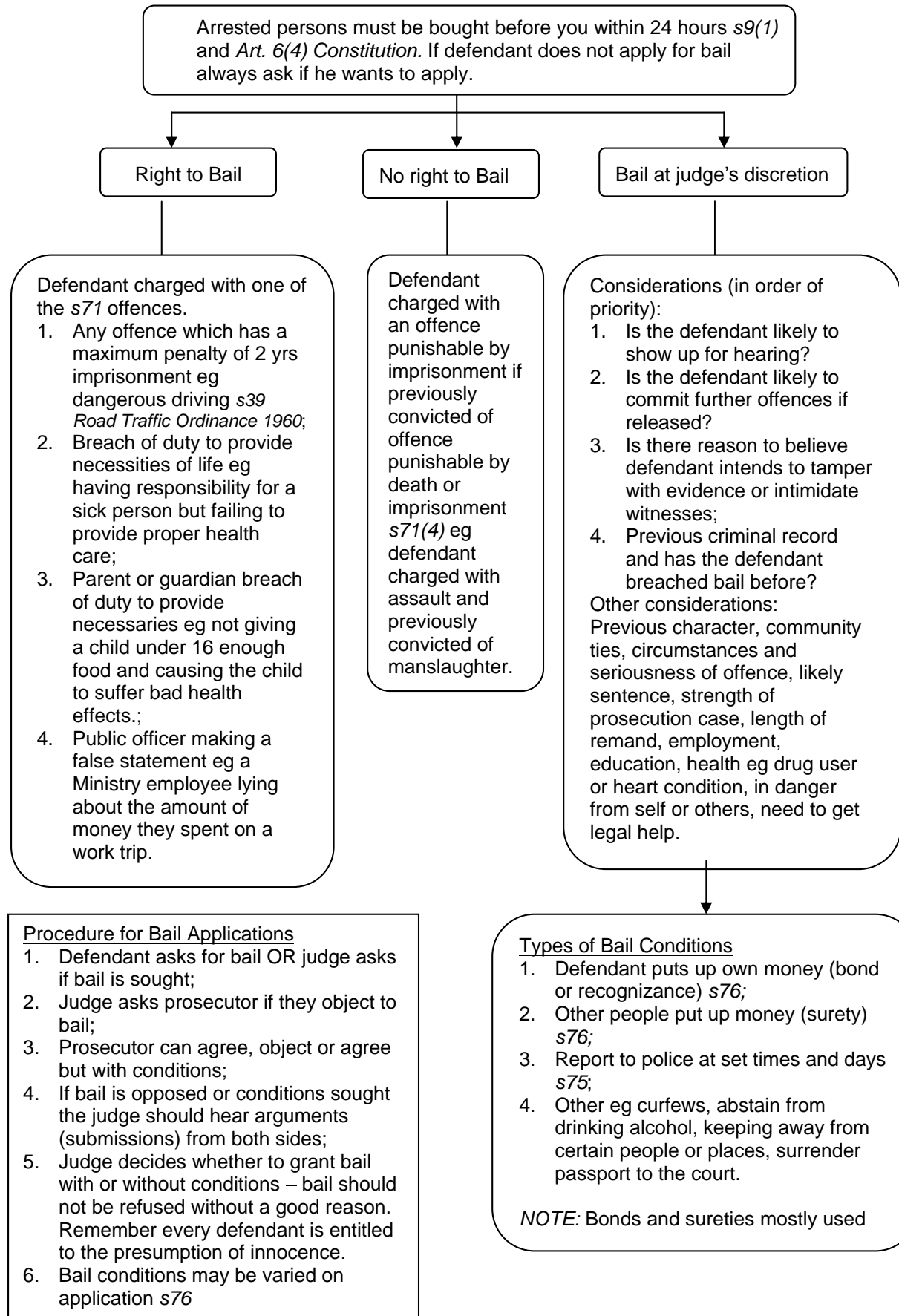
Adjournment Procedure in the District Court



Defendant's Rights

1.5. It is the Constitutional right of every defendant to have their matter dealt with as quickly as practicable. This must be balanced with the defendant's right to have adequate time for the preparation of his defence. *Art 9. of the Constitution: Right to a Fair Trial.*

Bail



Penalties - Other than Fines or Imprisonment

1.6. Penalties, including imprisonment are usually served concurrently, which means they are served at the same time. However, in most cases, you have a discretion to order that sentences be served consecutively, or one after the other.

1.7. A table of maximum fines and terms of imprisonment for all offences under your jurisdiction can be found at chapter 6 of the Benchbook.

1.8. You also have a number of other sentencing options available besides fines and imprisonment. These are described as follows; they are not listed in order of priority, you need to use your discretion and the relevant legislation to work out which sentencing option is most suitable.

Convicted and Discharged

You convict and discharge an offender if you adjudge that no further punishment is necessary. You can also decide to order the offender to pay court costs, witness expenses, compensation or restitution for loss or damage to property.

Discharged without Conviction

This means the offender is acquitted even if they have pleaded guilty or are found guilty after a trial. It is very rare to issue such an order.

Bond

1. If an offender is convicted of an offence which has a prison sentence of less than three years you can order the offender to pay a bond, with or without sureties s119. A bond can be ordered instead of, or as well as, a term of imprisonment.
2. An offender on a bond order must keep the peace and be of good behaviour;
3. A bond order can be for no longer than 3 years.

Costs

You may order costs in the following situations:

1. For convicted defendants you may order payment for court fees, witness or interpreter's expenses or lawyers fees s167.; or
2. The prosecution may be ordered to pay costs where the defendant is acquitted s167; or
3. the information is withdrawn s35; or
4. or the information is dismissed for want of prosecution s43.

Restitution

1. You should order stolen property to be returned to its rightful owner s166(1).
2. If the stolen property has been sold and the purchaser did not know it was stolen you can order the offender to pay the purchaser a sum not exceeding the price paid for the property s166(2).

Disqualified from Driving

1. s33 of the *Road Traffic Ordinance 1960* allows you to make an order for disqualification of driving for anyone convicted of any offence under the RTO.
2. The order must state:
 - a) the period of disqualification;
 - b) and the commencement date.
3. The order may specify whether the offender is only disqualified from driving certain types of vehicle and / or whether they are allowed to drive at certain times.
4. You may also order a person who has been disqualified from driving to pass another driving test s33(A).
5. Any person convicted of driving while drunk or drugged *must* be disqualified from driving for a minimum of 12 months s40(2).
6. Any person convicted a second (or more) time for dangerous or reckless driving *shall* be disqualified from driving unless the court thinks that sufficient time has lapsed between offences or for any other special reason s39(3).

Diversion

s11 *Community Justice Act 2008* allows offenders who:

1. have pleaded guilty;
2. have no previous conviction; and
3. have not committed a serious offence to report to probation services within 24 hours to complete a diversion agreement.

The diversion agreement will state:

4. that the offender admits guilt;
5. what conditions the offender must comply with;
6. and how much time they have to comply. The agreement will usually focus on the offender undertaking reconciliation steps with the victim and/or complainant in accordance with Samoan custom and tradition.

Compensation

You may order the convicted person to pay compensation for damage or loss caused to a victim's property s165.

Supervision and Community Work under the *Community Justice Act 2008*

1. Unless legislation prescribes otherwise, for any crime where there is no alternative to the penalty of imprisonment you may make an order for supervision or community work s9
2. Before ordering such a sentence you should ask Probation to prepare a Pre-sentence report. This will help you work out what type of sentence would be most suitable for the offender and why s10.

Supervision

- a. Must be > 6 months but < 2 years; s12
- b. You must be satisfied the sentence of supervision will reduce the likelihood of further offending through rehabilitation and reintegration of the offender; s13
- c. Supervision orders have certain prescribed conditions eg the offender must report to their probation officer;
- d. You can also impose other conditions; except fines eg drug rehabilitation. s16

Community Work

- a. Must be >40 hours but <400 hours s19. *Note that it is possible to use other sections of the Act as a way around this 40 hour minimum.*
- b. If an offender is sentenced to two or more periods of community work they must be served together unless you order that they be served one after the other s20
- c. If you order: s21
 - i. 200 hours or less it must be served within 12 months;
 - ii. 200 hours or more it must be served within 24 months.

Ordering Diversion – Your Options

Procedure at First Mention:

1. Offender pleads guilty;
2. if s11 criteria (above) are met you can:

s11 Community Justice Act 2008 allows offenders who:

1. have pleaded guilty;
2. have no previous conviction; and
3. have not committed a serious offence to report to probation services within 24 hours to complete a diversion agreement.

The diversion agreement will state:

1. that the offender admits guilt;
2. what conditions the offender must comply with; and how much time they have to comply. The agreement will usually focus on the offender undertaking reconciliation steps with the victim and/or complainant in accordance with Samoan custom and tradition.

1. Order Diversion both:
 - a. Without a Pre-sentence Report; and
 - b. Without a call back date.
2. Wait for a probation officer to “report back to the Court at either the completion of the diversion agreement or (to) advise of the failure of the person charged to comply”. S11(6) CJAAct.
3. Upon successful completion of the diversion agreement (as reported to the Court by Probation Services) the Court must take no further action ie the matter must be withdrawn and NO conviction recorded.
4. If the probation officer reports that the person has failed to comply with the diversion agreement you may decide to pass sentence (refer to sentencing procedure page 11).

1. Order diversion PLUS order a call back date.
 - a. You need to use your discretion as to what period of time you give between the call back date and the diversion agreement taking place.
2. On the call back date:
 - a. if the diversion agreement is complete you must withdraw the matter and record NO conviction;
 - b. if the diversion agreement is not complete you may decide to grant more time and so order a further call back date; or
 - c. if the offender has failed to comply with the agreement you may sentence them or remand them for sentencing at a later date.

1. Remand the offender for sentencing and order a pre-sentence report. It is then up to Probation Services to recommend diversion.
2. On the date for sentencing read the pre-sentence report. If diversion is recommended and you believe it is warranted you may order it.
3. If you order diversion you should then remand the offender for sentence and fix the date for sentence. Either based on:
 - a. how long you believe is necessary for a diversion agreement to be completed.; or
 - b. you may choose to be guided by the recommendation of Probation Services as to the time required.
4. On the next date for sentence:
 - a. if the diversion agreement has been completed you must withdraw the matter and record NO conviction.
 - b. if the offender has failed to comply with the agreement you may sentence them or remand them for sentencing at a later date.

Conversion Table for Penalties

Fines (Review and Amendment) Act 1998 s3

1 penalty unit = \$100 Samoan tala (note that penalty units are sometimes also referred to as pecuniary penalty units)

- (i) Penalty units are calculated by dividing the penalty in tala by 100
- (ii) Penalty units should be expressed as whole numbers
- (iii) If the number of penalty units is not a whole number, you should round up to the nearest whole number of penalty units.

For example:

- a. The penalty in tala is \$5550.
- b. To convert this into penalty units you divide the tala amount by 100.
- c. The result is 55.5 penalty units.
- d. You round this up to 56 penalty units
- e. 56 penalty units = \$5600 (tala)

Continuing Offences

Fines for continuing offences need to be halved.

Specifically the *Fines (Review and Amendment) Act 1998 s3(2)* says:

(2) Subsection (1) shall not apply to fines that are expressed to be for continuing offences, which shall be set at one-half of the substantive fine in each case.

You need to know:

- a. what is a continuing offence; and
- b. how to halve the fine for a continuing offence.

A continuing offence is one which takes more than one act to prove the charge. Continuing offences may include things like stalking, public nuisance, conspiracy or harassment. Wilful trespass *s7 Police Offences Ordinance 1961* is another example of a continuing offence. The Court has dealt with this offence by fining an offender \$50 for the first day of the offence then \$25 for each subsequent day.

The Fines Review Act however provides no definition or guidance on what is a continuing offence.

The Act also does not explain how to halve the fine for a continuing offence. There is no Samoan case law to use as a guide. This is a problem because there are two possible ways to halve the fine for a continuing offence. You could:

1.
 - (a) in the case of a continuing offence, award a fine of say \$150 for the first day the offence was committed;
 - (b) then for each day the offence is committed after this first day you halve the fine e.g. the first day's fine is \$150 initially, then the fine is \$75 for each day after the first; or
2. you could determine what the fine would be for a particular offence, eg \$300, and then halve this amount ie \$150. The offender would then be fined \$150 for each occasion the offence was committed including the first occasion.

Sentencing - Factors to Consider

Your criminal jurisdiction

1. You may impose sentence on anyone convicted of:
 - a. any offence that has a penalty of one year's imprisonment or less, or a fine of \$1000 or less or both; and
 - b. the crime of theft, as long as the value of the property stolen is not more than \$1000 s39
2. If you believe the offender should receive a penalty which exceeds your jurisdiction you should refer the matter to the DC or the SC for sentencing only, these higher courts do not have to hear the matter again s30. You need to write down your reason(s) so the higher court can understand the matter.

Note: It is also possible to have your jurisdiction extended by the Chief Justice, s18 District Courts Act 1969.

Apply Uniformity in your approach

1. Decide sentence
2. Can the court extend leniency, if yes, how?

Fix the penalty with reference to the offence eg if the statute imposes a maximum of X\$ for failure to stop at traffic lights consider whether the failure to stop happened when the vehicle was travelling at 20kmph on a deserted road at night or on Beach Road when traffic flow was very heavy; or, in the case of assault, consider the severity of the assault.

Decide which principle, or combination of principles, applies?

1. Retribution = punishment on behalf of the wider community to mark disapproval for the offence.
2. Prevention = limit offenders ability to re-offend during the period of punishment eg imprisonment or disqualify from driving.
3. Deterrence = discourage offender (and anyone else) from breaking the law.
4. Rehabilitation = reform the offender so they won't offend again.

Aggravating factors

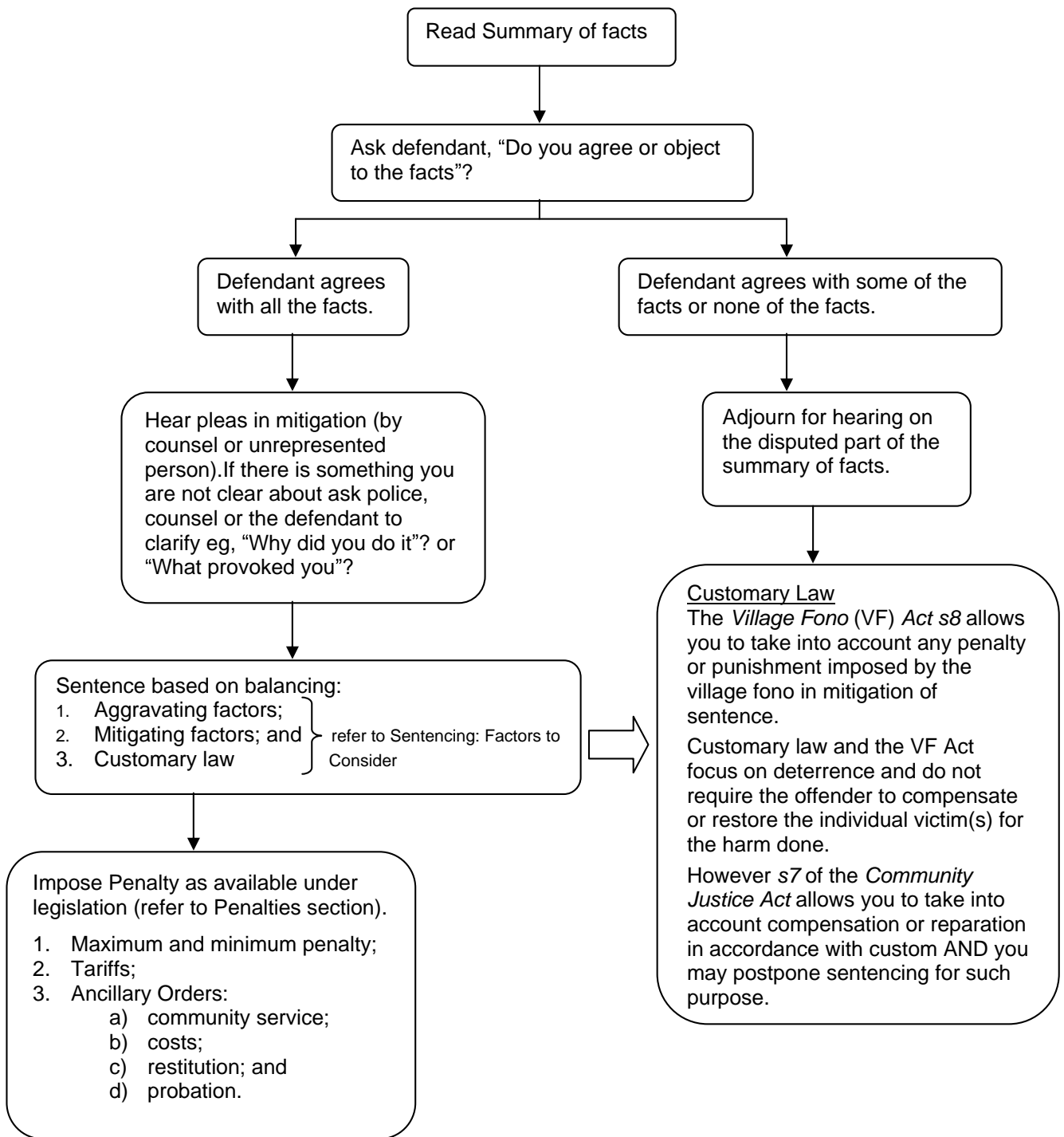
1. Alcohol (voluntarily consumed is not a mitigating factor);
2. Lack of remorse - including causing victim to give evidence especially in difficult situations eg a rape case;
3. Premeditated act eg burglary;
4. Impact on the victim (emotional and material eg financial loss);
5. Previous convictions (how many and how long ago?); and
6. Community perceptions of the crime eg paedophilia.
7. Danger to the public.

Mitigating factors

1. First offender;
2. Guilty plea;
3. Reconciliation by offender with victim/s;
4. Offender was provoked;
5. Victimless crime ie no person or property was harmed;
6. Minor offence;
7. Village Fono punishment;
8. Previous convictions (how many and how long ago?);
9. Good character;
10. Ifoga;
11. Disability (physical and/or mental);
12. Genuine contrition;
13. Employment / good work history;
14. Age (very young or very old);
15. Low income;
16. and domestic situation and/or emotional stress of offender.

Consider recommendations and factors from probation reports and victim impact statements. These may include letters from the Pulenuu or information about an ifoga.

Sentencing Procedure



Remember:

- You do not have to impose the maximum fine or term of imprisonment. You have the discretion to sentence to less than the maximum s112(1).
- The offenders ability to pay should be considered when you are imposing a fine s112(2).

Voir Dire Procedure

Voir dire = a trial within a trial used to decide whether a statement or confession made by the defendant or a witness was:

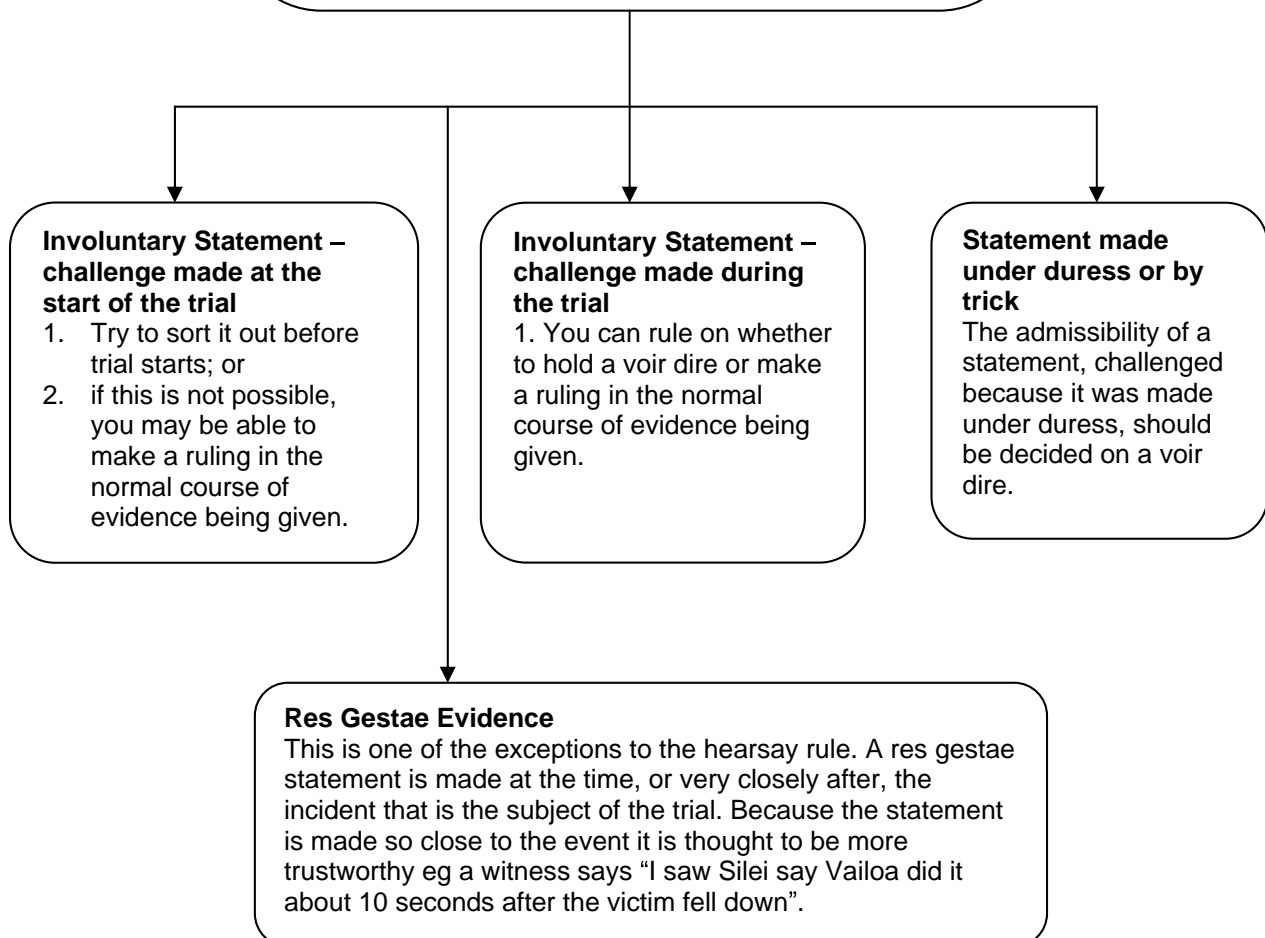
- a. given voluntarily; or
- b. made under duress.

For example:

- (i) a defendant may have been told, upon arrest, that he/she has a right to remain silent;
- (ii) the defendant may have replied that he/she does not want to make a statement;
- (iii) the police evidence says that the defendant then verbally admitted the crime.

In this example you would not need a voir dire. You could rule that the verbal admission is inadmissible but the rest of the written police statement is O.K.

Note the reason for the inadmissibility is that the defendant exercised his/her right to silence and the police then directly violated this right.



Guilty Pleas

Change of Plea:

Sometimes a defendant will want to change a not-guilty plea to a guilty plea. This often happens when a defendant wants to go back to New Zealand but realizes they would have to stay here to defend their not-guilty plea. In this case the defendant writes to the Registrar asking for a mention date to change their plea. In these cases you do not really need to deal with the matter in open court, you may opt to deal with it in chambers.

Fitness to plea. The court must be satisfied the defendant understands the nature and consequences of his/her plea s48. Unfitness to plea may be raised by either party or you may be concerned yourself. This is not the same as insanity which is assessed at the time the crime was committed s13 CO.

1. Adjourn without a plea. Ask police to organise an appointment at the hospital for a psychiatrist to assess whether the defendant is mentally fit to plea.
2. If a person is assessed as unfit to plea, and you are satisfied with this assessment, you may discharge the matter s104.

Partial Plea or Charge Admitted but Facts in Dispute:

For example the police have charged a defendant with theft. The police facts state the defendant stole \$400, 10 cases of Vailima and 15 cartons of Pall Malls. The defendant admits the theft but disputes the facts – claiming that he took only 5 cases of beer and no cigarettes or money. The options are:

1. adjourn the matter so the police can amend the charge or, if the police will not amend the charge;
2. the plea becomes one of not guilty and should be dealt with as such.

Special Pleas

Previous acquittal

Ask parties for submissions about why you should deal with a charge for which the defendant was earlier acquitted. Otherwise you should discharge the matter.

Previous conviction

For example a defendant tells you he/she was sentenced for the same crime 2 months ago. Check if this is right and, if so, you should throw out the charge.

Procedure after guilty plea confirmed

Sentencing on first mention

If you have time eg in Savaii, and defendant pleads guilty on a first mention you can ask for a verbal summary of facts and pass sentence straight away.

Diversion

s11 Community Justice Act 2008 allows offenders who:

1. have pleaded guilty;
 2. have no previous conviction; and
 3. have not committed a serious offence
- to report to probation services within 24 hours to complete a diversion agreement.

The diversion agreement will state:

1. that the offender admits guilt;
2. what conditions the offender must comply with;
3. and how much time they have to comply. The agreement will usually focus on the offender undertaking reconciliation steps with the victim and/or complainant in accordance with Samoan custom and tradition.

Depending on the charge you may remand the defendant and, if applicable, ask for a pre-sentence report and/or victim impact statement eg was the damage repaired, or the stolen goods returned or the doctor's bill paid in the case of an assault.

Note in the diary:

1. Your name;
2. Charge(s) for sentence;
3. Name of counsel or unrepresented person;
4. F/S (for sentence);
5. P/R (Probation Report);
6. V/R (Victim Impact statement); and
7. S/F (Summary of Facts).

Not Guilty Pleas

Preliminary Matters

1. Ask are the parties ready to proceed?
2. Ask are there any preliminary interlocutory matters? Eg exhibits the prosecution may want to produce, or a witness such as a doctor who doesn't want to be kept waiting – in this example the defence may just consent to the medical report becoming an exhibit and the doctor's oral evidence may not be needed.
3. Caution statement to parties – if counsel intends to challenge the admissibility of any evidence the court must be informed right at the beginning that they intend to challenge. For example defence counsel may say that their client's evidence was taken by force or under duress.
4. Post mortem report, if applicable, should be tabled.

Is either party challenging the admissibility of any evidence?

Consider holding a voir dire page 12

Address Defendant's Rights

1. If unrepresented you should explain that the defendant has a right to silence. The defendant can give evidence but only if he/she wishes. He/she also has the right to question the prosecution's witnesses;
2. Read out the charge and ask the defendant if he still pleads not guilty or if he/she want to change their plea.
3. You should also make sure unrepresented defendants understand trial procedure and what will happen after all the evidence has been heard.

Opening Addresses

Invite the parties to generally explain what they intend to prove and what the evidence will be about. At present there are no trial documents disclosed to the judge before a hearing so this will help you understand what the parties case will be about.

Defences

Defence(s) being relied upon should be made clear before any evidence is given. This Defence should not normally be allowed to raise anything new or unexpected during the trial, and you have a discretion to stop this happening. If the Defendant does raise something new and the Prosecution objects you have the discretion to allow the Defence to carry on but you may give the Prosecution a right to rebut the new evidence. Possible defences are listed and described on page 15.

Continued next page

Defences

Defences include:

- (a) **Compulsion** – the defendant must believe the threat of immediate death or grievous bodily harm is real and will be carried out. The compulsion defence absolves the defendant of criminal responsibility unless the offence is murder, attempted murder, treason, abduction, grievous bodily harm, arson or aiding or abetting rape.
- (b) **Self defence against unprovoked assault** – the force used in defending oneself must not be meant to cause death or grievous bodily harm.
- (c) **Self defence against provoked assault** - the force used in defending oneself must not be meant to cause death or grievous bodily harm. In addition the initial provocation must not have been carried out with intent to kill or do grievous bodily harm and before resorting to self defence the defendant declined further conflict and quit or retreated as far as was practicable.
- (d) **Defence of dwelling house** – use of reasonable force to prevent a break and enter.
- (e) **Defence of land or building** – use of reasonable force to remove a trespasser.
- (f) **Defence of persons under protection** – use of reasonable force to protect a person under the defendant's protection eg a child or elderly relative.
- (g) Other **common** law defences may be available as per s9 CO and also s111 of the *Constitution of the Independent State of Western Samoa Act 1960*.

For example:

- (i) **Defence of necessity** may be available where the accused can show he/she broke the law in order to avoid a greater harm. The following is an example of such a defence: Police found the defendant to be in possession of a firearm without license. The defendant raised the defence of necessity, on the basis that he had been visited in the early hours by a friend who intended to kill another person. The defendant had taken the gun in order to prevent the killing, and had intended handing over the gun to the police the following day.
- (ii) **Mistake of Fact** may also be available as a defence. The mistake must be honest and reasonable, and not mere ignorance. The mistake must render the accused's act innocent. The mistake must be one of fact not law. For example if Kale takes a DVD from Punina, believing honestly and reasonably that Punina consented to him taking the DVD, then Kale is not guilty of theft. For some crimes, like rape, the defence of mistake of fact is not available.
- (iii) **Alibi** - a common law offence where the defendant proves, or attempts to prove that he/she was in another place when the offence was committed. In some jurisdictions there may be a requirement that the defence disclose an alibi defence prior to a trial. There is no definitive case law in Samoa on whether this disclosure requirement exists or not. However, in *Police v Mauga* [2007] WSSC 42 (23 May 2007) the trial was adjourned to give the accused the opportunity to call alibi witnesses and to give due notice of particulars of his alleged alibi to the prosecution. And in *Aukuso v Police* [1997] WSSC 26; Misc 22088 (5 November 1997) an appeal allowing an affidavit which established evidence of an alibi was allowed outside the statutory appeal period because it was in the interest of justice to allow the alibi evidence.
Further, the *Alternative Dispute Resolution Act 2007* s4(1)(f) & s 4(3) allows the defence to apply to the court for an order not to disclose their alibi; and for the court to make such an order if it is necessary to protect the rights of any party to the proceedings.
- (iv) **Abuse of Process** – may be found where the prosecution manipulate or misuse the process of the court and in doing so unfairly prejudice the defendant's right to a fair trial, including not giving him/her time to prepare their defence.

The crucial question to ask is whether a party is misusing or abusing the process of the court by seeking to raise an issue which could have been raised before.

Abuse of process most commonly occurs when the prosecution try to sneak in another charge after acquittal, based on the same factual circumstances. See *Toailoa Law Office v Duffv* [2005] WSSC 53; [2005] 2 LRC 138 (17 May 2005).

Evidence Rules

Prosecution's evidence - Prosecution must prove their case beyond reasonable doubt

1. All witnesses must be sworn before giving evidence. They may choose to swear an oath on the bible or make an affirmation. Lack of religion does not effect the validity of the evidence.
2. Prosecution calls first witness to give evidence in-chief;
3. Defence (can) cross examine this witness;
4. Prosecution (can) re-examine this witness;
5. The same procedure is then followed for the second and all subsequent witnesses.

Rules of evidence

Is there a case to answer?

1. Prosecution closes their case;
2. You need to apply the following test to decide if there is a prima facie case for the defence to answer:

TEST: IS THERE ENOUGH EVIDENCE ON WHICH I *COULD* (NOT SHOULD)

Decide whether there is a case to answer and give your ruling

(continued next page)

Hearsay Rule

Hearsay is "secondhand information". Generally evidence given by a person who did not personally hear or see what happened is inadmissible eg Iloa told Taiese that he saw Sione steal the car; so it is Iloa who should give evidence of what he saw, not Taiese who only has evidence of what Iloa told him.

You can use the following elements to test if evidence is hearsay:

- a. evidence must be a statement not a question;
- b. the evidence must be able to be tested in cross-examination; and
- c. the evidence must go to proving the matter asserted eg Nalu gives evidence that Lailani said she was cold. This is not evidence that Lailani was cold. It is evidence that she told Nalu she was cold and also evidence that she could talk.

There are common law exceptions to the hearsay rule.

These include:

- i. Confessions;
- ii. Dying declarations;
- iii. Res gestae evidence A res gestae statement is made at the time, or very closely after, the incident that is the subject of the trial. Because the statement is made so close to the event it is thought to be more trustworthy eg a witness says "I saw Silei say Vailoa did it about 10 seconds after the victim fell down"; and
- iv. Telephone conversations.

Leading Questions

- a. Suggest a certain answer eg "Did you see Nofoa at the shops at 2pm on Tuesday"? Rather than "Where were you at 2pm last Tuesday"? and "Who did you see there"?
- b. Assume certain facts exist eg "When did you stop beating your wife"?

Leading questions may be asked in cross-examination but not in examination in-chief or re-examination.

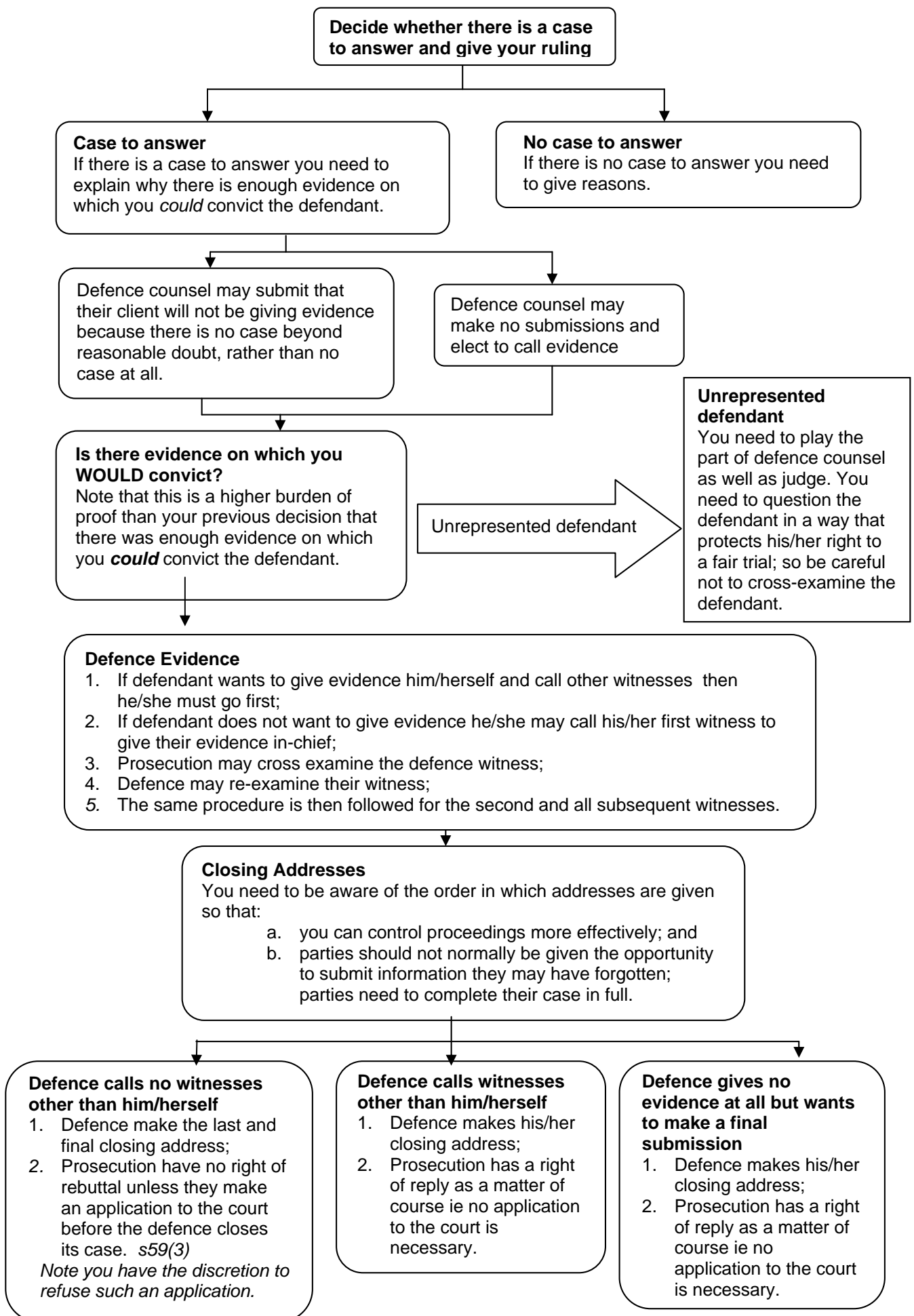
Leading questions are also OK if they relate to facts which are not in dispute or introductory matters eg "Do you live at Moata'a"?

Opinion Evidence

Witnesses may only give evidence of facts they have personally observed not of their opinion of the facts eg a witness may state, "I heard Galu yelling at Lolani" but it is inadmissible for a witness to say "Galu always seems to be angry with Lolani".

There are two exceptions to the rule on opinion evidence:

1. Experts are allowed to give an opinion if they are qualified and the matter requires such an opinion eg a qualified motor mechanic giving an opinion about the condition of a car; and
2. Non-experts can give an opinion but only if the opinion has a factual basis eg a non-expert may give an opinion about the identity of an object, about the weather, about the speed of a vehicle or about whether relations between two people seemed to be friendly or unfriendly.



The Decision and Post Conviction Procedure

The decision

1. All elements of the offence must be proved:
 - (i) Fault element – the accused is blameworthy eg they *intended* to hurt the victim; or they *recklessly* drove the car, or they were *negligent* in not making sure the child was safe from harm; and
 - (ii) Physical element – the accused did something which was against the law or resulted in the law being broken. .

2. Has the prosecution proved their case beyond reasonable doubt?

Test : Ask yourself if, after hearing the defence evidence (if any), you have a reasonable doubt about any of the elements, then the prosecution has failed. You must be, “*completely convinced*” and “*damned sure*”. No matter how small the doubt, if it exists, then you cannot convict.

Note:

For offences involving the possession of weapons under the *Arms Ordinance 1960* the prosecution does not have to prove the defendant owns the weapon, only that it was in his/her possession. For example a defendant may truthfully state that they borrowed the gun from a neighbour to shoot a pig; but this is irrelevant, the crime is one of possession, not ownership.

After Conviction

You need to:

1. Tell the convicted person that they have a right of appeal to the Supreme Court against both the conviction and the sentence.
2. Tell the person they have 21 days to appeal.
3. Follow this procedure for previous convictions -you need to know about previous convictions to help you work what sentence to give the person:
 - (i) You should ask the prosecutor if there are any previous convictions. The prosecutor will tell you either:
 - a. No previous convictions (or so insignificant that the prosecution does not intend to produce them). However you should still ask to see them – it is up to you, not the prosecution, to judge the relevance and weight of any prior convictions; or
 - b. Previous conviction records produced; or
 - c. Prosecution asks for an adjournment to check for previous convictions. You would usually allow such an adjournment.
 - (ii) Ask Defendant does he/she agree with previous convictions; if yes
 - (iii) If Defendant does NOT agree with any or all of the previous convictions then the prosecutor has to prove them. Anything that can't be proved should be ignored.

proceed to sentencing

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2. CORONER'S COURT PROCEDURE

Introduction

2.1. The *Coroner's Ordinance 1959 (CO)* provides legal authority for the appointment, functions and powers of Coroners and for the way inquests should be carried out. On its 50th birthday the CO is out of date with current District Court practice. It also does not address many of the issues covered by modern coronial legislation in other jurisdictions; such as how to define the scope of an inquest, who has a right to appear, contempt of court, coroner's juries, coronial recommendations and even terrorism.

2.2. This chapter provides practical guidance for all Coroners. It documents current procedure and focuses on when and how inquests need to be held.

2.3. Unless stated otherwise section numbers refer to the *Coroner's Ordinance 1959*.

Appointment of Coroners

2.4. The Chief Justice and all Supreme and District Court Justices and Judges are Coroners (*s2 and s9 Magistrates' Court Act 1969*).

When must an inquest be held

2.5. A Coroner must hold an inquest when:

- (a) the cause of death is uncertain or unknown (*s2*), or
- (b) the death was either violent or unnatural (*s4(1)(a)*), or
- (c) a person dies in prison (*s4(1)(b)*).

2.6. A Coroner *may* also hold an inquest:

- (i) where a person is missing and the body is irrecoverable (*s7*); or
- (ii) where it is necessary to establish the cause and origin of a fire and the effectiveness or otherwise of the measures taken to deal with the fire (*s22*).

Purpose of an Inquest

2.7. Coronial inquests are conducted to establish:

- (a) that a person has died;
- (b) the identity of the dead person; and
- (c) when, where and how the death occurred (s12).

Procedure for Dealing with inquests where:

- a) death is the result of an accident or suicide; **FIGURE 1**
- b) death resulted from a traffic offence (in which the driver died but no-one else was involved; **FIGURE 1**
- c) death resulted from a suspected crime; **FIGURE 2**
- d) the person is missing or the body is not recoverable; **FIGURE 3** and
- e) the inquiry concerns a fire. **FIGURE 4**

Post Mortems

2.8. How and when to order to order a post mortem - **FIGURES 1 and 2.**

Trial Documents

2.9. The police are required to assist at all coronial inquests. (s23). This assistance includes providing the Coroner with all the trial documents. In practice, where a criminal trial is held in conjunction with an inquest, this rarely happens. Even though, at the very least, the police summary of facts should be available to the Coroner to enable him to make a finding.

2.10. There is no legal basis for defence counsel to object to a District Court Judge and/or a Coroner getting the trial documents.

Evidence and Witnesses

Admissibility

2.11. A Coroner may admit any evidence he thinks fit. This includes evidence which may be inadmissible in a court of law (s17(3)).

2.12. Where an inquest is held in conjunction with a criminal trial there is the potential for the rules of evidence in the different proceedings to conflict. In theory this could lead to inadmissible evidence at the criminal trial not being heard for the purposes of the inquest. In practice this is unlikely. Even if evidence was ruled inadmissible at criminal law:

- (i) it is unlikely that the Coroner's findings would turn on this evidence;

- (ii) the District Court almost always deals with inadmissibility by allowing the statement to be read in court rather than holding a voir dire; and
- (iii) if evidence was struck out that may effect the Coroner's findings he would continue with the criminal trial to determine guilt or otherwise then continue with the evidence for the purposes of the inquest.

Right of Appearance

2.13. Any person who tenders evidence about the inquest must be examined by the Coroner (s17(1)). In addition, anyone with an interest in the inquest can attend and can examine and cross examine witnesses. Such people can be represented by counsel (s17(2)).

Summonses

2.14. Anyone who does not obey a Coroner's direction or order, or does not obey a summons to attend the Coroner's court may be liable for a maximum fine of \$60 (s18).

Fees and Allowances

2.15. The CO allows the Coroner to pay witnesses, doctors and pathologists for their expenses and loss of time (s28). In practice payment is unnecessary and in any case the Coroner has no budget for such payment. All medical experts and witnesses are employees of government organizations therefore the issue of payment has, to date, never arisen.

Administrative and Practical Matters in Relation to Sentencing

2.16. In cases where a defendant has been found guilty it is best to ensure that sentencing is handed down at the same time as the Coroner's findings, even if this means delaying sentencing.

2.17. This is necessary to make sure the police obtain all the necessary evidence, including from witnesses, for the Coroner to make a finding and close the inquest. In the past if sentencing happens and the criminal trial concludes before the inquest then the police have little incentive to chase up witnesses.

Burial Orders

2.18. A body cannot be buried without an order from the Coroner (s10). No such order has ever been made by the Samoan Coroner's Court. In practice the Coroner signs the form entitled "*Report of Medical Practitioner to Coroner*" and directs that:

- (a) a post mortem is or is not required;
- (b) the inquest will be held on x date; and
- (c) the body is to be released for burial (after the post mortem if one has been ordered).

Practicalities of the Hearing

2.19. The Coroner lets the police know the time, date and place of the inquest so they can summons witnesses and prepare the necessary evidence (s14).

The Public

2.20. Coronial inquests are open to the public but the Coroner can exclude persons and/or stop publication of evidence if necessary (ss16 & 19).

Findings and Coroner's Report

2.21. The Coroner gives written certification of his findings. This certification includes:

- (a) the parties in the matter;
- (b) the date on which the inquest was completed;
- (c) the place at which the inquest was held;
- (d) the name and age of the deceased; and
- (e) when, where and how the person died.

2.22. The certificate is given to the Registrar General. A copy of the certificate plus all witness statements must also be given to the Commissioner of Police and the Director of Health (s21).

Offence for Publication of Proceedings

2.23. Anyone who publishes disallowable information about the inquest is liable for up to 6 months in goal or a fine of up to \$150 (s26).

Exhumation

2.24. If exhumation is required, for example if the findings of a Coroner are quashed and another inquest is ordered (s24), then written permission must be obtained from the Minister for Health. In the absence of the Minister for Health the Minister of Police, Prisons and Fire Service may provide permission (s10 *Burials Ordinance 1961*).

Immunity

2.25. All witnesses and their legal representatives have the same privileges and immunities as they would have in a court of law (s25).

Recommendations of the Coroner

2.26. There is no express provision in the CO for the Coroner to make recommendations.

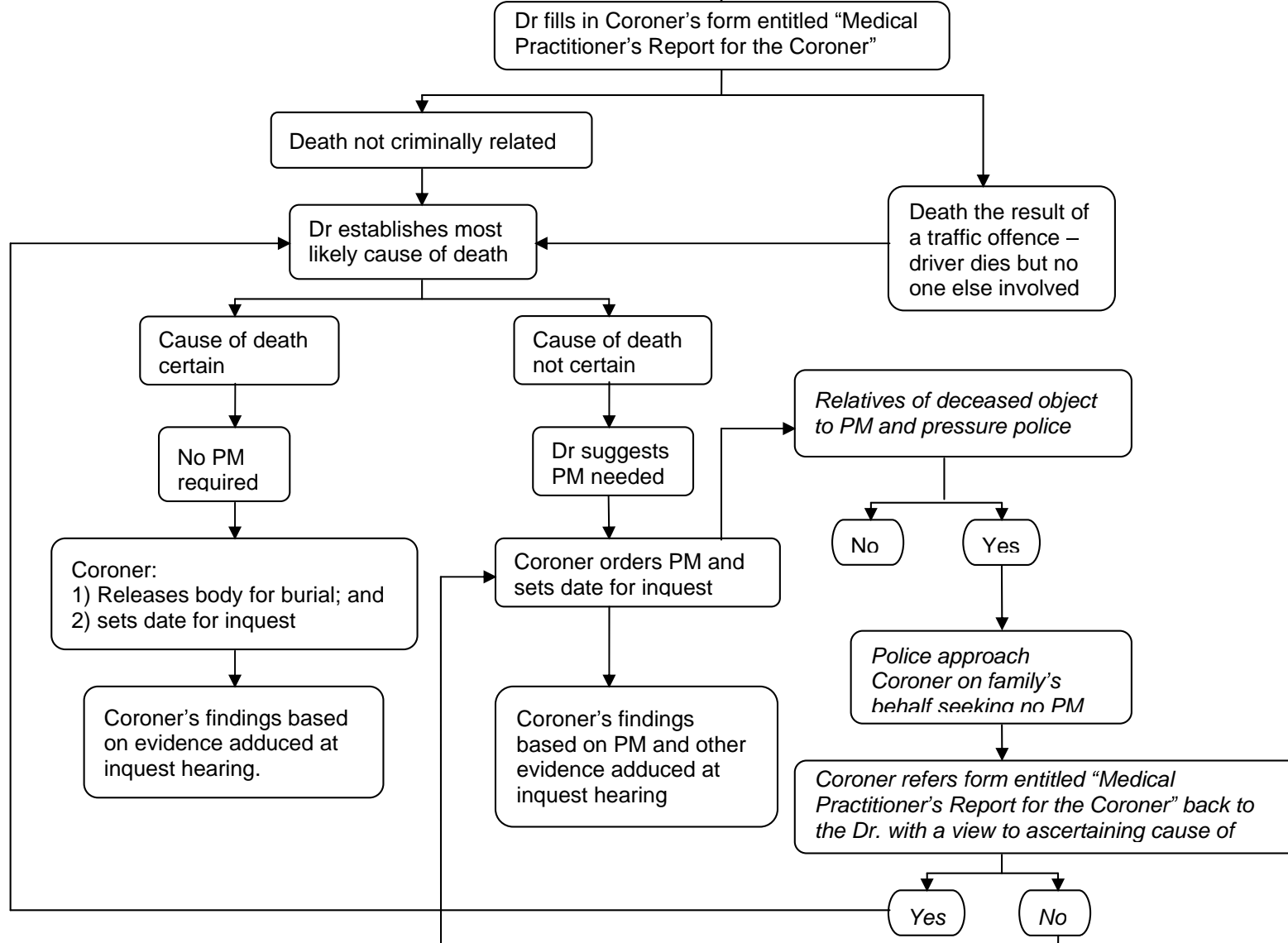
2.27. However the practice in the Coroner's Court has been to make public the court's views in matters where coronial findings provide evidence to show that regulatory and/or policy changes could make a difference to the death toll. For instance it was found that paraquat (weed killer) was causing a high number of deaths. Coronial recommendations on the matter led to the regulation of paraquat sales. Similar recommendations have been made to have boats carry compulsory emergency satellite rescue equipment and for fisheries officers to regularly monitor boat's locations.

Procedure for coronial inquests where death not criminally related – including accidents and suicide.

Coroner informed:

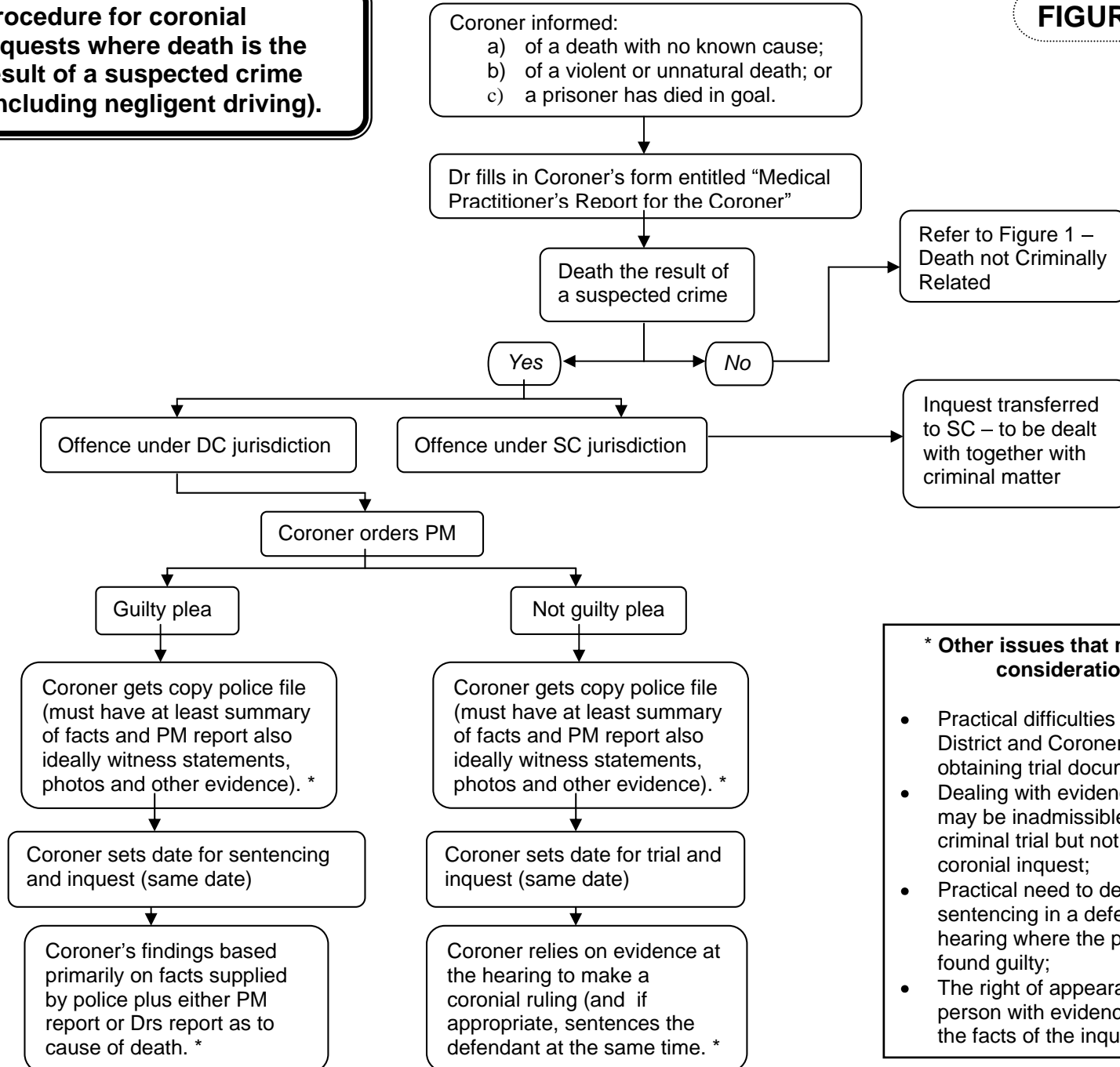
- a) of a death with no known cause;
- b) of a violent or unnatural death; or
- c) a prisoner has died in goal.

FIGURE 1



Procedure for coronial inquests where death is the result of a suspected crime (including negligent driving).

FIGURE 2

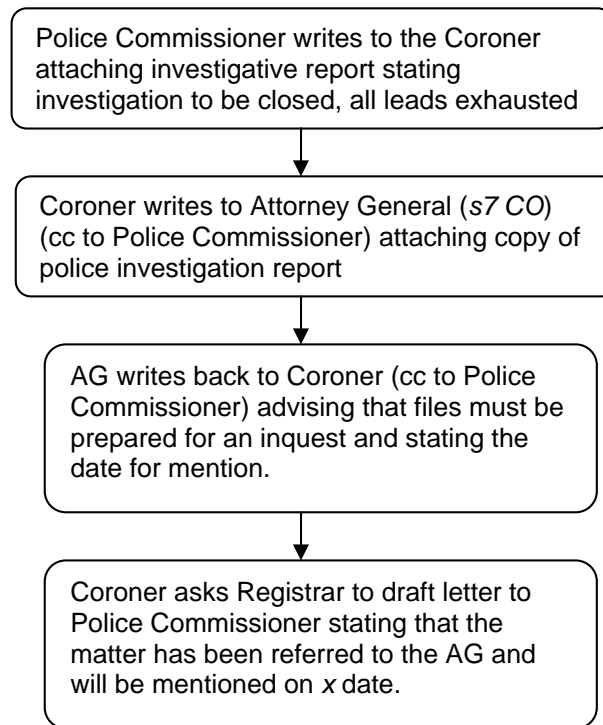


*** Other issues that may need consideration.**

- Practical difficulties for the District and Coroner's Court obtaining trial documents;
- Dealing with evidence which may be inadmissible in a criminal trial but not in a coronial inquest;
- Practical need to delay sentencing in a defended hearing where the person is found guilty;
- The right of appearance for any person with evidence relating to the facts of the inquest.

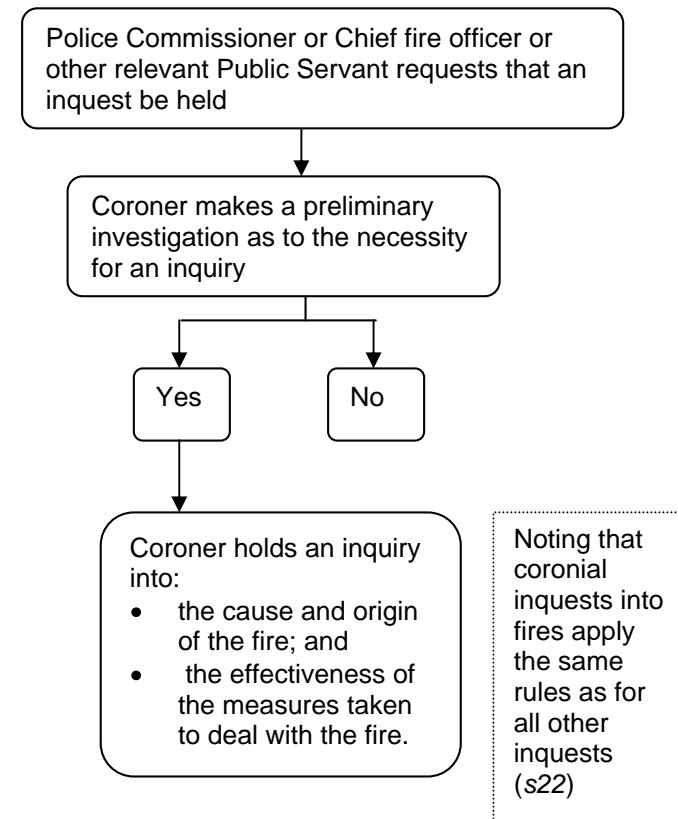
Procedure for coronial inquests where person missing at sea or body not recoverable.

FIGURE 3



Procedure for inquiries concerning fires

FIGURE 4



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3. YOUTH COURT

(Young Offenders Act 2007- YO Act)

3.1. Whenever a defendant over 10 and under 17 years of age appears before you your court becomes the Youth Court under the *Young Offenders Act 2007*. The procedure for Youth Court is prima face the same as for adult matters (see Criminal Court Procedure section page 3).

3.2. The differences are listed below. You should also note that for young people your goal as a judge should be rehabilitation; and this is best achieved through diversion.

Dealing with Young Offenders and Closing the Court

1. Before court starts each day the Registrar should warn you of any young persons in the list. This does not always happen so you need to watch for young defendant's yourself. Young people's matters must be heard in the Youth Court s5 YO Act.
2. Unless you determine otherwise eg if you can justify, in writing, why it's in the public interest, any matters concerning young persons should be closed to the public and the media. For this reason it is best to hear all the adult matters first then you can most easily clear the court for the youth matters.
3. You also have the option of referring matters to the District Court which sits as the Youth Court on Thursdays.
4. It is standard practice to allow the media into the Youth Court room. Most journalists know they must not publish the names of young defendants. If you think there are any journalists there who do not know this rule then you should remind them.

Parental Attendance

You have the power to summons parents to attend court to give evidence or support their child s7 YO Act. In practice you shouldn't need to summons the parents, usually you can just request the police to ask the parents to come.

Not guilty plea

Defended hearings should be heard as soon as practicable. If there's too much delay between the date of the offence and the hearing, usually because the police are not ready, then you may dismiss the charge(s).
If you find the young person guilty you must follow the sentencing options explained below (under Guilty Plea)

Guilty Plea

You **must** order a pre-sentence report UNLESS:

- a. there has been a fa'aleleiga; and
- b. you think the fa'aleleiga was just and reasonable; OR
- c. the court considers such a course inappropriate eg the young person is a serious repeat offender and has breached pre-sentence conditions many times. In this case you may proceed straight to sentencing s6YO Act.

Pre-sentence Report

Pre-sentence meeting must take place no later than 31 days after the hearing.
The report must be provided to the Youth Court immediately prior to the next sitting of the young person's matter.
Any course of action or punishment recommended in a report must be able to be completed with 6 months of the Young Person being sentenced.
The pre-sentence report will consider and recommend sentencing or diversionary options to you; such as paying compensation to the victim for property loss or medical expenses or helping the victim by working in their plantation.



Sentencing and Diversion Options (see Criminal Court Procedure section page 8 for your options for ordering diversion).

You may, within 6 months and without conviction, order the young person to:

- Carry out obligations reached at a pre-sentence meeting;
- Undertake an order of community work of not more than 100 hours (to be completed with 6 months)
- Undertake a needs assessment and/or a rehabilitation program of not more than 6 months duration.

But if, after 6 months, the young person has not complied with the order you may record a conviction and:

- Discharge the person this one especially for kids still at school
- Suspend the sentence for a period of 12 months
- Impose a fine
- Order a sentence of community work
- Order a sentence of supervision
- Impose a sentence of imprisonment in a youth residential facility (a last resort and to be used where there is no reasonable alternative)

Police Warnings

Sometimes young people are brought before the court charged with minor and trivial offences. In some of these cases a warning from the police would have been enough. The police have the power to issue such warnings *Part IV YO Act*. You may want to remind them of this.

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4. FAMILY COURT

(Maintenance and Affiliation Act 1967 - MAA)

Maintenance Applications

4.1. Usual practice is for the District Court to sit as the Family Court on Thursday mornings to hear maintenance and custody matters. Sometimes a matter will come before you which also involves property and/or divorce. Family Court property matters and divorce are not within your jurisdiction. You can only preside over maintenance and custody matters. You should separate property and divorce matters and refer them to the Supreme Court.

Maintenance Applications Procedure

1. Maintenance orders can be granted for children under 16 s12 MAA. You can also order maintenance to be paid for a person over 16 but under 19 if they are doing a course. Applications for maintenance are bought by the MCJA's Maintenance section.
2. Matter called for mention. Maintenance officer will ask for an adjournment – usually 3 weeks – so parties can try to reconcile and come to their own agreement.
3. At next call-over maintenance officer may :
 - a. ask for more time; or
 - b. seek withdrawal of the application because the parties have reconciled; or
 - c. tell you that the parties cannot agree.If c. You should send the parties to mediation (MJCA has certified mediators).

Do not settle at mediation

Settle at mediation

Hearing Procedure

1. Sort out which issues are in dispute and which are in agreement.
2. Hear the evidence of both parties. Noting that the rules of evidence are more loosely applied in the Family Court than in criminal proceedings. For instance it is very difficult to stop people giving opinion evidence where emotions run high like in the Family Court (see Criminal Court Procedure section - Evidence Rules page 16)
3. Make the orders by applying the precedent that “the children of the marriage should maintain as much as possible the life style they experienced before the separation”. *Hadley v Hadley* [1997] WSMC 2 (23 December 1997).

Make final orders
based on mediation
agreement

Custody Application Procedure

1. The same procedure applies as for a maintenance application.
2. Jurisdictional questions – For some matters you may need to decide whether Samoa is the appropriate jurisdiction or should the matter be transferred to another court eg if a child has domiciled in NZ and NZ citizen parent it may be more appropriate for the NZ Family Court to deal with the matter. See International Custody law as it applies in Samoa (p??).
3. Note the test for the making of custody orders is that the “welfare of the child is paramount” (*Infants Ordinance 1961 s3*).

Varying Orders

You have the power to vary maintenance and custody orders upon application s30

Interim Orders

You may need to make interim, or short term, orders. For example if the parties cannot resolve their dispute through mediation and the hearing is 6 to 8 months away you may need to make orders for maintenance or custody just for this period.

Adoption Orders

The Court has the power to order adoption s7 *Infants Ordinance 1961*. You must be satisfied that the adoptees have the ability and character to care for the child and that the welfare and interest of the child would be promoted by the adoption.

International Child Custody Disputes

Applicable Law in Samoa

4.2. Samoa is not presently a signatory to the *Hague Convention on the Civil Aspects of International Child Abduction*. However Samoan case law verifies that the principles of the Convention should be applied, *In Re J (A Minor)* 6 August 2007 District Court Samoa in *Wagner v Radke* [1997] WSSC 2: Misc 20701 (19 February 1997).

4.3. The Convention applies in cases where:

1. Both the country of the child's habitual residence and the country to which the child was taken have acceded to the Convention;
2. The child in question is younger than 16 years of age; and
3. The child has been "wrongfully removed or retained" in breach of rights of custody under the law of the State of the child's habitual residence.

4.4. The main purpose of the Convention is to ensure that abducted children are returned to the country of **habitual residence** on the presumption that such **disputes are properly resolved in the country where the child habitually resides**.

4.5. A party initiating judicial proceedings under the Convention may request either:

1. The return of wrongfully taken children; or,
2. "arrangements for organizing or securing the effective exercise of rights of access to a child."

4.6. Wrongful Removal 'Wrongfulness' is defined as follows in Article 3 of the Convention:

The removal or the retention of a child is to be considered wrongful where

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

Exceptions to the Mandatory Return of a Child:

4.7. If the conditions for the return of a child to the country of habitual residence are established, there are at least six possible defences. The burden of proof rests firmly upon the parent who opposes the return. The defences are:

1. **Grave Risk of Harm** - there is "a grave risk that [the child's] return would expose the child to physical or psychological harm or otherwise place the

child in an intolerable situation." Convention, Article 13b. The United States Court of Appeals in *Friedrich v Friedrich* held that a "grave risk of harm" for the purposes of the Convention can exist only in two situations.

- a. If returning the child would put the child in imminent danger prior to the resolution of the custody dispute - e.g. returning the child to zone of war, famine or disease.
 - b. If there is evidence of serious abuse or neglect, or extraordinary emotional dependence, and if the court in the country of habitual residence is incapable or unwilling to give the child adequate protection. Courts in England have adopted a more stringent approach.
2. **Human Rights Issue** - the return of the child "would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms." Convention, Article 20.

This provision was intended to deal with the rare occasion when the return of a child would utterly shock the conscience of the court or offend all notions of due process. It is almost never utilized by the courts.

3. **More Than One Year** - more than one year has elapsed from the date of the alleged wrongful removal or retention, and the child is now settled in the new environment. Convention, Article 12.

Article 12 provides that if the application is made within one year of the date of wrongful removal or retention, the authority concerned shall order the return of the child immediately. It also states that if the application is made more than one year after the date of wrongful removal or retention, the authority shall still order the immediate return of the child unless it is shown that the child is now settled in its new environment. Time starts running from the moment the child is wrongfully removed, or when the left behind parent withdraws his or her consent.

4. **Not Exercising Custody Rights** - the petitioner was not exercising his or her custody rights at the time of removal or retention. Convention, Article 13a.
5. **Consent** - the petitioner had consented to or subsequently acquiesced in the removal or retention. Convention, Article 13a.
6. **Child's Objection** - that the child "objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views." Convention, Article 13b.

4.8. For this defence, there is a two-fold test, namely:

- (1) Does the child object to being returned to its place of habitual residence; and
- (2) Has the child obtained an age and degree of maturity at which it is appropriate to take account of its view?

Case Law in Samoa

4.9. The primary consideration for in all proceedings affecting child custody is that the welfare of the child is the “first and paramount importance”, s3 *Infants Ordinance 1961*.

4.10. In relation to international jurisdictional questions Samoan law holds that “...any decision relating to the custody of children is best decided in the jurisdiction in which they have normally been resident” ... and that this is an “application of the principle that the child’s welfare is the first and paramount consideration”, *Wagner v Radke [1997] WSSC 2: Misc 20701 (19 February 1997)*.

Determining Habitual Residence

4.11. The Convention does not define a child's "habitual residence", which is among the most-litigated issues under the Convention.

New Zealand cases:

Punter v Secretary for Justice [2007] 1 NZLR 40

Both parents lived and subsequently separated in Australia. They eventually agreed to a “shuttle” custody arrangement under which the mother would take the children to New Zealand for two years and return them to Australia to their father for the next two years, an arrangement which was to continue until each child reached 18 years of age.

Soon after arriving in New Zealand, the mother applied to the Family Court in New Zealand for sole custody of the children. In response, the Secretary for Justice as the New Zealand Central Authority issued proceedings, at the request of Mr Punter, for the return of the children to Australia.

The Court of Appeal held, contrary to the prior proceedings in the Family Court and High Court, that Mrs Punter’s application for custody had not amounted to a “retention” in breach of the Hague Convention. There was no actual retention until and unless either the Family Court had granted an order for sole custody or the two-year period under the parents’ agreement had elapsed and the children were not returned to Australia.

Immediately after the two-year period elapsed from the date agreed by the parents for the children’s return, new proceedings were commenced in the Family Court in New Zealand to determine the question of the habitual residence of the children.

It was decided that the facts surrounding the care of the Punter children after their removal to New Zealand under a “shuttle” custody arrangement pointed to the conclusion that they had gained habitual residency in New Zealand. The relevant factors included by the judges were **the settled purpose of the parents, the actual and intended length of the stay of the children in New Zealand, the purpose of the stay, the degree of their assimilation, and, above all, the underlying reality of the connection between the children and New Zealand, including their connection with their Maori heritage.**

SK v KP [2005] 3 NZLR 590

The parents were Mr SK, a United States citizen resident in Chicago, and his wife, Ms KP, a New Zealand citizen. Their child S, was born in the United States in July 2000. With the consent of the father, the child was taken to New Zealand by his mother in December 2000, where he remained until May 2001. Ms KP returned to New Zealand with S in November 2001 in order to obtain family support during her second pregnancy, again with the agreement of Mr SK who visited them during these trips even though by the second trip, the parties were effectively separated.

By September 2002 it had become apparent that Ms KP did not intend to return with the children to the United States and in October 2002 Mr SK issued proceedings in New Zealand under the *Guardianship Amendment Act 1991*. About that time he also issued proceedings in the United States relating to custody and dissolution of the marriage.

The issue before the Courts in New Zealand was whether S, in light of the arrangements entered into by his parents, had lost his status as habitually resident in the United States for the purposes of s 12(1)(d) of the 1991 Act.

It was held by majority that the provisions of the 1991 Act, including s 12(1)(d), had to be interpreted consistently with the Hague Convention and its emphasis on the prompt return of children wrongfully removed from or retained away from the state of their habitual residence. Although the critical term, “habitual residence”, was not defined substantively in the 1991 Act, it was used in the Convention as a **factual concept**. Under this approach, emphasis was placed on factors such as the **settled purpose of the parents, actual residence for an appreciable period, the strength of the ties of the child to the existing state, continuity of residence, and whether the stay was for a limited time and temporary in nature**.

Australian Cases

State Central Authority & Papastavrou [2008] FamCA 1120 (22 December 2008)

Regarding how a court should determine which jurisdiction should hear the matter, reference was made to notes of the English court decision case in *Re W* [2004] 2 FLR 499 (at p 509) that:

“In these cases, the authorities make it clear that in normal circumstances the courts of the country of habitual residence are best to determine **issues relating to the welfare of the child, primarily because the best outcome for the child’s future will be identified by reference to past events and the physical, emotional, social and cultural milieu in which the family have lived**. All these matters, including in particular any resolution of factual disputes relating to past events, are, *prima facie*, more easily addressed in courts of that State.”

Here in this case, it was decided that although the mother had unlawfully removed the children from their place of habitual residence without the consent of the father, the ‘grave risk’ defence was invoked and accepted by the Family Court of Australia

LK v Director-General, Department of Community Services [2009] HCA 9 (11 March 2009)

This case concerned a husband and wife, married and living in Israel, separated in September 2005. The four children of the marriage continued to live with the mother in the matrimonial home. All four children had been born in Israel but were entitled to Australian citizenship by descent from their mother. In May 2006, the mother and the four children, travelled by air from Israel to Australia with the knowledge of the father.

The father knew, and accepted, that the mother left Israel on the footing that she would return if she and her husband were reconciled, but would not if the husband persisted in his then stated intention to live separately from her. Both before she left Israel and immediately after arriving in Australia, the mother took steps for her and her children to establish a home in this country.

Just over two months after the mother and children had arrived in Australia, the husband told the mother that he wanted the children to return to Israel but that, as he had said previously, he wanted a divorce. The question fell onto whether the children were then habitually resident in Israel.

It was held by the High Court of Australia that the children were not habitually resident in Israel when the father asked the mother to return them to Israel.

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5. CIVIL LAW PROCEDURE

The Civil Standard of Proof

5.1. The aim of civil law is to provide rights and remedies for people who cannot agree about certain things. Civil law covers disputes about contracts, property, family relationships and torts. A tort is an action that causes damage to a person's body, property, reputation or finances.

5.2. Most civil cases in Samoa are disputes about unpaid debts (or breach of contract). Some cases are also about negligence.

You need to know:

7. In civil cases the person bringing the matter to court (the applicant or plaintiff) has to prove their case "on the **balance of probabilities**" rather than the criminal standard of "beyond reasonable doubt";
8. What is a contract and how can a contract be breached?; and
9. How can a negligence claim be established?

Balance of probabilities

5.3. For the plaintiff to win you must decide that their evidence proves their claim on the balance of probabilities. There are a number of ways of working out the balance of probabilities:

- The claim needs to be more likely than not;
- The plaintiff's story is "slightly more likely" than the defendants'; and /or
- The mere existence of a possibility is not enough, there must be a substantial, as opposed to a fanciful or remote, possibility that the claim is true. *Jin Ying Company Ltd v Progressive Insurance Company Ltd [2002] WSSC 6 (22 March 2002)*.

Contract Law

5.4. All the unpaid debt actions that you hear have their basis in contract law. To make a decision in a contract case you need to work out:

1. Was there a contract? And
2. Was the contract breached?

5.5. You can use the following check list to work out if there was a contract and, if so, was it breached. If there was a breach the check list will also help you understand what remedy you should apply.

Contract Checklist

1. Agreement

Is there an offer?

Has the offerer given a clear statement of terms that he or she is prepared to be bound by and that invites the other person to accept the offer? eg a letter from a bank offering a loan and explaining the terms and conditions of the loan.

Is there acceptance?

Has the person who has been offered something said or done something to show they accept the offer? eg signing the loan.

Did they accept that they were committing themselves to a contract?

Is there certainty?

Are the terms of the contract clear and complete, so that the parties understood what they were agreeing to?

If you have answered yes to all of these questions, then there is agreement.

2. Consideration

- (a) Did one party give or promise something, or promise not to do something, in exchange for the other party's promise? Eg the defendant promised to pay back \$500 per month, every month, for 6 years in exchange for a loan of \$36000 plus interest.

If you have answered yes, then there is consideration.

3. Intention

- (b) Did the parties, at the same time the promises were made, intend to create legally enforceable obligations which would allow them to turn to the Courts if the promises were broken?

If you answered yes, then there is intention.

If you have answered yes to all of the above questions, then a contract exists.

4. Capacity

- (i) Do the parties have the capacity to enter into a contract? Are they of sound mind, and old enough?

If you answered yes, then there is capacity.

If you have answered yes to all of the above questions, then a contract exists.

5. Validity

- (ii) Is there any reason to make the contract invalid, such as misrepresentation or illegality? For instance did the plaintiff lie to the defendant about the interest rate or about what would happen if they could not make a repayment OR did the plaintiff trick the defendant into signing the contract.

If you answered yes, then the contract is invalid and the claim may be dismissed.
If you answered no, then the contract is valid and you can go on to consider whether there was a breach.

6. Breach of contract

- (iii) Consider the terms of the contract and the words or actions of the defendant. Did he defendant fail to meet the terms set out in the contract? Eg did the defendant fail to make the repayments he /she had agreed to make in the contract?

If you answered yes, then there has been a breach of the contract.

7. Remedy

If there has been a breach of the contract, next decide whether there should be a remedy and if so, what the remedy will be. This will usually be damages. Remember your jurisdiction allows you to award up to \$1000.

There are different types of damages but usually you will just award “compensatory” damages which means you order the defendant to pay the plaintiff the amount of money they lost. For instance you may order the defendant to pay the bank 6 months worth of unpaid principal and interest.

If there was good reason for the breach, a remedy may not always be necessary. For example, the defendant may have refused to carry out the terms of the contract because the plaintiff had breached it first. Consider the arguments of the parties and the evidence presented.

Torts and Negligence

5.6. Tort law is used by people who have been injured due to another person’s negligence (rather than because of a crime). The injured person may use tort law to make the negligent person pay money for the damage they caused.

5.7. You can use the following checklist to work out if a negligence action has been proved.

Negligence Checklist**1. Duty of care**

Should the defendant have foreseen that his or her behaviour could cause damage or harm to someone? For instance should the defendant have seen the possibility that leaving the fire unattended on a windy day might cause the house to catch on fire?

Would a reasonable person* have foreseen it in the circumstances?

** The Reasonable Person*

You need to decide whether the defendant has acted “reasonably”. To work this out you should consider things like:

- *Would the average, ordinary person have done the same thing in the same circumstances?*

The reasonable person test is an objective one. This means the standard is the same whether the defendant is a doctor or lawyer or has no education at all.

The following example explains how you might decide whether a person was acting reasonably:

- *a defendant was working on a loading dock and tossing large bags of grain onto a truck. In the process of doing this, the defendant notices two children playing near the truck. The defendant throws a bag towards the truck and it accidentally hits one of the children. In this example you would take into account whether the defendant actually knew that children were playing in the area. Then you would work out whether a reasonable person would know that a bag of grain could injure a child and whether they would also know that children can do unpredictable things.*

If you have answered yes then a duty of care existed towards that person.

2. Breach of duty of care

- (i) a. Would a reasonable person know that their actions (or failure to act) may cause some damage or harm, and therefore take care to avoid doing (or not doing) it? For instance would the reasonable person put the fire out or get someone else to look after it before walking away.
- (ii) Did the defendant fail to take the precautions that a reasonable person would in the circumstances? Did the defendant put the fire out or get someone else to look after it before walking away.

If you have answered yes to both questions, then there has been a breach of the duty of care.

3. Damage or harm as a direct cause

- (iii) Did the defendant's breach of a duty of care actually cause damage or harm to the plaintiff? Eg did the plaintiff's house burn down because the defendant left the fire unattended on a windy day.
- (iv) Would that damage or harm not have occurred *but for* the defendant's breach of a duty of care?

If you answered yes to both of these questions, then there was a close enough connection between the defendant's actions and the damage.

Remedy

If negligence has been proved, next decide what the remedy will be. This will usually be damages. Remember your jurisdiction allows you to award up to \$1000.

Contributory Negligence – Did the plaintiff contribute to the damage? Eg Did the plaintiff build his house out of timber, in a very windy area and place the cooking fire right next to the house with no nearby water source?

Contributory negligence does not mean the defendant is innocent. It means the plaintiff will get less damages because he/she contributed to his/her own harm (*s3 Contributory Negligence Act 1964*) For instance you might reduce the amount of damages a plaintiff receives in a car crash by 25% because he/she was not wearing a seatbelt.

Damages

Tort law is not about punishing the defendant; it is almost always about compensating the plaintiff for the loss they have suffered. This means the amount of damages you award should equal the amount of money needed to put the defendant back in the position he/she was in before the tort was committed. You should not award any more than this otherwise the plaintiff would profit from the tort. You can award damages under the following two heads:

1. Special Damages - these are losses suffered up until the date of the trial. They can include things like: hospital and medical expenses, transport to see a doctor and loss of earnings before the trial.
2. General Damages – these are losses which are difficult to put a tala value on. General damages are awarded for things like: pain and suffering, loss of enjoyment of life, loss of earning capacity or loss of amenity. For instance a professional rugby player who broke his back in a car accident caused by the defendant might be awarded amounts of money for:
 - (i) the pain of his injury;
 - (ii) for the amount of money he lost because he couldn't fulfill his contract with the All Blacks;
 - (iii) for the broken back itself; and
 - (iv) for his loss of enjoyment of life because he can no longer do what he loves.

See *Katopau v Samoa Breweries Ltd [2000] WSSC 5*.

Procedure for Hearing Civil Matters

1. Read the statement of Claim

It will tell you:

- a. the names of the plaintiff and the defendant;
- b. the cause of action ie what the dispute is about; and
- c. the amount of damages the plaintiff wants.

2. Decide:

- a. Do you have the jurisdiction to hear the matter? You can hear civil matters where the debt, demand, damages, or value of goods is \$1000 or less s33 *District Courts Act*; and
- b. Is there a conflict? (Refer to Criminal Court Procedure section page 3); and
- c. Is it too late for the plaintiff to file their claim?

You need to check that the *Limitation Act 1975* does not apply. This Act sets time limits for civil claims. For instance a claim for the payment of an unpaid debt eg a mortgage cannot be more than 6 years old. To work out how old a claim is you need to start your calculation from the time the cause of action accrued. So for example, if a defendant stopped making his/her mortgage payments you would calculate the cause of action from the date the unpaid amount was due. You need to be careful because some plaintiffs, such as banks, know they are running out of time to make a claim and so will try and make out that the cause of action started on the date the defendant received their final reminder letter to pay.

If there is no conflict and the Limitations Act does not apply you may proceed with the matter

3. You will need to read any other documents, apart from the statement of claim, which may have been filed. These other documents are called “pleadings” and may include:

- a. a defence: which explains why the defendant does not think he/she is legally responsible for the plaintiff’s claim;
- b. a counterclaim: in which the defendant can not only disagree with the plaintiff’s claim but also argue that it was the plaintiff who caused the harm or breached the contract first.

The pleadings should explain to you what the matter is about. For instance in a case about an unpaid debt the pleadings should explain how the debt arose, how much interest is owed and how much money the plaintiff is seeking from the defendant. If you are not satisfied with the pleadings you can ask for more and better information. This is called asking for “further particulars”. If the plaintiff does not give you the further particulars you ask for you can strike the matter out.

4. Once you have read all the documents about the case you need to decide what to do next. These are your options depending on which of the parties shows up.

1. Plaintiff appears but defendant does not

- a. Proof of service: You first need to check that the defendant knew the court case was on. You do this by checking that he/she got the correct documents. The *Magistrate's Court Act 1969* tells you that service can be proved in several ways eg by affidavit or oral evidence. The proof of service should explain to you when, where and how the documents were served on the defendant.
- b. Judgment by default: This means you give the plaintiff what they have asked unless it is unreasonable or unfair. You can make a default judgment UNLESS:
 - (i) a year has gone by since the defendant was served with the summons to come to court. If this is the case the plaintiff will need to ask the court to give judgment; or
 - (ii) the defendant files a confession, counterclaim or defence within 7 days of being served with the summons to come to court.
- c. Judgment by formal proof: This is similar to judgment by default except you would give a judgment by formal proof if more than a year had passed since the defendant was served with the summons. Judgment by formal proof means you take all the court documents about the matter, including the affidavit evidence, into chambers and give your judgment by writing it on the court file.

2. Defendant Appears but Plaintiff does not

- a. You should find out what has happened to the Plaintiff;
- b. If the plaintiff has not turned up or does not have a good reason for not showing up then you would usually strike the matter out.

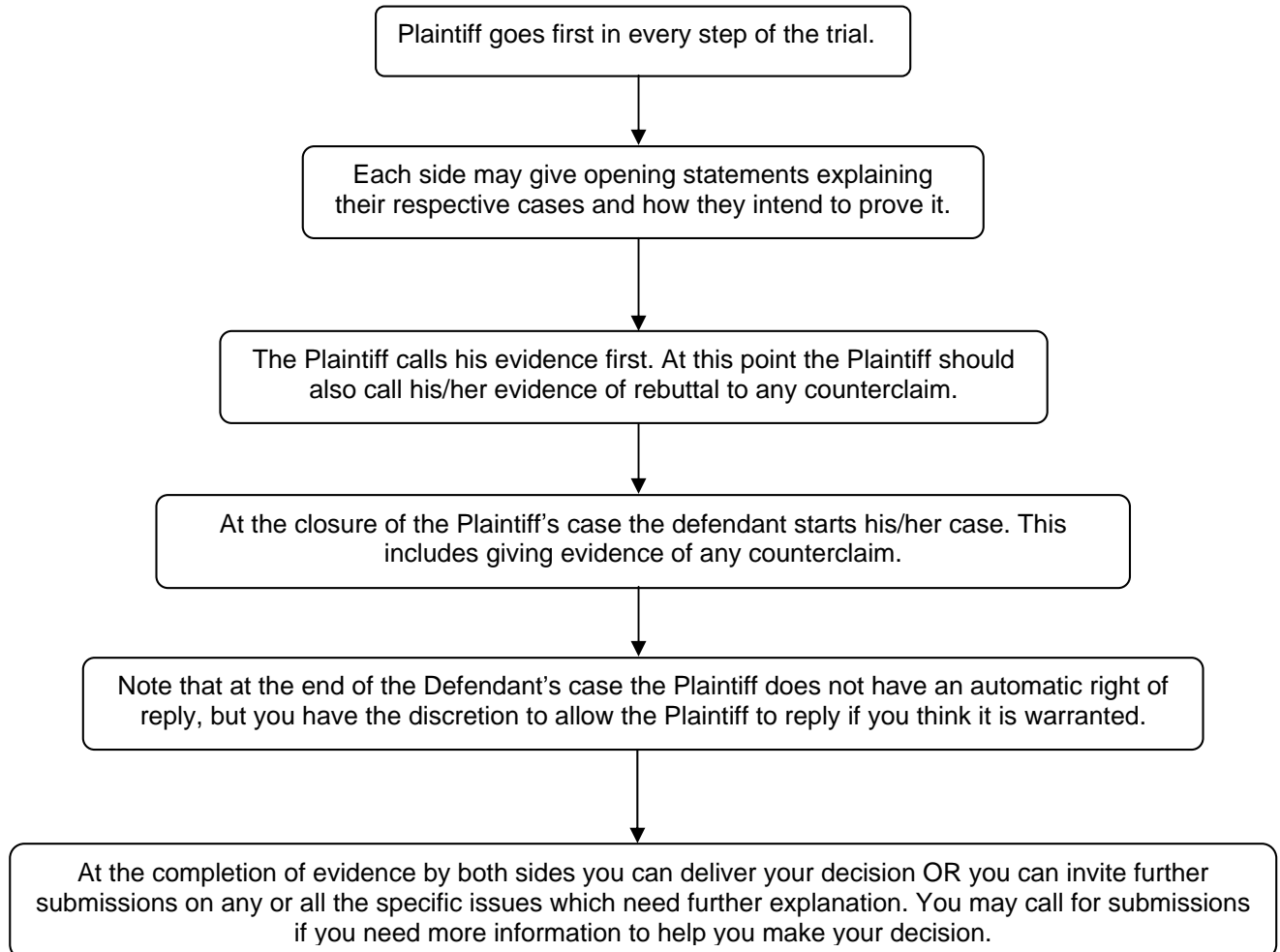
3. Plaintiff and defendant both do not appear

- a. You would usually take the matter off the list rather than striking it out. This way the plaintiff can apply to the Registrar for a court date.

4. Plaintiff and defendant both appear

- a. You should read all the documents about the matter first;
- b. You should then ask the defendant what they say about the claim. If the defendant:
 - (i) Confesses
In this case the Registrar will arrange for the defendant to sign a form which has details of the confession including how much the defendant owes. You would then make a **Judgment on Confession** for the amount the defendant confessed to being responsible for.
 - (ii) Tells you that he/she have come to an agreement with the plaintiff about how much should be paid. You should check that the plaintiff agrees with this. If yes, you can enter a **Judgment by Consent** of the parties.
 - (iii) Disagrees with all or part of the Plaintiff's Claim. You have two options:
 1. alternative dispute resolution should be your first option; or
 2. you may need to adjourn the matter so a statement of defence can be filed

Hearing Procedure



Alternative Dispute Resolution

The *Alternative Dispute Resolution Act 2007* gives you the power to refer civil disputes to mediation. You can do this if you think the parties have an OK chance of sorting things out themselves. Mediation gives the parties the chance to get help, from a trained mediator, to settle their dispute themselves, rather than you forcing a solution on them. You will only need to hear the matter if mediation does not work.

Costs

Sometimes the winning party in a civil action will apply to the court for "Costs". This means they want the losing party to pay their legal fees.

You can award costs if you think it is reasonable to do so. If you think you might make an order for costs you should consider the following:

1. s31 of the *Magistrates Court Rules 1971 Second Schedule* has a scale of costs that you should follow;
2. The schedule is almost 40 years old and so the costs it prescribes are too low. For instance court appearances are charged at a maximum of \$4 and preparing a statement of claim is as low as 50sene. In 2009 the fees for both these services would be hundreds of dollars.
3. You should not award costs as a form of punishment. In both criminal and civil matters costs are a form of compensation. The reasoning behind awarding costs is that it is unfair for a successful defendant to have to pay the cost of defending him or herself. *Police v Lota [1999] WSSC 5 (17 June 1999)*
4. If you decide to award costs to the successful party they should be calculated to take into account:
 - a. the expenses of the legal proceedings; and
 - b. the conduct of the defendant ie even if the defendant wins the case you should consider whether he or she may have prolonged the proceedings unreasonably. If so you may want to reduce the amount of costs awarded or decide not to award them at all.

Table of Offences and Maximum Penalties under Fa'amasino Fesoasoani Jurisdiction

The following Table of Offences contains:

1. The most common offences that will come before you under the:

	Page Number
Animals Ordinance 1960:	1
Arms Ordinance 1960:	6
Fisheries Act 1988:	7
Maintenance and Affiliation Act 1967:	8
Narcotics Act 1967:	10
Police Ordinances Act 1961:	13
Road Traffic Ordinance 1960:	26

2. The maximum penalty you can order under your Fa'amasino Fesoasoani jurisdiction. This may be a fine, a term of imprisonment or both.

Animals Ordinance 1960:

Sec.	Offence	Maximum Fine	Maximum Term of Imprisonment
7	<p>Duty of person delivering cattle to poundkeeper</p> <p>(1) Every person shall upon delivering cattle to a poundkeeper for impounding sign and deliver to the poundkeeper a statement setting out particulars of the time and place where such cattle were found and of their ownership (if known to the person) and of the amount (if any) claimed for driving fees.</p> <p>(2) Every person commits an offence who:</p> <p>(a) Fails to deliver the statement to the poundkeeper in accordance with the provisions of subsection (1);</p> <p>(b) Knowingly or negligently sets out in such statement any particular which is false or misleading.</p>	Fine not exceeding 1 penalty unit.	n/a
11	<p>Notices</p> <p>(1) It shall be the duty of every poundkeeper:</p> <p>(a) To deliver within 7 days after any cattle have been delivered to him or her a notice to the owner of the cattle (if such owner can be reasonably ascertained) setting out particulars of the cattle, the person by whom they were impounded, and the time and place where the cattle were found;</p> <p>(b) To exhibit for 3 clear days before any pound sale in a prominent place at or near to the entrance of the pound a notice specifying the time and date of the pound sale and the cattle to be sold;</p> <p>(c) If the pound is situated within 10 miles from the Customs-house in Apia, the poundkeeper thereof shall give public notice in some newspaper published in Apia of each intended pound sale and of all cattle to be sold thereat, at least 3 clear days before the holding of the pound sale.</p> <p>(2) Every poundkeeper who acts in contravention of the provisions commits an offence.</p>	Fine not exceeding 1 penalty unit.	n/a

14	<p>Pigs to be kept in enclosed place</p> <p>(1) No person shall keep a pig or cause or suffer a pig to be kept in any place except a place which is for the time being securely and completely fenced and enclosed so as to be a pig-proof enclosure.</p>	Fine not exceeding 1 penalty unit.	n/a
15	<p>Distance from dwelling</p> <p>(1) No person shall without the express permission in writing of the Chief Executive Officer of the Ministry of Health or a Medical Practitioner or Inspector of Health authorised by the Chief Executive Officer of the Ministry of Health, keep a pig or cause or suffer a pig to be kept in a place any part of which is within 200 yards of a dwelling for the time being used for human habitation or in a place where keeping of a pig is liable to cause pollution of water supply regularly used for drinking or domestic purposes.</p>	Fine not exceeding 1 penalty unit.	n/a
16	<p>Pigs in Villages</p> <p>(1) The owner of any pig found at large upon any road within a village or in the neighbourhood of any dwellinghouse in a village is liable to a fine not exceeding 1 penalty unit, and the Pulenu'u of the village where any such pig is found, or any person authorised by the Pulenu'u so to do, may destroy such pig unless it has been previously brought into proper confinement by the owner.</p>	Fine not exceeding 1 penalty unit.	n/a
20	<p>Obligations of person destroying pig</p> <p>(1) Any person destroying a pig under authority of a warrant shall forthwith take all reasonable steps to ascertain who is the person entitled to the property in the pig and shall call upon such person to declare whether he or she claims the carcase or not, and if such person cannot be found or does not claim the carcase the person who under warrant destroyed the pig shall be entitled to the possession of the carcase for the purpose of disposing of the same and shall forthwith dispose of the same in such a manner that it shall not become a nuisance.</p> <p>(2) Any person destroying a pig under the authority of a warrant who fails to comply with the provisions commits an offence.</p>	Fine not exceeding 1 penalty unit.	n/a

21	Obligation of person claiming carcase (1) If a person entitled to the property in the pig claims the carcase he or she shall forthwith dispose of the same in such a manner that it shall not become a nuisance and if he or she fails so to do he or she commits an offence.	Fine not exceeding 1 penalty unit.	n/a
23	Killing of trespassing or diseased animals (1) No occupier of land shall kill or attempt to kill any animal found trespassing on such land except: (a) Bona fide in self defence; (b) A dog attacking and interfering with cattle or poultry; (c) A pig or goat found in a taro or similar cultivated area or on any golf links, football field, tennis court or kept lawn; (d) A wild pig. (2) Every occupier of land who acts in contravention of the last preceding subsection commits an offence.	Fine not exceeding 1 penalty unit.	n/a
23(3)	Killing of trespassing or diseased animals (1) The Chief Executive Officer of the Ministry of Health or the Chief Executive Officer (or any person authorised by either of them) may destroy any diseased pig or other animal wherever found, or may require the owner thereof or some other person to destroy it, and any owner of such who fails to comply with such requirement shall be liable.	Fine not exceeding 1 penalty unit.	n/a
24	Owner of Brand to Register Name (1) Every owner of stock who uses a brand which has not been registered shall apply to the Chief Executive Officer for the brand to be registered by him or her, and shall on such application deposit 2 correct copies or impressions of his or her brand on the form supplied for the purpose. (2) There shall be paid by the owner of every brand to the Chief Executive Officer a fee of 20 sene for the registration of such brand. (3) Every owner who uses a brand which has not been registered shall be liable.	Fine not exceeding 1 penalty unit.	n/a

26	<p>Similar brands not to be registered</p> <p>(1) The Chief Executive Officer shall not register any brands which in his or her opinion are likely to lead to mistakes or confusion.</p> <p>(2) If any two owners of stock have the same or similar brands, the Chief Executive Officer may require the owner of the brand last registered to alter the brand.</p> <p>(3) Any owner who refuses or neglects to alter a brand accordingly when duly required to do so, and afterwards uses the said brand, shall be liable.</p>	Fine not exceeding 1 penalty unit.	n/a
27	<p>Using another person's brand</p> <p>(1) After any owner of stock has registered a brand no other person in Samoa shall, without the authority of such stock owner, brand any stock with the same brand, or with any brand bearing the same mark, or one so nearly similar as in the opinion of the Chief Executive Officer to be not easily distinguishable therefrom, or make or cause to be made any branding iron bearing the same or a nearly similar brand as aforesaid.</p> <p>(2) Every person who offends against this section shall be liable.</p>	Fine not exceeding 1 penalty unit.	n/a
29	<p>Defacing brands</p> <p>(1) Every person who destroys, defaces or alters the brand on any stock, or is a party to the destruction, defacement, or alteration thereof, unless the person is the lawful owner of such stock, is liable.</p>	Fine not exceeding 1 penalty unit for each head of stock in respect of which such offence has been committed.	n/a
30	<p>Using unregistered brand</p> <p>(1) Every person who brands any stock with a brand which is not registered, or of which he or she is not the registered owner, is liable.</p>	Fine not exceeding 1 penalty unit for each head of stock in respect of which such offence has been committed.	n/a

35	<p>Offences</p> <p>(1) Any person who uses for breeding purposes any stallion or bull which is not approved for such purposes, and every owner of any such stallion or bull who wilfully permits the same to be so used, and also any person who fails to comply with, or who commits a breach of, any provision of this Ordinance or any regulation made thereunder is guilty of an offence and shall on conviction be liable.</p>	Fine not exceeding 1 penalty unit. If such offence is a continuing one a fine not exceeding 1 penalty unit for every day during which such offence continues.	n/a
43A	<p>Exportation of Birds</p> <p>(1) No person shall, without the prior written authority of the Minister, export or attempt to export from Samoa any bird, whether native, introduced, or imported, or that has migrated to Samoa or has arrived in Samoa and become established there (but not including any domestic bird), or any feathers, egg or other part of any such bird.</p> <p>(2) The Minister in his or her discretion may refuse to grant authority under the subsection (1) or may grant authority either unconditionally or subject to such conditions as the Minister thinks fit to impose, and may at any time revoke or vary any authority previously granted.</p> <p>(3) Before granting any authority under this section to export any bird, the Minister may require the applicant to satisfy the Minister that a permit for its importation into the country to which it is proposed to be exported has been granted by the appropriate authority in that country.</p>	Fine not exceeding 10 penalty units.	Imprisonment for a period not exceeding 6 months.

Arms Ordinance 1960:

Sec.	Offence	Maximum Fine	Maximum Term of Imprisonment
16	Obstruction of Police (1) Every person who obstructs a member of the Police of any rank in the exercise of any right of search, seizure, or detention conferred by this Ordinance commits an offence, and shall be liable.	n/a	Imprisonment for a term not exceeding 1 year.

Fisheries Act 1988:

Sec.	<i>Offence</i>	<i>Maximum Fine</i>	<i>Maximum Term of Imprisonment</i>
21	Offences (1) Where a foreign fishing vessel is used in contravention of section 8(1), the master, owner and charterer shall each be guilty of an offence	Fine not exceeding 2 penalty units.	

Maintenance and Affiliation Act 1967:

Sec.	Offence	Maximum Fine	Maximum Term of Imprisonment
77	<p>Failing to maintain wife, husband or children</p> <p>(1) Every person who without reasonable cause fails to provide his wife or her husband with adequate maintenance and every parent who without reasonable cause fails to provide any of his or her children with adequate maintenance, shall be guilty of an offence</p> <p>(2) If, on the hearing of any application under Part V or Part VI of this Act alleging that the defendant has failed to make adequate provision for the maintenance of his wife or her husband or his or her child, it is proved to the satisfaction of the Judge (whether the defendant is present before him or her or not) that the defendant has so failed and in respect of such failure has committed an offence against this section, the Judge may, if the Judge thinks fit in the exercise of his or her discretion, and either in addition to or in lieu of making a maintenance order against the defendant, convict the defendant of that offence in the same manner as if the hearing of the application was the hearing of an information for that offence.</p>		Imprisonment for a term not exceeding 6 months.
79	<p>Leaving Samoa while payments under maintenance order are in arrears</p> <p>(1) Every person against whom a maintenance order has been made, either before or after the commencement of this Act, while any money payable under the order is in arrear and unpaid, leaves or attempts to leave Samoa without the permission in writing of a Judge shall be guilty of an offence</p>		Imprisonment for a term not exceeding one year.
82	<p>Leaving Samoa while failing to make adequate provision for maintenance of wife or husband -</p> <p>(1) Every person who without reasonable cause fails to provide his wife or her husband with adequate maintenance, and who at any time while failing so to do leaves or attempts to leave Samoa without the permission in writing of a District Court Judge shall be guilty of an offence</p>		Imprisonment for a term not exceeding one year.

83	<p>Leaving Samoa while failing to provide for maintenance of child</p> <p>(1) Every parent of a child who without reasonable cause fails to provide that child with adequate maintenance, and who at any time while failing so to do leaves or attempts to leave Samoa without the permission in writing of a Judge, shall be guilty of an offence</p>		Imprisonment for a term not exceeding one year.
85	<p>Person against whom affiliation order made leaving Samoa without permission</p> <p>(1) Every person against whom an affiliation order is made prior to the birth of the child, and who leaves or attempts to leave Samoa without the permission in writing of a Judge at any time within 12 months after the making of the order, shall be guilty of an offence</p>		Imprisonment for a term not exceeding one year

Narcotics Act 1967:

Sec.	Offence	Maximum Fine	Maximum Term of Imprisonment
6	<p>Unlawful cultivation of prohibited plants</p> <p>(1) Every person who:</p> <ul style="list-style-type: none"> (a) cultivates any prohibited plant; or (b) has in his or her possession the seed of any prohibited plant,- commits an offence against this Act, and is liable on conviction to imprisonment for a term not exceeding 7 years. <p>(2) If the Court is satisfied that any offence against this section was not committed wilfully, then the offender shall be liable to a fine not exceeding 2 penalty units, or imprisonment, or imprisonment for a term not exceeding 3 months, or both such a fine and imprisonment, instead of being liable to the penalty specified in subsection (1) of this section.</p> <p>(3) It shall be a defence to a charge under subsection (1) of this section if the defendant proves:</p> <ul style="list-style-type: none"> (a) that he or she cultivated the prohibited plant or had in his or her possession the seed of the prohibited plant, as the case may be, to which the charge relates, pursuant to and in accordance with the conditions of a licence granted under this Act by the Chief Executive Officer; or (b) that the prohibited plant or the seed as the case may be, to which the charge relates, is a variety of <i>Papaver Somniferum</i> L., and that it was not intended to be a source of any narcotic or that it was not being developed as a strain from which a narcotic could be produced. 	fine not exceeding 2 penalty units, or imprisonment, or both	imprisonment for a term not exceeding 3 months

13	<p>Miscellaneous offences</p> <p>(1) Every person commits an offence against this Act who:</p> <ul style="list-style-type: none"> (a) Uses or permits to be used any premises or vehicle for the purpose of the commission of an offence against this Act; or (b) Has in his or her possession any needle, syringe, pipe or other utensil for any such purpose; or (c) Without lawful excuse smokes or otherwise uses prepared opium or is on premises being used for the smoking of opium; 	<p>24. General penalty for such breach - (1) Every person who commits an offence against this Act or the regulations for which no other penalty is provided by this Act or the regulations is liable to a fine not exceeding 2 penalty units or to imprisonment for a term not exceeding 3 months, or to both such fine and imprisonment.</p>	<p>imprisonment for a term not exceeding 3 months</p>
20	<p>Failure to comply with conditions of licence</p> <p>(1) Every person who acts in contravention of or fails to comply with any term or condition of any licence issued under or in pursuance of this Act is guilty of an offence</p>	<p>Fine not exceeding 2 penalty units.</p>	
22	<p>Failure to answer question -</p> <p>(1) Every person who fails or refuses to answer any question which any officer of Customs or Health or constable, or inspector is authorised by this Act to put to that person for the purposes of this Act and does put to him or her, or who does not truly answer the same, is guilty of an offence against this Act.</p>	<p>fine not exceeding 2 penalty units or to imprisonment or both</p>	<p>imprisonment for a term not exceeding 3 months</p>

23	<p>General offence of breach of provisions of Act or regulations</p> <p>(1) Every person commits an offence against this Act or the regulations who acts in contravention of or fails to comply in any respect with any provision of this Act or the regulations, or of any requirement, direction, prohibition, notice, approval, or condition given or imposed thereunder.</p>	fine not exceeding 2 penalty units or to imprisonment or both	imprisonment for a term not exceeding 3 months
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Police Ordinances Act 1961:

Sec.	Offence	Maximum Fine	Maximum Term of Imprisonment
3	<p>Offences against public cleanliness and convenience</p> <p>(1) Every person commits an offence and is liable to a fine of up to 2 penalty units who:</p> <ul style="list-style-type: none"> (a) Throws or places any glass, filth, dirt, rubbish or other matter of a similar nature, or any earth, stones or other material upon any public place; or (b) Places any hoarding, scaffolding, timber, bricks or other building material upon any public place without the permission of the Commissioner of Police, or otherwise than in accordance with the terms of any such permission; or (c) Burns any litter, straw, wood, shavings or other combustible material in any public place, or in any open space so as to endanger any building near thereto; or (d) Leaves any inflammable material in any public place or in any open space near a building; or (e) Casts into Apia Harbour or onto or into any foreshore place or stream any log or floating thing which is likely to become a danger to boats or shipping; or (f) Opens any drain or sewer or removes the surface of any public footpath or public place without having first obtained the permission of the Chief Executive Officer of the Ministry of Works, Transport and Infrastructure; or (g) Has any awning or showboard or signboard on any public footpath not being 8 feet clear above such footpath, or hangs any goods on or under such awning over such footpath; or (h) Exposes for sale any article in or outside any shop window abutting on a public place so as to encroach thereon; or (i) Suspends or places any carcase, meat or offal so as to overhang any part of a public place; or (j) Empties any privy or cesspool or carts away any nightsoil or other offensive matter, without the permission of, and without having taken such precautions as may be required by, the Chief Executive Officer of the Ministry of Works, 	2 penalty units	

	<p>Transport and Infrastructure; or</p> <p>(k) Spills or casts, or allows to be spilt or cast, into or upon any public place any nightsoil or other offensive matter; or</p> <p>(l) Slaughters, except in case of inevitable necessity, or skins any animal upon any public place, or permits any slaughtered animal or skin to remain there, or leaves any dead animal on such place; or</p> <p>(m) Throws or leaves any dead animal or part thereof, or animal remains or offensive matter of any kind, upon any public place, or into any river, creek, stream or other water, or on the bank thereof; or</p> <p>(n) Suffers any dead animal or part thereof to remain unburied upon his or her land, or on premises in his occupation, so as to become a nuisance to any other persons; or</p> <p>(o) Neglects to bury or cause to be buried the body or part of the body of any animal belonging to him or her, or in his or her charge or keeping, that may have died while straying or while being driven from one place to another; or</p> <p>(p) Wantonly or maliciously disturbs any person by blowing any horn, beating any drum, ringing any bell, or using any other noisy instrument, or uttering the cry ususu contrary to Samoan custom; or</p> <p>(q) Places any placard or other document, writing or painting on, or otherwise defaces, any house or building or any wall, fence, lamp-post, or gate, without the consent of the occupier or owner thereof; or</p> <p>(r) Places any advertisement or writing on, or otherwise defaces or removes any tomb, monument, memorial, or any object of interest which may be declared to be such by Proclamation of the Head of State in the Gazette; or</p> <p>(s) Removes any sand, boulders or stone from any foreshore or from the bed or bank of any stream without the permission in writing of the Chief Executive Officer of the Ministry of Works, Transport and Infrastructure; or</p> <p>(t) Blasts any rock, stone, or timber in or near any public place without the permission of the Director of Works or does not comply with any directions in regard thereto, given by the said Chief Executive Officer; or</p> <p>(u) Discharges any firearm without reasonable cause, or sets off any fireworks or</p>		
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	<p>explosive material in or on any public place, or so near thereto as to endanger, annoy or frighten passers-by or residents; or</p> <p>(v) Permits any horse to serve a mare in or within sight of any public place; or</p> <p>(w) Without lawful justification, places any poison in any place so as to be a source of danger to human beings or to animals; or</p> <p>(x) Permits any horse, bull, cow, pig or other animal to be tethered whether the same be tethered on private property or otherwise, in such a manner that the animal so tethered is enabled to encroach on any public road or public place; or</p> <p>(y) Permits any horse, sheep, pig, goat, or cattle to wander or be at large in any public place or to trespass upon any land; or</p> <p>(z) Without lawful justification obstructs any public place, or creates any source of danger therein, or otherwise commits any public nuisance therein.</p>		
4	<p>Offences relating to public order and interest</p> <p>(1) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine of 2 penalty units who:</p> <p>(a) Uses any profane, indecent or obscene language in any public place or within hearing of any person in a public place; or</p> <p>(b) Disturbs any congregation assembled for public worship, or any public meeting or audience at any entertainment or lecture; or</p> <p>(c) Wantonly or maliciously defaces, injures or removes any notice of a public nature exhibited by any person having authority so to do; or</p> <p>(d) Publicly advertises a reward for the return of any property which has been stolen or lost and in such advertisement uses any words purporting that no questions will be asked; or</p> <p>(e) Repealed</p> <p>(f) Uses the plants ava niukini or futu or any derivative thereof for the purpose of capturing fish or has in his possession any part or derivative thereof in a form adapted for the purpose of capturing fish; or</p>	2 penalty units	Imprisonment not exceeding 3 months

	<p>(g) Uses any threatening, abusive, insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned; or</p> <p>(h) Throws or discharges any stone or other thing at or to the danger of any vehicle or building, whether or not the stone or thing actually hits the object at which it is aimed; or</p> <p>(i) Who hits or throws any ball or other like object used in playing cricket thereby causing damage, personal injury, or annoyance to any motor, pedestrian or other traffic on any public highway; or</p> <p>(j) Is guilty of any disorderly conduct in any public place.</p>		
4A	<p>Procession, parade or march</p> <p>(1) Every person or group of persons who desires to hold a procession, parade or march along Main Beach Road shall, before holding such procession, parade or march, first obtain a permit from the Commissioner of Police who shall determine whether a permit shall be granted or refused.</p> <p>(2) Every person or group of persons who holds a procession, parade or march pursuant to a permit granted by the Commissioner of Police shall comply with any terms or conditions specified in the permit.</p> <p>(3) Every person or group of persons who is refused a permit under subsection (1) shall not hold a procession, parade or march along Main Beach Road.</p> <p>(4) Every person who contravenes any provision of this section commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.</p> <p>(5) This section shall not apply to any procession, parade or march held during the Independence Day Celebrations for the purpose of such Celebrations or held for the purpose of a funeral.</p>	2 penalty units	
5	<p>Insanitary premises</p> <p>(1) Every one is liable to a fine not exceeding 2 penalty units who permits any premises in his occupation or belonging to him or her to be in an insanitary or offensive condition to the danger or annoyance of the public or his or her neighbours.</p>	2 penalty units	

6	<p>Cruelty to animals -</p> <p>(1) Every person is liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding 2 penalty units or to both who:</p> <p>(a) Cruelly beats, kicks, ill-treats, overrides, overdrives, overloads, tortures, infuriates, or terrifies any animal; or causes or procures any animal to be so used; or, being the owner or having the charge of any animal, permits it to be so used; or by wantonly or unreasonably doing or omitting to do any act, or causing or procuring the commission or omission of any act, causes any unnecessary suffering to any animal, or, being the owner or having the charge of any animal, permits any unnecessary suffering to be so caused to it; or</p> <p>(b) Being the owner of or having the charge of any animal, omits to supply any such animal with proper and sufficient food, water, or shelter; or</p> <p>(c) Slaughters, brands, conveys, or carries, or causes to be slaughtered, branded, conveyed, or carried, any animal in such a manner or position as to subject such animal to unnecessary pain or suffering.</p> <p>(2) In this and the next succeeding section "animal" includes any beast or bird of any kind or species whatever, whether of domestic or wild nature and whether indigenous or imported into Samoa.</p> <p>(3) Any constable may without warrant enter into any place where he or she has reasonable cause to believe that animals are kept and inspect the condition of the same and of any animal therein.</p> <p>(4) Any constable may with the authority of a Judge of the Supreme Court or a District Court destroy any animal which by reason of its weakness, disablement or diseased state, ought to be killed:</p> <p>PROVIDED THAT a constable shall not incur any liability, civil or criminal, where in cases of urgency he or she destroys a weak, disabled or diseased animal without such authority if his or her action is subsequently approved by a Judge of the Supreme Court or a District Court Judge.</p> <p>(5) Any constable may arrest any offender under this section without warrant and take possession of any animal believed by him or her to be the subject of the offence and</p>	2 penalty units	Imprisonment not exceeding 12 months
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	<p>detain it in a place of safety until the information in respect of the offence has been determined.</p> <p>(6) The reasonable costs of the maintenance and treatment of any animal detained under subsection (5) shall be determined by the Court upon the conviction of an offender and the non-payment of the amount so determined within the time fixed in that behalf shall constitute an offence punishable by a fine not exceeding 1 penalty unit which shall be additional to the first-mentioned amount.</p>		
7	<p>Wilful trespass -</p> <p>(1) Everyone is liable to a fine not exceeding 2 penalty units who wilfully trespasses on land or premises in the occupation of any other person.</p>	Penalty not exceeding 2 penalty units	
8	<p>Publication of false notices -</p> <p>(1) Every person is liable to a fine not exceeding 2 penalty units who:</p> <p>(a) Sends or causes to be delivered to the proprietor, printer, or publisher of any newspaper for the purpose of publication therein a false notice of the birth of a child or of the marriage of any persons or of the death of any person; or</p> <p>(b) Being a printer or a publisher of a newspaper, prints or publishes any such notice knowing the same to be false.</p> <p>(2) Every printer or publisher of a newspaper is liable to a fine not exceeding 2 penalty units who on application in writing made to him or her by a person interested within 14 days from the publication of the notice of a birth, marriage or death in such newspaper refuses to furnish the person so applying with the name of the person who sent or delivered such notice.</p>	Penalty not exceeding 2 penalty units	

9	<p>Publication of false statements</p> <p>(1) Every person is liable to a fine not exceeding 2 penalty units who makes or repeats or publishes any false statement or originates or repeats or publishes any false rumour whether such person believes such statement or rumour to be false or not, if such statement or rumour is of a nature likely to agitate or distress or to create disaffection, resentment or dissension among the population of Samoa or any section of it and if such person knew or reasonably might have known that such statement or rumour was of such a nature:</p> <p>PROVIDED HOWEVER THAT a prosecution under this section shall be heard before a District Court Judge, and provided also that no such prosecution shall be instituted without the previous consent in writing of the Attorney-General.</p>		
10	<p>Resisting and misleading the police</p> <p>(1) Every person commits an offence and is liable to imprisonment for a term not exceeding one year or to a fine of 2 penalty units who:</p> <ul style="list-style-type: none"> (a) Resists, assaults or wilfully obstructs any constable in the execution of his or her duty or any person acting in aid of any such constable; (b) Incites or encourages any person to resist assault or obstruct any constable in the execution of his or her duty or any person acting in aid of any such constable; (c) By word or action threatens any constable with intent to intimidate him or her in the execution of his or her duty. <p>(2) Every person who wilfully gives a false name or information to a constable with intent to mislead him or her in the execution of his or her duty shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding 3 months.</p>		Imprisonment not exceeding 3 months

11	<p>Liabilities of traders</p> <p>(1) Every trader commits an offence and is liable to imprisonment for a term not exceeding 6 months or to a fine of 5 penalty units who:</p> <p>(a) Gives out goods or money belonging to his or her employer on credit without the written authority of his or her employer;</p> <p>(b) Fails at any time fully and properly to account for the goods and money of his or her employer received by and entrusted to such trader in the ordinary course of his or her employment.</p> <p>(2) Nothing in this section shall affect the liability of any trader to be prosecuted for theft.</p> <p>(3) "Trader" means the manager or person in charge of a trading station in Samoa employed as such by the owner thereof.</p>	5 penalty units	Imprisonment not exceeding 6 months
12	<p>Control of entertainments and meetings</p> <p>(1) In this section "public entertainment" includes any cinema screening, theatrical or vaudeville performance, concert, dance, musical entertainment (whether live or recorded), sporting fixture or contest, or other recreational entertainment or amusement to which the public are admitted or in which the public may take part, whether or not a charge is made to the public for admission.</p> <p>(2) Every person who holds or takes part in the conduct of a public entertainment in a building that has not been approved in writing for such entertainment by the Commissioner of Police commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units or to imprisonment for a term not exceeding 6 months.</p> <p>(3) It shall be lawful for any constable in uniform to enter and to remain in any building or place in or at which a public entertainment is taking place or is about to take place.</p> <p>(4) Any constable in uniform present at a public entertainment may stop any wrestling or boxing or other contest or match in which physical force is employed if in his or her opinion one or more of the contestants are not in a fit condition to continue such contest or match.</p>	2 penalty units	

	<p>(5) Any contestant who continues and every person who incites or encourages a contestant to continue a match or contest which has been duly stopped by a constable commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units.</p> <p>(6) The Commissioner of Police by warrant under his or her hand may prohibit the holding of any proposed public entertainment either absolutely or except upon and subject to such conditions as he or she shall impose if he or she is satisfied that such prohibition or restriction is necessary for the peace, order or good government of Samoa and without limiting the conditions which may be imposed by the Commissioner under this subsection, he or she may specify the times of day at which any public entertainment is to cease, and any such condition may be imposed in respect of any one or more public entertainments in Samoa or in any specified locality, area or place in Samoa.</p> <p>(7) Every person who takes part in the conduct of a public entertainment in breach of the provisions of any warrant made under the last preceding subsection commits an offence and shall be liable for every such offence to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 6 months.</p> <p>(8) Any commissioned officer of the Police Service present at a public entertainment may stop that public entertainment, or permit it to continue only subject to such conditions as he shall impose, if he is satisfied that such stopping or imposition of conditions is necessary in the interests of peace, order, or public welfare.</p> <p>(9) Every person who takes part in the continued conduct of a public entertainment in breach of any direction given by a commissioned officer of the Police Service under subsection (8) commits an offence and shall be liable for every such offence to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 6 months.</p>		
13	<p>Gaining admission without payment -</p> <p>(1) Every person commits an offence and shall be liable on conviction to a fine of 2 penalty units who without right obtains admission or enters any place without having paid any fee or subscription lawfully chargeable for admission thereto at the time he obtains such admission.</p>	2 penalty units	

14	<p>Public billiard rooms</p> <p>(1) Every public billiard room shall be closed from half past 10 o'clock at night until 7 o'clock on the following morning except on Saturdays when it shall be closed from half past 10 o'clock at night until 7 o'clock on the following Monday morning.</p> <p>(2) No person under the age of 16 years shall be permitted to enter the premises of any public billiard room.</p> <p>(3) Every person being the proprietor, manager or person in charge of a public billiard room commits an offence and shall be liable on conviction to a fine of 2 penalty units who:</p> <p>(a) Fails to close the public billiard room as aforesaid, or permits any game to be played therein during the hours the public billiard room is required to be closed; or</p> <p>(b) Permits any person under the age of 16 years to enter the premises of any public billiard room.</p>	2 penalty units	
15	<p>Impostors, loiterers, and trespassers</p> <p>(1) Every person shall be liable to imprisonment for a term not exceeding 6 months or to a fine of 1 penalty unit who:</p> <p>(a) Wanders abroad or places himself in any public place to beg or gather alms, or causes or procures or encourages any child so to do; or</p> <p>(b) Solicits, gathers, or collects alms, subscriptions, or contributions under any false pretence; or</p> <p>(c) Imposes or endeavours to impose upon any charitable institution or private individual by any false or fraudulent representation, either verbally or in writing, with a view to obtain money or any other benefit or advantage; or</p> <p>(d) Is found by night without lawful excuse (the proof of which excuse shall be on him) in or on any building or in any enclosed yard, boat, or other vessel or in or upon any vehicle; or</p> <p>(e) Is found near any port or harbour, river, canal, navigable stream, dock or basin, or any quay or wharf, or any other public place, or any house, building, or other</p>	1 penalty unit	Imprisonment not exceeding 6 months

	place adjacent to any such port or harbour, river, canal, navigable stream, dock or basin, or quay or wharf, with intent to commit any offence under this Ordinance or any other enactment.		
16	<p>Drunkenness and prostitution -</p> <p>(1) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine of 2 penalty units who:</p> <p>(a) Is found drunk in any public place; or</p> <p>(b) Entices or solicits any person or persons in any public place for the purposes of prostitution.</p>	2 penalty units	Imprisonment not exceeding 3 months
17	<p>Stowing away</p> <p>(1) Every person who secretes himself or herself and goes to sea in a ship without the consent of the owner, master, mate or purser of the ship or of any other person entitled to give that consent, is liable to imprisonment for a period not exceeding 6 months.</p> <p>(2) For the purposes of this section "ship" shall have the same meaning as defined in section 2 of the Crimes Ordinance 1961.</p>		Imprisonment not exceeding 6 months
18	<p>Hawking and peddling goods</p> <p>(1) Any person may peddle:</p> <p>(a) Foodstuffs (other than milk, cream, bread or meat) grown in or produced in Samoa;</p> <p>(b) Fish and shell fish caught within territorial limits of Samoa;</p> <p>(c) Samoan curios and artifacts of the Samoan people:</p> <p>PROVIDED THAT no person shall be entitled by virtue of the provisions of this section to sell any Samoan foodstuffs in breach of any law regulating markets.</p> <p>(2) No person shall peddle any goods or things except those authorised by the last preceding subsection unless he or she is the holder of a current pedlar's licence.</p> <p>(3) Every pedlar's licence shall be issued by and at the discretion of the Commissioner of the Police Service upon the payment of \$50 and shall continue in force until the</p>	2 penalty units	

	<p>31st day of March then next ensuing.</p> <p>(4) Every person who shall peddle any goods or things save under the authority of and in accordance with the provisions of this section shall be guilty of an offence and be liable on conviction to a fine of 2 penalty units.</p>		
19	<p>Sale of unwholesome provisions</p> <p>(1) Every one commits an offence and is liable on conviction to a fine of 2 penalty units who sells, or exposes for sale, or has in his or her possession with intent to sell, any food or drink which is unsound or unfit for human consumption.</p>	2 penalty units	
20	<p>Polluting water</p> <p>(1) Every person is liable to imprisonment for a term not exceeding 6 months or to a fine of 2 penalty units who throws any offensive matter into or otherwise pollutes or contaminates any river, watercourse, well, cistern, or other place from which water for drinking purposes is obtained.</p>	2 penalty units	Imprisonment not exceeding 6 months
21	<p>Insulting remarks as to genealogy</p> <p>(1) Every person who publishes or causes to be published without lawful excuse, any insulting or derogatory words concerning the genealogy or parentage of any person, with intent to provoke a breach of the peace or with intent to insult, taunt, annoy or offend, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine of 2 penalty units.</p> <p>(2) It shall be no defence to any proceedings under this section that such insulting or derogatory words are true, and no evidence shall be admitted to prove the truth or untruth of such words.</p> <p>(3) For the purpose of this section "to publish" means to put into writing or any other permanent form or to speak words so that the same may be read or heard by any person whether such person be the person whose genealogy or parentage is referred to or not.</p>	2 penalty units	Imprisonment not exceeding 3 months

22	<p>Consumption and importation of methylated spirit</p> <p>(1) Every one who consumes or attempts to consume methylated spirit, whether subjected to any process of purification or not, or who has methylated spirit in his or her possession for the purpose of consumption by himself or herself or by any other person, is liable to imprisonment for a term not exceeding 3 months or to a fine of 2 penalty units or to both such imprisonment and fine.</p> <p>(2) "Methylated spirit" means any spirit mixed with methyl-alcohol or wood spirit, or to which any other substance has been added that has the same effect as methyl-alcohol or wood spirit in rendering spirit unsuitable for human consumption, and includes any spirit from which methyl-alcohol, wood spirit or such other substance has been unlawfully removed.</p> <p>(3) No person shall without the consent in writing of the Minister responsible for Customs or otherwise than in accordance with the terms of such consent import into Samoa methylated spirit or similar preparations other than mineralised methylated spirit required for domestic purposes.</p> <p>(4) Every person who acts in contravention of the provisions of the last preceding subsection commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine of 1 penalty unit.</p>	2 penalty units	Imprisonment not exceeding 3 months
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Road Traffic Ordinance 1960:

Sec.	Offence	Maximum Fine	Maximum Term of Imprisonment
34	<p>Provisions as to disqualifications and suspensions</p> <p>(1) Where a person who is disqualified by virtue of a conviction or order under this Part is the holder of a driving licence, the driving licence shall be suspended so long as the disqualification continues in force.</p> <p>(2) A driving licence suspended by virtue of this Part shall during the time of suspension be of no effect.</p> <p>(3) Any person who by virtue of a conviction or order under this Part is disqualified from holding or obtaining a driving licence may, at any time after the expiration of 6 months from the date of the conviction or order, and from time to time apply to the Court to remove the disqualification, and on any such application the Court may as it thinks proper, having regard to the character of the person disqualified and his or her conduct subsequent to the conviction or order, the nature of the offence, and any other circumstances of the case, either by order remove the disqualification as from such date as may be specified in the order, or refuse the application:</p> <p>PROVIDED THAT, where an application under this subsection is refused, a further application thereunder shall not be made within 3 months after the date of the refusal.</p> <p>If the Court orders a disqualification to be removed, the Court shall cause particulars of the order to be endorsed on the licence, if any, previously held by the applicant.</p> <p>(4) If any person who under the provisions of this Part is disqualified from holding or obtaining a driving licence, applies for or obtains a driving licence while he or she is so disqualified, or if any such person while he or she is so disqualified drives on a road a motor vehicle, or, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, a motor vehicle of that class or description, that person shall be liable on summary conviction</p>	5 penalty units	Imprisonment not exceeding 6 months

35	<p>Provisions as to endorsements</p> <p>(1) An order that the particulars of any conviction or of any disqualification to which the convicted person has become subject are to be endorsed on any driving licence held by the offender shall, whether the offender is at the time the holder of a driving licence or not, operate as an order that any driving licence he or she may then hold or may subsequently obtain, shall be so endorsed until he or she becomes entitled under this section to have a driving licence issued to him or her free from endorsements.</p> <p>(2) Where an order is made requiring any driving licence held by an offender to be endorsed, then:</p> <p>(a) If the offender is at the time the holder of a driving licence, he or she shall if so required by the Court produce the driving licence within 5 days or such longer time as the Court may determine for the purpose of endorsement; and</p> <p>(b) If he or she is not then the holder of a driving licence, but subsequently obtains a driving licence, he or she shall within 5 days after so obtaining the driving licence produce it to the Court for the purpose of endorsement and if he or she fails to do so, he or she shall be guilty of an offence; and if the driving licence is not produced for the purpose of endorsement within such time as aforesaid, it shall be suspended from the expiration of such time until it is produced for the purpose of endorsement.</p> <p>(3) On the issue of a new driving licence to any person, the particulars endorsed on any previous licence held by him or her shall be copied on to the new driving licence unless he or she has previously become entitled under this section to have a driving licence issued to him or her free from endorsements.</p> <p>(4) If any person whose driving licence has been ordered to be endorsed and who has not previously become entitled under this section to have a driving licence issued to him or her free of endorsement applies for or obtains a driving licence without giving particulars of the order, he or she shall, be liable on summary conviction.</p>	2 penalty units (any driving licence so obtained shall be of no effect)	Imprisonment not exceeding 3 months (any driving licence so obtained shall be of no effect)
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38A	<p>Dangerous riding on, or overcrowding of, vehicles</p> <p>(1) No person shall ride, and the driver shall not permit any person to ride in or on any vehicle:</p> <p>(a) In a manner or position which may be liable to cause injury to that person or any other person;</p> <p>(b) Where the number of passengers in such vehicle exceeds any maximum number of seated passengers as may be set by the Principal Licensing Authority for that vehicle:</p> <p>PROVIDED THAT for the purpose of the preceding paragraph (b):</p> <p>(i) Any 2 children under the apparent age of 12 years shall be counted as 1 passenger;</p> <p>(ii) Any 3 children under the apparent age of 12 years shall be counted as 2 passengers.</p>	10 penalty units	Imprisonment not exceeding 12 months
38B	<p>38B. Unsafe vehicles</p> <p>(1) No person shall operate any vehicle in such condition or in such manner or so loaded or with a load so unsafe or insecure, as to cause, or be liable to cause, injury to any person.</p>	10 penalty units	Imprisonment not exceeding 1 year
39	<p>Reckless or dangerous driving</p> <p>(1) If any person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case including the nature, condition, and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, he or she shall be guilty of an offence and shall be liable upon conviction</p>	10 penalty units	N/A to this jurisdiction

40	<p>Driving when drunk or drugged</p> <p>(1) Any person who when driving or attempting to drive or when in charge of a motor vehicle on a road or other public place is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle shall be guilty of an offence and shall be liable upon conviction</p>	10 penalty units	N/A to this jurisdiction
44	<p>Duties of drivers in cases of accidents</p> <p>(1) Where an accident arising directly or indirectly from the use of a motor vehicle occurs to any person or to any horse or vehicle in charge of any person, the driver of the motor vehicle shall stop, and shall also ascertain whether he or she has injured any person, in which event it shall be his or her duty to render all practicable assistance to the injured person including transportation of that person to hospital.</p> <p>(2) In the case of any such accident (whether any person has been injured thereby or not) the driver of the motor vehicle shall, if required, give to any constable or to any person concerned his or her name and address and also the name and address of the owner and the numbers assigned to the registration plates and licence label of the motor vehicle. If the accident involves injury to any person, the driver shall report the accident in person at the nearest police station or to a constable as soon as reasonably practicable, and in any case not later than 24 hours after the time of the accident, unless the driver is incapable of doing so by reason of injuries sustained by him or her in the accident.</p> <p>(3) Every driver who fails to comply with any obligation imposed on him or her by subsection (1) in any case where no other person is injured in the accident commits an offence and is liable on summary conviction</p>	2 penalty units	Imprisonment not exceeding 3 months
55A	<p>Plying public service vehicles in dangerous condition</p> <p>(1) Every person who, being the owner of a public service vehicle, knowingly allows the vehicle to ply for hire in a dangerous condition commits an offence and shall be liable on conviction to imprisonment</p>	5 penalty units	Imprisonment not exceeding 6 months

58A	Offence to carry passengers for reward on goods or pick-up vehicles (1) It shall be an offence to use or permit to be used any goods vehicle or pick-up vehicle for the purpose of carrying passengers for hire or reward and on conviction every person shall be liable	10 penalty units	Imprisonment not exceeding 1 year
71(1)	Forgery, etc., of licences and certificates (1) If, with intent to deceive, any person: (a) Forges or alters or uses or lends to or allows to be used by any other person any licence, certificate, or warrant under any part of this Ordinance; or (b) Makes or has in his or her possession any document so closely resembling such a licence, certificate, or warrant as to be calculated to deceive he or she shall be guilty of an offence	10 penalty units	N/A to this jurisdiction
71(2)	(1) If any person for the purpose of obtaining the grant of any licence, certificate, or warrant to himself or herself or any other person or the variation of any licence, certificate, or warrant or for the purpose of preventing the grant or variation of any licence or for the purpose of procuring any condition or limitation in relation to a licence, knowingly makes any false statement he or she shall be guilty of an offence and upon conviction shall be liable	5 penalty units	Imprisonment not exceeding 6 months
72A	Offences and general penalties - (1) Any person who fails to do any act required by this Ordinance to be done and any person who does any act which this Ordinance forbids to be done commits an offence. (2) Any person convicted of an offence under this Ordinance or any regulation made thereunder for which no special penalty is provided shall be liable	Up to 2 penalty units for first offence Up to 4 penalty units for subsequent offence	Imprisonment not exceeding 3 months (for subsequent offence)
72A(3)	(1) Any person who commits a breach of any rule or traffic order made by the Principal Licensing Authority or by the Board for which no special penalty is provided in this Ordinance or any regulation made thereunder shall be liable on conviction	0.5 penalty units	

73	<p>Board may control traffic -</p> <p>(1) The Board may, with the consent of the Minister, by notice in the <i>Samoa Gazette</i> and in the <i>Savali</i> make traffic orders for any or all of the following purposes:</p> <ul style="list-style-type: none"> (a) Prescribing speed limits in any specified place or any specified route not being in excess of any speed limit prescribed by regulations under this Ordinance, and special speed limits may be prescribed for vehicles of a particular class; (b) Constituting one-way streets; (c) Prohibiting or restricting the use of specified roads by motor vehicles of any specified class or weight either generally or during specified hours, but not so as to prevent such access to premises as may reasonably be required; (d) Appointing public stands, parking places, and bus stops, and prescribing rules to be obeyed and rental to be paid to the Board by drivers of motor vehicles and other persons using the same; (e) Controlling the plying for hire of public service vehicles and directing in what places such vehicles shall or shall not stop to put down or pick up passengers and on what routes or streets such vehicles may or may not ply for hire; (f) Prescribing the times during which and the places at which goods vehicles may be parked for the purpose of loading or unloading goods; (g) Prohibiting touting; (h) Prohibiting the use of sound signals on any specified road between specified hours; (i) Establishing crossings for pedestrians and for providing for the precedence of vehicles and pedestrians respectively and generally with respect to the movement of traffic (including pedestrians) at or in the vicinity of a crossing; (j) Regulating or restricting the parking of vehicles or classes of vehicles subject to any general regulations as to parking; (k) Providing that vehicles shall stop at certain intersections or other places; (l) Such other purposes concerning any area of traffic regulation, traffic management and road usage not provided for under paragraphs (a) to (k). <p>(2) In addition to the power to make traffic orders conferred by subsection (1), the</p>	1 penalty unit.	
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	<p>Board may, with the approval of the Minister, make and promulgate in such manner as it thinks fit, rules in respect of any matter mentioned in section 70 for which provision has not been made by regulation:</p> <p>PROVIDED THAT no rule so made shall be inconsistent with any such regulation, and on the making of a regulation in regard to any matter, any rule inconsistent therewith shall to that extent be deemed to be abrogated.</p> <p>(3) The power conferred on the Board by this section shall be deemed to include power to vary or revoke the regulations to control the standing of motor vehicles on public roads published in the <i>Samoa Gazette</i> No. 85 of the 26th day of February 1935, and to make Traffic Orders relating to the standing of motor vehicles on public roads.</p> <p>(4) Any person contravening a traffic order made under this section is guilty of an offence and on conviction shall be liable</p>		
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