

LAWS OF WESTERN SAMOA

CRIMINAL PROCEDURE

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CRIMINAL PROCEDURE ACT 1972

1972,

No. 14

AN ACT to make provision for the procedure to be followed in criminal prosecutions.

(8 December 1972)

PART I
PRELIMINARY

1. Short title and commencement - (1) This Act may be cited as the Criminal Procedure Act 1972.

(2) This Act shall come into force on the day it is assented to by the Head of State.

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

"**Act**" includes "**Ordinance**", and vice versa.

"**Constable**" includes any member of the Police.

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

"**Court**" includes both the Supreme Court, and any Magistrate's Court of Western Samoa whether presided over by a magistrate or a Fa'amasino Fesoasoani.

"**Decision**" includes any judgement, decree, order, writ, declaration, conviction, sentence, opinion or other determination.

"**Defendant**" means any person charged with an offence, and includes, where appropriate, a defendant's counsel; and "**defence**" has a corresponding meaning.

"**Enactment**" includes each Article of the Constitution and any Act, Ordinance, Order, notice, warrant, rules and regulations in force in Western Samoa, whether made in Western Samoa or in New Zealand, and any part thereof.

"**Fa'amasino Fesoasoani**" means a Fa'amasino Fesoasoani who is appointed under, or whose appointment is continued by, the Magistrates' Courts Act 1969.

"**Informant**" means the person by whom an information is laid; and includes, in respect of any charge where an information has not been laid, the person responsible

for bringing the charge; and further includes, where appropriate, an informant's counsel or the prosecutor in respect of the charge.

"Judge" means a Judge appointed under the Judicature Ordinance 1961.

"Judicial Service Commission" means the Judicial Service Commission constituted by Article 72 of the Constitution.

"Magistrate" means a Magistrate who is appointed under, or whose appointment is continued by, the Magistrates' Courts Act 1969.

"Offence" means any act or omission for which under any enactment any person can be punished other than solely by means of a civil proceeding.

"Prison" means a prison within the meaning given to that term in the Prisons Act 1967, and includes a police gaol.

"Prosecutor" includes the Attorney-General and any legal officer or counsel or member of the police acting under the general or special instructions of the Attorney-General; and in a prosecution under section 108 of the Income Tax Administration Act 1974 includes the Commissioner of Inland Revenue and any person authorised in writing by him in that behalf and his counsel; and in a prosecution under section 55 of the Public Money Act 1964 includes any person appointed by the Minister of Finance in that behalf and his counsel; and in a private or local body prosecution includes the informant and his or its counsel; and **"prosecution"** has a corresponding meaning.

"Registrar" means the Registrar of a Court; and includes any Deputy Registrar.

"Remanding Officer" means a remanding officer within the meaning of Clause (4) of Article 6 of the Constitution as substituted by section 2 of the Constitution Amendment Act 1965.

"Representative", in relation to a corporation, means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this Act authorised to do.

"Rules" means rules made under, or applying pursuant to, section 176 of this Act.

"Rules Committee" means the Rules Committee as constituted under section 40 of the Judicature Ordinance 1961.

"State" means the Independent State of Western Samoa.

(2) A statement in writing, which need not be under seal, but which purports to be signed by any person having, or being one of the persons having, the management of the affairs of a corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this Act, shall be admissible without further proof as prima facie evidence that that person has been so appointed.

3. Application - (1) This Act shall apply to all proceedings in any Court where a person is proceeded against for an offence:

PROVIDED THAT, as to any matter of criminal procedure for which no special provision has been made by this Act or by any other law for the time being in force in Western Samoa, the law as to criminal procedure for the time being in force in New Zealand shall be applied so far as it shall not conflict or be inconsistent with this Act or any other law for the time being in force in Western Samoa.

(2) Nothing in this Act shall be construed to limit or affect in any way any provision of any other enactment conferring on any Court any power to pass a sentence or impose a punishment or make an order in addition to or instead of a sentence or punishment prescribed by this Act, or otherwise to deal with any offender.

PART II **PROCEDURE FOR PROSECUTION OF OFFENCES**

Arrest

4. Arrest without warrant - (1) No one shall be arrested without a warrant except pursuant to the provisions of this Act or of some other enactment expressly giving power to arrest without a warrant.

(2) Any person may arrest without a warrant any other person whom he finds committing any offence punishable by death or imprisonment for 3 years or more.

(3) Any constable, and all persons whom he calls to his assistance, may arrest and take into custody without a warrant:

(a) Any person whom he finds committing, or whom he has good cause to suspect of having committed, any offence punishable by death or imprisonment for 3 months or more; or

(b) Any person who within his view commits or commences to commit an offence against any of the provisions of the Police Offences Ordinance 1961 or the Road Traffic Ordinance 1960, and who either:

(i) fails to give his name and address on demand, or

(ii) after being warned by him to desist, persists in committing that offence; or

(c) Any person whom he finds committing, or whom he has good cause to suspect of having committed, a breach of the peace, or whom he finds in any public place, and has good cause to think is drunk, and whom he has good cause to believe might cause harm to others or come to harm himself as a result of the said breach of the peace or drunkenness.

(4) The foregoing provisions of this section shall be read subject to the express provisions of any enactment imposing any limitation, restriction or condition on the exercise of any power

to arrest without a warrant conferred on any constable by that enactment in respect of any specified offence or class of offences.

(5) Where under any enactment other than this Act any officer or person, not being a constable, has power to arrest any other person without a warrant, any constable may exercise that power in the same cases and in the same manner as that officer or person.

(6) Nothing in this section shall limit or affect any of the provisions of Part II of the Crimes Ordinance 1961 (which relates to matters of justification or excuse).

5. Power to enter premises without warrant to arrest offender or prevent offence - (1)

Where any constable is authorised by this Act or by any other enactment to arrest any person without a warrant, that constable, and all persons whom he calls to his assistance, may enter on any premises, without a warrant and by force if necessary, to:

(a) Arrest that person if the constable:

(i) has found that person committing any offence punishable by death or imprisonment for 3 months or more and is freshly pursuing that person; or

(ii) has good cause to suspect that that person has committed any such offence on those premises; or

(b) Prevent the commission of any offence that would be likely to cause immediate and serious injury to any person or property, if he has good cause to suspect that any such offence is about to be committed.

(2) If, in any case to which this section applies, the constable is not in uniform and any person in actual occupation of the premises requires him to produce evidence of his authority, he shall, before entering or proceeding further on the premises, produce his badge or other evidence that he is a constable.

(3) Nothing in this section shall affect in any way the power of any constable to enter any premises pursuant to a warrant.

6. Warrant to arrest defendant - (1) When an information has been laid and whether or not a summons has been issued or served:

(a) A Judge or a Magistrate may, if he thinks fit, issue a warrant, which shall be in the prescribed form (if any), to arrest the defendant and bring him before a Court; or

(b) A Fa'amasino Fesoasoani or a Registrar may issue a warrant, which shall be in the prescribed form (if any), to arrest the defendant and bring him before a Court if the defendant is liable on conviction to death or imprisonment; and

if, in the opinion of the Fa'amasino Fesoasoani or the Registrar:

(i) a warrant is necessary to compel the attendance of the defendant; or

(ii) a warrant is desirable having regard to the gravity of the alleged offence and the circumstances of the case.

(2) Every warrant to arrest a defendant shall be directed either to any constable by name or generally to every constable, and any such warrant may be executed by any constable.

7. Power to enter premises to arrest defendant with warrant - (1) For the purposes of executing any warrant referred to in section 6 of this Act, the constable executing it may at any time enter on to any premises, by force if necessary, if he has good cause to suspect that the defendant is on those premises.

(2) If, in any case to which this section applies, the constable is not in uniform and any person in actual occupation of the premises requires him to produce evidence that he is a constable, he shall, before entering or proceeding further on the premises, produce his badge or other evidence that he is a constable.

8. Withdrawal of warrant - Any warrant to arrest a defendant may be withdrawn by the person who issued it at any time before it is executed.

9. Duty of persons arresting - (1) It is the duty of every one arresting any other person to comply with the provisions of Clauses (3) and (4) of Article 6 of the Constitution (as that Clause (4) was substituted by section 2 of the Constitution Amendment Act 1965), relating to promptly informing the person arrested of the grounds of his arrest, and of any charge against him, and allowing him to consult a legal practitioner of his own choice without delay, and producing him before a remanding officer within 24 hours (excluding the time of any necessary journey).

(2) It is the duty of every one who arrests any other person pursuant to any process or warrant:

(a) If he has the process or warrant in his possession at the time of the arrest, to produce it if required by that person to do so;

(b) If he does not have the process or warrant in his possession at the time of the arrest, to show it to the arrested person as soon as practicable after the arrest, if that person so requires.

(3) Where under any enactment any person other than a constable has, by virtue of his office, a power of arrest without a warrant, he shall, whenever he arrests any other person pursuant to that power.

(a) If he has evidence of his appointment to that office in his possession at the time of the arrest, produce it if required by that person to do so;

(b) If he does not have evidence of his appointment in his possession at the time of the arrest, show it to the arrested person as soon as practicable after the arrest, if that person so requires.

(4) A failure to fulfil any of the duties mentioned in the foregoing provisions of this section shall not of itself deprive the person arresting, or his assistants, of protection from criminal

responsibility or civil proceeding, but shall be relevant to any inquiry whether the arrest might not have been effected, or the process or warrant executed, by reasonable means in a less violent manner.

(5) Nothing in this section shall limit or affect the express provisions of any enactment whereby:

(a) The burden of proving the absence of reasonable or probable cause, or the absence of justification, for any arrest is on any person;

(b) Any person having, by virtue of his office, a power of arrest without a warrant is entitled, in any specified circumstances, to exercise that power without the production of evidence of his appointment to that office, or is required, in exercising the power, to comply with any specified conditions or restrictions in addition to or instead of producing evidence of his appointment.

Commencement by Information

10. Commencement of proceedings - (1) Except where a person has been arrested without a warrant, all proceedings brought under this Act shall be commenced by the laying of an information in writing.

(2) Where a person has been arrested without a warrant and no information has been laid, particulars of the charge against him shall be set out in a charge sheet.

(3) The provisions of this Act shall apply with respect to every entry in a charge sheet as if that entry were an information.

11. Any person may lay an information - Except where expressly otherwise provided by any enactment, any person who has reasonable cause to suspect that an offence has been committed may lay an information for that offence.

12. Time for laying information - Except where some other period of limitation is provided by any enactment, every information for an offence the maximum punishment for which does not exceed 3 months imprisonment or a fine of \$50 or both such imprisonment and such fine shall be laid within 12 months from the time when the offence is alleged to have been committed.

13. Information to be in prescribed form - Every information shall be substantiated on oath before a Registrar and shall be in form 1 set out in the Second Schedule to this Act.

14. Prior consent to prosecution - Where any person is charged with an offence in respect of which the leave or consent or certificate of a Judge or of the Attorney-General or of any other person to the taking of the prosecution is required, the leave or consent or certificate may be endorsed on the information or set out in a memorandum, and the endorsement or memorandum shall be accepted by the Court as proof that the leave or consent or certificate has been given.

15. Information to be for one offence only - (1) Except where it is otherwise provided by any enactment, every information shall be for one offence only:

PROVIDED THAT an information may charge in the alternative several different matters, acts or omissions if these are stated in the alternative in the enactment under which the charge is brought.

(2) The defendant may, at any time during the hearing of any information which is framed in the alternative, apply to the Court to amend or divide the information on the grounds that it is so framed as to embarrass him in his defence.

(3) The Court may, if satisfied that the defendant will be so embarrassed in his defence, either direct the informant to elect between the alternatives charged in the information, in which case the information shall thereupon be amended accordingly and the hearing shall proceed as if the information had been originally framed in the amended form, or direct that the information be divided into 2 or more charges, in which case the hearing shall proceed as if an information had been laid for each charge.

(4) Where on any information framed in the alternative the defendant is convicted, the Court may, and shall, if so requested by the defendant, limit the conviction to one of the alternatives charged.

16. Information to contain sufficient particulars - (1) Every information shall contain such particulars as will fairly inform the defendant of the substance of the offence with which he is charged.

(2) The particulars of the nature of the alleged offence shall, so far as is possible, use the words of the enactment creating the offence, and may refer to any portion of that enactment, and, in estimating the sufficiency of any such information, the Court shall have regard to such words or reference.

(3) The particulars shall include the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed.

(4) Except as hereinbefore provided, no information shall be held to be defective for want of form or substance.

17. Further particulars - The Court may, before ruling upon the sufficiency of any information, and at any time if satisfied that it is necessary for a fair trial, order that further particulars in writing be furnished by the informant or prosecutor.

18. Objections to information - (1) No objection to an information shall be taken by way of demurrer, but if an information does not state in substance a crime the prosecutor or the defendant may move the Court to amend it, or the accused may move the Court to quash it or in arrest of judgment, as provided in this section.

(2) If the motion is made before the defendant pleads, the Court shall in its discretion either quash the information or amend it.

(3) If the defect in the information appears to the Court during the trial the Court may if it thinks fit amend it, or may in its discretion quash the information or leave the objection to be taken in arrest of judgment.

19. Information to be filed - (1) As soon as practicable after an information is sworn it shall be filed in the office of a Court in accordance with this section.

(2) Any information for an offence within the jurisdiction of the Magistrates' Courts shall, unless all parties to the proceedings agree otherwise, be filed in the Magistrate's Court which is nearest by the most practicable route to the place where the offence was alleged to have been committed or where the informant believes that the defendant may be found.

(3) Every information not filed in a Magistrate's Court in accordance with the provisions of subsection (2) hereof shall be filed in the Supreme Court.

(4) Failure to comply with the provisions of this section shall not be deemed to invalidate any proceedings.

Summons and Service of Documents

20. Issue of summons - (1) When an information has been laid, a Judge, Magistrate, Fa'amasino Fesoasoani or Registrar may issue a summons to the defendant in form 2 set out in the Second Schedule to this Act.

(2) Such summons shall be issued out of a Magistrate's Court if the information relates to an offence which is within the jurisdiction of that Court as defined in the Magistrates' Courts Act 1969, and in any other case shall be issued out of the Supreme Court.

21. Service of documents on defendant - (1) For the purposes of subsection (2) of this section the term "**member of his family**" means the defendant's father, mother, wife, husband, brother, sister, half-brother, half-sister, or child of or over the age of 18 years.

(2) Every summons to a defendant and every other document which is required to be served on a defendant shall be served on him by being delivered to him personally or by being brought to his notice if he refuses to accept it:

PROVIDED THAT a Judge, Magistrate, Fa'amasino Fesoasoani or Registrar may, if he thinks that the circumstances of a particular case require it, direct that the summons or other document may be served by being left for the defendant at his usual place of residence with a member of his family residing there and appearing to be of or over the age of 18 years.

22. Service in particular cases - (1) Notwithstanding anything in section 21 of this Act, service of a document may be effected in accordance with the provisions of this section, in any case to which these provisions apply.

(2) Where a solicitor represents that he is authorised to accept service of any document on behalf of any person, it shall be sufficient service to deliver the document to the solicitor if he signs a memorandum stating that he accepts service of the document on behalf of that person.

(3) Where a defendant is an inmate of any penal or mental institution, it shall be sufficient service to deliver the document to the superintendent or other officer apparently in charge of the institution.

(4) Notwithstanding anything in section 460 of the Companies Act 1955, where service is to be effected on any corporation, it shall be sufficient service to deliver the document:

(a) To the president, chairman, manager or other principal officer of the corporation, or to the secretary, clerk or treasurer; or

(b) To any person purporting to have charge of the affairs or business of the corporation at its registered or principal office or principal place of business or at the office or place of business nearest to the Court from which the document issued; or

(c) In the case of a corporation incorporated outside Western Samoa, to any such person at any office or place of business in Western Samoa.

23. Language of documents - Where a document is served on any person who is known to the Registrar to be able to read and understand English, it shall be written in English but in every other case it shall be written in Samoan or be accompanied by a translation into Samoan.

24. Who may serve documents on defendant - Every summons to a defendant and every other document which is required to be served on a defendant may be served by a constable, an officer of the Court or any other person or member of a class of persons authorised by a Judge, Magistrate or Registrar, either generally or in respect of a particular case or class of cases.

25. Proof of service - (1) The service of any document may be proved:

(a) By affidavit made by the person who served the document, showing the fact and the time, place and mode of service; or

(b) Where service is effected by an officer of the Court or a constable, by an endorsement on a copy of the document showing the fact, time, place and mode of service and signed by the person who served the document; or

(c) By any person who served the document, on oath at the hearing.

(2) The statement as to service made by the person who served the document shall be deemed to be correct unless and until the contrary is proved.

(3) Every person who wilfully endorses any false statement of the fact, time, place or mode of service on a copy of a document commits an offence and is liable to imprisonment for a term not exceeding one year or to a fine not exceeding \$200 or to both.

Taking of Evidence

26. Evidence of person about to leave Western Samoa - (1) A Judge, Magistrate or Fa'amasino Fesoasoani may, on the application of the informant or the prosecutor or the defendant before the hearing of any information, make an order for the taking, before any Judge, Magistrate or Fa'amasino Fesoasoani, of the evidence of any person, if the Judge, Magistrate or Fa'amasino Fesoasoani is satisfied that that person intends to depart from

Western Samoa before the hearing and that it is desirable or expedient in the interests of justice that his evidence should be so taken.

(2) Evidence given in accordance with this section and with any rules or regulations made under this Act may be tendered at the hearing as if it were given in the course thereof, and judicial notice shall be taken of the signature of any examining Judge, Magistrate or Fa'amasino Fesoasoani to any deposition made pursuant to an order under this section.

(3) Where the Court hearing the charge against the defendant considers that, in the light of information put before it which was not known to the Judge, Magistrate or Fa'amasino Fesoasoani who made the order, the order should not have been made, the Court may refuse to allow the evidence to be so tendered.

(4) Nothing in this section shall limit or affect any power of the Court to compel the personal attendance of any witness at the hearing.

27. Statement of person dangerously ill - (1) Where it appears to the satisfaction of a Judge, Magistrate or Fa'amasino Fesoasoani that any person is able and willing to give material information relating to any offence or relating to any person accused of any offence, and, in the opinion of a medical officer, is dangerously ill, the Judge, Magistrate or Fa'amasino Fesoasoani may take in writing, or direct the Registrar to take in writing, a statement on oath or affirmation of that person.

(2) The Judge, Magistrate, Fa'amasino Fesoasoani or Registrar who takes the statement shall thereupon sign it and shall add the day and place when and where it was taken and the names of the persons (if any) present at the taking of the statement.

(3) If the statement relates to an offence with which a person has already been charged, the statement shall be forwarded forthwith to the Registrar of the appropriate Court, and in all other cases it shall be forwarded to the Registrar of the Supreme Court at Apia or Tuasivi where it shall be recorded and preserved for such use as may be required of it.

(4) Any statement taken under this section may afterwards without further proof be read in evidence for or against the defendant, on the hearing of any information for any offence to which the statement relates, if:

(a) It is proved by such evidence as the Court of hearing considers sufficient (whether legally admissible or not) that the person who made the statement is dead or that there is no reasonable possibility that he will ever be able to travel or give evidence; and

(b) The statement purports to be signed by the Judge, Magistrate, Fa'amasino Fesoasoani or Registrar before whom it is purported to have been taken; and

(c) It is proved to the satisfaction of the Court of hearing that reasonable notice of the intention to take the statement was served upon the party other than the party on whose behalf the statement is proposed to be read, and that that other party or his counsel or solicitor had, or would have had if he had chosen to be present, full opportunity of cross-examining the person who made the statement.

28. Evidence of witness out of Court - (1) Notwithstanding anything elsewhere in this Act, a Judge, Magistrate or Fa'amasino Fesoasoani, on the application of the defendant or the informant, before or at the hearing, may make an order for the taking, before any other Judge, Magistrate or Fa'amasino Fesoasoani or officer of the Court or other person or persons, at any place either within or outside Western Samoa, of the evidence of the defendant or the informant or any witness for the defence or the prosecution if the Judge, Magistrate or Fa'amasino Fesoasoani is satisfied that it is desirable or expedient in the interests of justice that the evidence of the defendant, the informant or the witness should be so taken.

(2) Evidence given in accordance with this section and with any rules or regulations made under this Act may be tendered at the hearing as if it were given in the course thereof, and judicial notice shall be taken of the signature of any officer or other person to any deposition made pursuant to an order under this section.

(3) Where the Court hearing the charge against the defendant considers that, in the light of information put before it which was not known to the Judge, Magistrate or Fa'amasino Fesoasoani who made the order, an application under this section has been made for the purpose of delay or for any other improper purpose, or that there is undue delay in the taking of such evidence, the Court may hear and determine the charge without waiting for the evidence to be so taken or tendered at the hearing, or may refuse to allow the evidence to be so tendered.

(4) Nothing in this section shall limit or affect any power of the Court to compel the personal attendance of the defendant or of any witness at the hearing.

General Provisions as to Trial

29. Court and place of trial - Unless an order is made pursuant to section 30 hereof, every charge shall be heard and determined in the Court in the office of which the information is filed.

34. Transfer of Information - (1) A Judge, Magistrate or Fa'amasino Fesoasoani may, if satisfied that it is desirable or expedient in the interests of justice, order that an information filed in a Magistrate's Court be transferred to the Supreme Court, and likewise on the same ground a Judge may order that an information filed in the Supreme Court for an offence within the jurisdiction of the Magistrates' Courts be transferred to a Magistrate's Court.

(2) A Judge, Magistrate or Fa'amasino Fesoasoani may, if satisfied that it is desirable or expedient in the interests of justice, order that an information filed in the Supreme Court or a Magistrate's Court be transferred to another sitting of the Supreme Court or to another Magistrate's Court.

(3) On the making of an order pursuant to this section, the Registrar of the Court of filing shall forward the information and a copy of the order and any other relevant document to the Registrar of the Court to which the information is ordered to be transferred.

31. Two or more informations may be tried together - (1) Any number of informations for any offences against a defendant may be tried together:

PROVIDED THAT no information charging murder shall be tried with any other information.

(2) If the Court thinks it is desirable or expedient in the interests of justice to do so it may order that the defendant shall be tried upon any one or more of such informations separately.

(3) Any such order may be made either before or in the course of the trial, and if it is made in the course of the trial the Court shall be discharged from giving a verdict on the informations on which the trial is not to proceed.

(4) The informations which are not then tried shall be proceeded upon in all respects as if they had been presented separately.

(5) If one sentence is passed upon any verdict of guilty on more than one information the sentence shall be good if any of those informations would have justified the sentence.

32. Two or more defendants may be tried together - Any number of defendants may be tried together:

PROVIDED THAT the Court may, at any time, order separate trials if satisfied that the interests of justice so require.

33. Parties to offences - Every one who is a party to any offence may be convicted either upon an information charging him with having committed that offence, where the nature of the offence will admit of such a course, or upon an information alleging how he became a party to it.

34. Accessories after the fact and receivers - Every one charged with being an accessory after the fact to any offence, or with receiving property knowing it to have been stolen, may be tried whether or not the principal offender or other party to the offence or the person who stole the property has been charged or convicted, or is amenable to justice, and the accessory or receiver may be tried either alone, as for a substantive offence, or jointly with the principal or other offender or person who stole the property.

35. Withdrawal of information by informant - (1) Any information may by leave of the Court be withdrawn by the informant at any time before the defendant has been convicted or the information has been dismissed or, in any case where the defendant has pleaded guilty, before he has been sentenced or otherwise dealt with.

(2) On the withdrawal of an information the Court may award to the defendant such costs as it thinks reasonable, and any costs awarded may be recovered pursuant to section 117 of this Act as if the costs were awarded on a conviction.

(3) The withdrawal of an information shall not operate as a bar to any further or other proceedings against the defendant in respect of the same offence.

36. Amendment of Information - (1) Subject to the succeeding provisions of this section, where the defendant appears to answer a charge, the Court may amend the information in any way at any time during the trial.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section, the Court may amend an information by substituting one offence for another.

(3) Where, under the foregoing provisions of this section any charge is amended or substituted during the trial, the following provisions shall apply:

(a) Before the trial is continued, the charge as amended or substituted shall be stated to the defendant and he shall be asked how he pleads;

(b) The trial shall proceed as if the defendant had originally been charged with the amended or substituted offence, and any evidence already given shall be deemed to have been given in and for the purposes of the trial of the charge as amended or substituted, but either party shall have the right to recall and examine or cross-examine or re-examine any witness whose evidence has already been given in respect of the offence originally charged;

(c) If any offence is amended or substituted to one which must be heard in another Court, the Court shall forthwith make an appropriate order for a transfer of the proceedings to that other Court.

(4) The Court may, at the request of the defendant, adjourn the trial if it is of the opinion that he would be embarrassed in his defence by reason of an amendment or substitution made under this section.

(5) In any circumstances to which sections 37, 38 or 39 of this Act applies, it shall not be necessary for the Court to amend the information.

37. Attempt proved when offence charged - Where the commission of the offence charged is not proved, but the evidence establishes an attempt to commit the offence, the defendant may be convicted of the attempt.

38. Offence proved when attempt charged - Where an attempt to commit an offence is charged, but the evidence establishes the commission of the full offence, the defendant may be convicted of the attempt.

39. Part of charge proved - (1) Every information shall be divisible; and, if the commission of the offence charged, whether as described in the enactment creating the offence or as charged in the information, necessarily includes the commission of any other offence, the defendant may be convicted of any offence so included which is proved, although the whole offence charged is not proved; or he may be convicted of an attempt to commit any offence so included.

(2) On an information charging murder, if the evidence proves manslaughter but does not prove murder, the Court may find the accused not guilty of murder but guilty of manslaughter, but shall not on that information, except in accordance with section 72 of the Crimes Ordinance 1961 (relating to infanticide), find the defendant guilty of any other offence.

40. Who may conduct proceedings against defendant - At the hearing of any charge, the informant shall appear and conduct the proceedings against the defendant personally or by a

barrister or solicitor of the Supreme Court of New Zealand or by any person entitled by law to practise in Western Samoa as a banister or solicitor of the Supreme Court of Western Samoa, and not otherwise:

PROVIDED THAT:

(a) With the leave of the Court (which may at any time be withdrawn) the informant may appear by any other agent; and

(b) Where an information has been laid by a constable, any other constable may appear and conduct the proceedings against the defendant; and

(c) Where an information has been laid by an officer of a Department of the State or local body, or by a corporation, any other officer of that Department or local body or any representative of that corporation may appear and conduct the proceedings against the defendant; and

(d) In the case of any information, the proceedings may be conducted against the defendant by the Attorney-General or by an officer subordinate to him, acting under and in accordance with his general or special instructions in accordance with Article 41 of the Constitution.

41. Presence and appearance of defendant - (1) Every defendant shall be entitled to be present in Court during the whole of his trial, unless he misconducts himself by so interrupting the trial as to render its continuance in his presence impracticable.

(2) In any proceedings, the Court may permit the defendant to be out of the Court during the whole or any part of the proceedings on such terms as it thinks proper.

(3) Every defendant may defend the proceedings personally or be represented by a barrister or solicitor of the Supreme Court of Western Samoa, or by any person entitled by law to practise as a barrister or solicitor in Western Samoa, or with the leave of the Court (which may at any time be withdrawn) by any other agent.

42. Powers of Court when defendant does not appear - In any case where a summons has been served on the defendant a reasonable time before the trial, or the defendant has been released on bail to attend personally at the trial, and the informant but not the defendant appears at the trial, the following provisions shall apply:

(a) If the offence charged is one in respect of which the maximum penalty is more than 3 months imprisonment, the Court may either issue a warrant, which shall be in the prescribed form (if any), to arrest the defendant and bring him before the Court, or adjourn the trial to such time and on such conditions as the Court thinks fit, and if the defendant does not appear at the time to which the trial is adjourned, the Court may issue such a warrant to arrest the defendant and bring him before the Court;

(b) If the offence charged is one in respect of which the maximum penalty is a fine or not more than 3 months imprisonment, the Court may proceed with the trial and (if the defendant is convicted) may pass sentence, or may issue such a warrant to arrest

the defendant and bring him before the Court, or may adjourn the trial to such time and on such conditions as the Court thinks fit.

43. Powers of Court when informant does not appear - Where at the trial of any charge the defendant but not the informant appears, the following provisions shall apply:

(a) If the defendant is in custody or has been released on bail and the informant has not had adequate notice of the trial, the Court shall adjourn the trial to such time and place and on such conditions as it thinks fit to enable the informant to appear;

(b) In any other case the Court may dismiss the information for want of prosecution or adjourn the trial to such time and place and on such conditions as the Court thinks fit;

(c) On dismissing an information for want of prosecution pursuant to this section, the Court may award to the defendant such costs as it thinks reasonable, and any costs awarded may be recovered pursuant to section 117 of this Act as if the costs were awarded on a conviction.

44. Powers of Court when neither party appears - Where at the trial of any charge neither the informant nor the defendant appears, the Court may dismiss the information for want of prosecution or adjourn the trial to such time and place and on such conditions as the Court thinks fit.

45. Dismissal for want of prosecution not a bar to other proceedings - The dismissal of an information for want of prosecution pursuant to section 43 or 44 of this Act shall not operate as a bar to any further or other proceedings in the same matter.

46. Court to proceed when both parties appear - Where at the trial of any charge both the informant and the defendant appear, the Court may proceed with the trial:

PROVIDED THAT, if the defendant is not personally present, the Court may, if it thinks fit, adjourn the trial to such time and place and on such conditions as it thinks fit to enable him to be present, or, if he is liable on conviction to a sentence of imprisonment, may issue a warrant, which shall be in the prescribed form (if any), to arrest and bring him before the Court.

Pleading

47. Plea of guilty by notice to Registrar - (1) Any person charged with an offence in respect of which he is not liable on conviction to a sentence of imprisonment may in writing addressed to the Registrar give notice that he pleads guilty, and the Court shall then have the same power to deal with him as if he had appeared before it and pleaded guilty:

PROVIDED THAT nothing in this section shall operate to prevent the issue of a warrant to arrest the defendant.

(2) As soon as practicable after receiving any such notice from the defendant, the Registrar shall give notice thereof to the informant.

48. Plea on defendant being charged - (1) Before any charge is gone into, the defendant shall be called by name and the charge shall be read to him and when the Court is satisfied he understands it he shall be asked how he pleads.

(2) He may plead either guilty or not guilty or such special pleas as are hereinafter provided for.

(3) If the defendant wilfully refuses to plead or will not answer directly, the Court may enter a plea of not guilty.

(4) If he pleads guilty, and the Court is satisfied he understands the nature and consequences of his plea, the Court may convict him or deal with him in any other manner authorised by law.

(5) If a plea of guilty is not entered, the trial shall be conducted as hereinafter provided.

49. Plea on behalf of corporation - (1.) Where a corporation is charged with an offence it may, without limiting its rights to appear by a representative under subsection (3) of section 41 of this Act, enter a plea in writing by its representative.

(2) If the corporation either does not appear by a representative, or, though it does so appear, fails to enter any plea as aforesaid, the Court shall order a plea of not guilty to be entered, and the trial shall proceed as if the corporation had duly entered a plea of not guilty.

50. Special pleas - (1) The following special pleas, and no others, may be pleaded - that is to say, a plea of previous acquittal, a plea of previous conviction, and a plea of pardon.

(2) All other grounds of defence may be relied on under the plea of not guilty.

(3) The special pleas may be pleaded together, and every special plea shall be disposed of before the defendant is called on to plead further, and in a trial with assessors shall be disposed of by the Judge in the absence of the assessors; and, if every such plea is disposed of against the defendant, he shall nevertheless be allowed to plead not guilty.

51. Evidence of former trial - On the trial of an issue on a plea of previous acquittal or conviction pursuant to subsection (3) of section 50 of this Act, a copy of the entry in the Criminal Record Book, a copy of the information, and a copy of any notes made by the Judge, Magistrate or Fa'amasino Fesoasoani presiding at the former trial, certified by the Registrar, shall be admissible in evidence to prove or disprove the identity of the charge.

52. Pleas of previous acquittal and conviction - On the trial of an issue on a plea of previous acquittal or conviction pursuant to subsection (3) of section 50 of this Act:

(a) If it appears to the Court that the matter on which the defendant was formerly charged is the same in whole or in part as that on which he has been charged in the information now before the Court and that the defendant might, on the former trial, if all proper amendments had been made that might then have been made, have been convicted of all the offences of which he may be convicted on that information, the Court shall give judgment that he be discharged from that information;

(b) If it appears to the Court that the defendant might on the former trial have been convicted of any offence of which he might be convicted on that information, but that he may be convicted on that information of some offence of which he could not have been convicted on the former trial, the Court shall direct that he shall not be convicted on that information of any offence of which he might have been convicted on the former trial, but that he shall plead as to any other offence charged.

53. Second accusation - (1) Where an information charges substantially the same offence as that with which the defendant was formerly charged, but adds a statement of intention or circumstances of aggravation tending if proved to increase the punishment, the previous acquittal or conviction shall be a bar to the information.

(2) A previous acquittal or conviction on an information charging murder or manslaughter or infanticide shall be a bar to a second information for the same homicide charging it as any one of those crimes.

(3) If on the trial of an issue on a plea of previous acquittal or conviction to an information charging murder or manslaughter or infanticide, pursuant to subsection (3) of section 50 of this Act, it appears that the former trial was for an offence against the person alleged now to have been killed, and that the death of that person is now alleged to have been caused by the offence previously charged, but that the death happened after the trial on which the accused was acquitted or convicted, as the case may be, then if it appears that on the former trial the defendant might if convicted have been sentenced to imprisonment for 3 years or upwards, the Court shall direct that the accused be discharged from the information before it. If it does not so appear the Court shall direct that he plead over.

54. Withdrawal of plea of guilty - A plea of guilty may, by leave of the Court, be withdrawn at any time before the defendant has been sentenced or otherwise dealt with.

Conduct of Trial

55. Admissions - The defence may during the trial admit any fact alleged against the defendant so as to dispense with proof thereof.

56. Evidence - (1) The Court shall first hear such evidence as the prosecution may adduce and then shall hear such evidence as the defence may adduce.

(2) The Court may hear evidence adduced by the prosecution in rebuttal of evidence adduced by the defence if, in the opinion of the Judge, Magistrate or Fa'amasino Fesoasoani, the defence evidence which it is sought to rebut contained fresh matter which the prosecution could not reasonably have foreseen, provided that the evidence in rebuttal or any part of it shall not be merely confirmatory of the prosecution case.

57. Caution and question to defendant not defended by counsel - (1) Where a defendant who is not defended by counsel pleads not guilty the Court shall, before any evidence for the prosecution is heard, and when the Court is satisfied that the defendant fully understands the nature and consequence of the charge, caution the defendant, either orally or in a written statement, in a language which he understands, in the following words, or in words to the like effect, that is to say:

"At the end of the evidence in chief given by each prosecution witness, you may cross-examine the witness if you wish. When all the evidence against you has been heard you will be asked whether you wish to give evidence yourself or to call witnesses. You are not obliged to give or call evidence, but, if you do, that evidence will be subject to cross-examination by the prosecution and may be used against you. You should consider in particular whether evidence which you can give is relevant and will assist you in your defence".

(2) When the evidence for the prosecution has been heard against a defendant who is not defended by counsel, the defendant shall be asked by the Court whether he wishes to give or call evidence.

58. Evidence to be on oath - Subject to the provisions of the Oaths, Affidavits and Declarations Act 1963, every witness at the trial of any charge shall be examined on oath.

59. Addresses - (1) Upon the trial of a defendant, the informant or his counsel may open his case before calling his witnesses; and, at the end of the case for the prosecution, the defendant or his counsel may open his case before giving or calling evidence.

(2) In a trial with assessors, when all the evidence (including any evidence given on cross-examination, re-examination, or in rebuttal) is concluded, the informant or his counsel may make a closing address to the Court; and after that closing address (if any), the defendant or his counsel may make a closing address to the Court, to which there shall not be any right of reply:

PROVIDED THAT, where the defendant is not represented by counsel, the informant or his counsel shall not have any right to make a closing address except with leave of the Court.

(3) In a trial without assessors, except with the leave of the Court, neither the informant nor the defendant may sum up or address the Court upon the evidence:

PROVIDED THAT if the defendant calls no evidence he may address the Court at the end of the informant's case:

PROVIDED FURTHER THAT nothing contained in this section shall affect the right of the informant and of the defendant to address the Court on matters of law.

60. Adverse comment - (1) Where the defendant refrains from giving evidence as a witness, no comment adverse to the defendant shall be made thereon.

(2) Where the defendant refrains from calling his wife or her husband, as the case may be, as a witness, no comment adverse to the defendant shall be made thereon.

61. Court may prohibit publication - (1) Where any Court may make an order, pursuant to Clause (1) of Article 9 of the Constitution, excluding the public and representatives of news services from all or any part of any trial, the Court may, in addition to making such an order or in lieu thereof

(a) Make an order prohibiting the publication of any report or account of the whole or any part of the trial; or

(b) Make an order prohibiting the publication, in any report relating to the trial, of the name of the defendant or of any other person connected with the trial:

PROVIDED THAT the Court shall not prohibit the publication of the name of the defendant if he has been previously convicted of any offence punishable by imprisonment.

(2) Where the publication of a person's name is prohibited under this section, it shall not be lawful to publish that person's name, or any name or particulars likely to lead to the identification of that person.

62. Exclusion of the public - Without limiting or affecting the power of any Court to commit for contempt of Court, every person commits an offence and is liable to a fine not exceeding \$100 who disobeys any order made pursuant to Clause (1) of Article 9 of the Constitution or pursuant to subsection (1) of section 61 of this Act or who acts in contravention of subsection (2) of that section.

Witnesses

63. Summons for attendance of witness - (1) Either the informant or the defendant may at any time obtain from a Judge, Magistrate, Fa'amasino Fesoasoani or Registrar a summons, which shall be in the prescribed form (if any), calling on any person to appear as a witness at the hearing of a charge.

(2) Any summons issued under this section may require the person summoned to bring with him and produce at the hearing such books, documents, papers, writings, maps, photographs, films and recordings as may be mentioned in the summons.

(3) Every summons calling on any person to appear as a witness shall be served on that person in accordance with the provisions of section 21 of this Act as if references in that section to the defendant were references to the person called upon to appear.

(4) Every summons calling on any person to appear as a witness may be served by a constable or officer of the Court, by a party or his solicitor, or by any person authorised by a party or his solicitor to serve the summons.

64. Warrant to arrest witness - (1) Whether or not a summons has been issued or served, if any Judge, Magistrate or Fa'amasino Fesoasoani is satisfied that any person whose evidence at the hearing is required by either the informant or the defendant will not attend to give evidence without being compelled to do so, then he may issue a warrant, which shall be in the prescribed form (if any), for the attendance of that person at the hearing.

(2) If at the hearing of any charge any person summoned as a witness under this Act fails to appear and no just excuse is offered for his failure, the Court, if satisfied that the summons was duly served on him, may issue a warrant, which shall be in the prescribed form (if any), for the appearance of that person.

(3) The provisions of subsection (2) of section 6, and sections 7 and 8 of this Act shall apply to every warrant issued pursuant to this section as if references in those sections to the defendant were references to the person whose attendance or appearance is required.

65. Penalty for failing to comply with witness summons - (1) Every person summoned pursuant to this Act to appear as a witness at a hearing who refuses or neglects without just excuse to appear or to produce any books, documents, papers, writings, maps, photographs, films or recordings required by the summons to be produced commits an offence and is liable on conviction to a fine not exceeding \$100:

PROVIDED THAT any person so summoned who refuses or neglects to appear shall be deemed to have done so with just excuse who establishes to the satisfaction of the Court that there was not tendered to him at the time of the service of the summons or at some other reasonable time before the hearing such sum (if any) in respect of his expenses as may be prescribed, and if not prescribed as may be reasonable, and that either:

(a) He was without the means to meet the cost of travel to the hearing; or

(b) He had reasonable grounds for believing that if he incurred the said cost he would not recover it on the day of the hearing from the party summoning him.

(2) Nothing in this section shall limit or affect any power of the Court to commit for contempt of Court.

66. Witness refusing to give evidence may be imprisoned - (1) Subject to clause (5) of Article 9 of the Constitution, any person present in Court at the hearing of any charge, whether he has been summoned to give evidence or not, may be required to give evidence.

(2) If any person without offering any just excuse refuses to give evidence when required, or refuses to be sworn, or having been sworn refuses to answer such questions concerning the charge as are then put to him, the Court (excluding, however, any Court presided over by a Fa'amasino Fesoasoani without extended jurisdiction granted pursuant to section 18 of the Magistrates' Courts Act 1969) may order that, unless he sooner consents to give evidence or to be sworn or to answer the questions put to him, as the case may be, he be detained in custody for any period not exceeding 7 days, and may issue a warrant, which shall be in the prescribed form (if any), for his arrest and detention in accordance with the order.

(3) If the person so detained, on being brought up at the adjourned hearing, again refuses to give evidence or to be sworn or, having been sworn, to answer the questions put to him, the Court (excluding, however, any Court presided over by a Fa'amasino Fesoasoani without extended jurisdiction granted pursuant to section 18 of the Magistrates' Courts Act 1969), if it thinks fit, may again direct the witness to be detained in custody for the like period, and so again from time to time until he consents to give evidence or to be sworn or to answer as aforesaid.

(4) Nothing in this section shall limit or affect any power of the Court to commit for contempt of Court.

67. Witnesses may be excluded - (1) The Court may, if it thinks fit, of its own motion or at the request of any party at any time during the hearing, order all or any witnesses other than a witness who has given or is giving his evidence to leave the Courtroom and to remain out of hearing but within call until required to give evidence.

(2) A witness who has given evidence shall not leave the Courtroom unless with permission of the Court.

(3) Any witness who acts in contravention of subsection (2) hereof commits an offence and shall be liable on conviction to a fine not exceeding \$100.

Adjournments and Bail

68. Power to adjourn hearing - (1) The hearing of any charge may from time to time be adjourned by the Court to a time and place then appointed.

(2) If at any time and place appointed for the hearing of any charge, the Court, by reason of its constitution, has no jurisdiction to hear the charge, the Court may adjourn the hearing to a time and place then appointed.

(3) When a defendant is brought before a remanding officer on arrest the remanding officer may adjourn the hearing to a time and place then appointed.

(4) If on any adjournment the defendant is remanded in custody under section 70 of this Act, the adjourned hearing shall be as soon as practicable.

69. Power to adjourn for inquiries after conviction - (1) Any Court may from time to time adjourn the hearing after the defendant has been convicted and before he has been sentenced or otherwise dealt with, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case.

(2) Where any hearing is adjourned for the purposes of this section, any Judge, Magistrate or Fa'amasino Fesoasoani having jurisdiction to deal with offences of the same kind, whether or not he is the Judge, Magistrate or Fa'amasino Fesoasoani before whom the charge was heard, may, after inquiry into the circumstances of the offence, sentence or otherwise deal with the defendant for the offence to which the adjournment relates.

70. When defendant may be remanded in custody:

(a) Whenever a defendant who has been arrested or otherwise detained is produced or brought before a Court or a remanding officer and the hearing is adjourned, or

(b) Whenever any hearing is adjourned and the defendant is liable on conviction to a sentence of death or imprisonment,-

the Court or remanding officer, as the case may be, may allow the defendant to go at large or may, subject to the provisions of sections 71 and 72 of this Act, remand him in custody for the period of the adjournment.

71. Bail - (1) Everyone is bailable as of right who is charged with any offence that is not punishable by death or imprisonment.

(2) Everyone is bailable as of right who is charged with any offence for which the maximum punishment is less than 2 years imprisonment.

(3) Everyone is bailable as of right who is charged with any offence against any of the following provisions of the Crimes Ordinance 1961, namely:

(a) Section 76 (duty to provide necessaries of life);

(b) Section 77 (duty of parent or guardian to provide necessaries);

(c) Section 100 (false statement by public officer).

(4) Notwithstanding anything in the foregoing provisions of this section, no one is bailable as of right who is charged with any offence punishable by imprisonment if he has been previously convicted of any offence punishable by death or imprisonment.

(5) Everyone who is charged with any offence and is not bailable as of right is bailable at the discretion of the Court or a remanding officer:

PROVIDED THAT, where the offence is one against section 28 of the Crimes Ordinance 1961 (relating to treason), bail may be granted only by a Judge.

72. Young defendants - Notwithstanding any thing in this Act, where any Court or remanding officer remands for the period of any adjournment any defendant who appears to the Court or remanding officer to be under the age of 21 years, the Court or remanding officer shall release him on bail or otherwise subject to such conditions as it or the remanding officer thinks fit, or, if the defendant appears to be under the age of 18 years, may remand him in the custody of a Child Welfare Officer appointed under the Infants Ordinance 1961, or of a probation officer if the law then provides for the appointment of such officer or of the Commissioner of Police or of a senior member of the Police stationed for the time being in the vicinity of the Court or of any reputable adult person:

PROVIDED THAT the Court or remanding officer may in any case in which such a defendant would not be bailable as of right, other than by this section of this Act, direct that he be detained in a penal institution if in the opinion of the Court or remanding officer no other course is desirable, having regard to all the circumstances.

73. Warrant for detention - (1) Where a defendant who is remanded in custody is not granted bail, the Court or remanding officer shall issue a warrant, which shall be in the prescribed form (if any), for his detention in custody for the period of the adjournment.

(2) Where a defendant who is remanded in custody is granted bail, then, if he is not released immediately, the Court or remanding officer shall issue a warrant, which shall be in the prescribed form (if any), for his detention in custody for the period of the adjournment, and shall certify on the back of the warrant the consent of the Court or remanding officer to the defendant's being bailed, the number of sureties (if any) to be required, the sum or sums fixed, and the conditions (if any) imposed.

74. Defendant may request bail - (1) Where a defendant who has been remanded in custody did not make application for bail at the time he was remanded, he shall, if he so requests, be brought before a Court or a remanding officer to apply for bail.

(2) Where bail is granted under this section, the particulars required to be certified by subsection (2) of section 73 of this Act shall be certified by the Court or remanding officer granting bail, in writing, and forwarded to the officer in charge of the penal institution in which the defendant is detained pursuant to the remand warrant.

75. Release of defendant granted bail - (1) Whenever a defendant is granted bail (whether as of right or not) the Court or remanding officer granting bail may impose as a condition of his release that the defendant report to the Police at such times and places as the Court or remanding officer thinks fit.

(2) Where a defendant who has been remanded in custody is granted bail, he shall, if he is in custody only under the warrant issued in pursuance of the remand, be released from custody upon entering, with or without surety or sureties at the discretion of the Court or remanding officer, into a bail-bond in such sum or sums as the Court or remanding officer fixes, subject to the condition that he attend personally at the time and place to which the hearing is adjourned and at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned, and subject to the condition authorised by subsection (1) of this section where such a condition is imposed.

76. Variations of conditions of bail - (1) Where the defendant is granted bail, any Court or remanding officer may, on the application of the defendant, make an order varying the terms on which bail has been granted or any conditions of any bail-bond entered into or to be entered into or revoking any such conditions.

(2) Where a bail-bond has been entered into in any case where sureties are required, it shall continue in force and the order shall not take effect until the sureties to the bail-bond have consented in writing to the order or a new bail-bond is entered into complying with the provisions of the order.

77. Form of bail-bond and notice - (1) A bond to be taken under section 75 of this Act shall be in the prescribed form (if any) and may be entered into by any of the parties to it before any remanding officer.

(2) The remanding officer before whom any bail-bond is entered into shall give a notice to each of the persons entering into it before him, which shall be in the prescribed form (if any).

(3) When all the parties to the bond have entered into it, then, if a warrant has been issued under subsection (2) of section 73 of this Act, either a warrant of deliverance, which shall be in the prescribed form (if any), shall be issued by the remanding officer and sent to the officer in charge of the penal institution in which the defendant is detained, or the remanding officer shall endorse on the remand warrant a certificate that all the parties to the bond have entered into it and that the defendant is accordingly entitled to be released.

78. Arrest of absconding defendant - (1) Where a defendant has been released on bail, any remanding officer, if satisfied on the oath of the informant or of any surety, or on the oath of some person on behalf of the informant or of any surety, that the defendant has absconded or is about to abscond for the purpose of evading justice, may issue a warrant, which shall be in the prescribed form (if any), to arrest the defendant and bring him before the Court or remanding officer.

(2) Where any defendant has been arrested pursuant to a warrant issued under subsection (1) of this section, the Court or remanding officer, as the case may be, on being satisfied that the defendant had absconded or was about to abscond, may remand the defendant in custody, and thereupon, notwithstanding anything in this Act, the defendant shall be bailable only at the discretion of the Court or remanding officer.

79. Arrest of defendant failing to report to Police as required - (1) Where a defendant who has been released on bail subject to the condition that he report to the Police at such times and places as the Court or remanding officer orders, at any time fails to comply with the condition, any remanding officer may issue a warrant, which shall be in the prescribed form (if any), to arrest the defendant and bring him before any Court or remanding officer.

(2) Where any defendant has been arrested pursuant to a warrant issued under subsection (1) of this section, any Court or remanding officer, as the case may be, may remand the defendant in custody, and thereupon, notwithstanding anything in this Act, the defendant shall be bailable only at the discretion of the Court or remanding officer.

80. Arrest of defendant failing to attend hearing - Where a defendant who has been released on bail does not attend personally at the time and place specified in the bond, or, as the case may be, does not attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned, any remanding officer may issue a warrant, which shall be in the prescribed form (if any), to arrest the defendant and bring him before a Court or remanding officer.

81. Estreat of bail-bond - (1) Where a remanding officer certifies on the back of a bail-bond the non - performance of a condition of that bail-bond, the Registrar shall fix a time and place to consider the estreat of the bond and shall, not less than 7 days before the time fixed, cause to be served on the defendant if he can be found and upon the surety or sureties (if any) notice that, unless at the time and place fixed some person bound by it proves to the satisfaction of the Court that it ought not to be estreated, the bond will be estreated.

(2) If at the time and place fixed by the Registrar under subsection (1) of this section no sufficient cause to the contrary is shown, a Court presided over by a Judge or Magistrate, on proof of the non - performance of a condition of the bail-bond (of which the certificate of a remanding officer shall be sufficient prima facie evidence), may make an order, which shall be in the prescribed form (if any), to estreat the bond to such an amount as it thinks fit as to any person bound thereby upon whom notice is proved to have been served in accordance with subsection (1) of this section:

PROVIDED THAT, if the Court is satisfied that the defendant cannot be found, the Court may estreat the bond as against the defendant, notwithstanding that the notice has not been served on him.

(3) Any penalty payable in accordance with subsection (2) of this section shall be recoverable as if it were a fine.

82. Defendant in custody may be brought before Court - Any defendant who has been remanded in custody on any charge and has not been released on bail, may be brought before a Court at any time to be dealt with on that charge, notwithstanding that the period for which he was remanded in custody has not expired.

Search

83. Search warrants - (1) Whether or not an information has been laid, a Judge, Magistrate, Fa'amasino Fesoasoani or Registrar who is satisfied on the oath of any person that there is reasonable ground or good cause for believing that there is in any building, aircraft, ship, vehicle, box, receptacle, premises or place:

- (a) Anything upon or in respect of which any offence punishable by imprisonment has been or is suspected of having been committed; or
- (b) Anything which there is reasonable ground to believe will be evidence as to the commission of any such offence; or
- (c) Anything which there is reasonable ground to believe is intended to be used for the purpose of committing any such offence,-

may issue a search warrant, which shall be in the prescribed form (if any).

(2) Every search warrant shall be directed either to any constable by name or generally to every constable, and any such warrant may be executed by any constable.

(3) Every search warrant shall authorise any constable at any time or times within one month from the date thereof to act in one or more of the following ways:

- (a) To enter and search the building, aircraft, ship, vehicle, premises or place referred to therein with such assistants as may be necessary, and if necessary, to use force for making entry, whether by breaking open doors or windows or otherwise;
- (b) To break open and search any box or receptacle therein or thereon;
- (c) To seize anything referred to in subsection (1) of this section.

(4) Every search warrant shall be executed by day, unless the warrant expressly authorises the execution thereof by night.

(5) It is the duty of everyone executing any search warrant to have it with him and to produce it if required to do so.

84. Disposal of things seized - (1) Where any constable seizes anything under section 83 of this Act, it shall be retained under the custody of a constable, except while it is being used in evidence or is in the custody of a Court, until it is disposed of under this section.

(2) In any proceedings for an offence relating to the thing, the Court may order, either at the trial or on a subsequent application, that the thing be:

- (a) Delivered to the person appearing to the Court to be entitled to it; or
- (b) Forfeited, defaced or destroyed (in the case of counterfeit coin, or forged bank notes or instruments or things for making such coins, notes or instruments); or

(c) Otherwise disposed of in such manner as the Court thinks fit.

(3) Any constable may at any time, unless an order has been made under subsection (2) of this section, return the thing to the person from whom it was seized or apply to a Magistrate for an order as to its disposal, and on any such application the Magistrate may make any order that a Court may make under subsection (2) of this section.

(4) If, upon the expiry of a period of 3 months after the date of seizure, proceedings have not been brought for an offence relating to the thing and the thing is still in the custody of a constable any person claiming to be entitled to the thing may apply to a Magistrate for an order that it be delivered to him; and on any such application the Magistrate may adjourn the same on such terms as he thinks fit for proceedings to be brought, or may make any order that a Court may make under subsection (2) of this section.

(5) Where any person is convicted in any proceedings for an offence relating to any thing to which this section applies, and any order is made under this section, the operation of the order shall be suspended until the expiration of the time for appeal or, where an application for leave to appeal or a notice of appeal is filed, until the refusal of the application or the determination of the appeal; and on the determination of an appeal, the Court determining the appeal may annul or vary the order made under this section.

85. Protection from responsibility - (1) Every person who, in accordance with the provisions of this Act or of any other enactment, arrests any person whether with or without a warrant, or executes any search warrant, or assists a constable to arrest any person on being called upon by the constable so to do shall be free from criminal responsibility and shall not be liable to any civil proceeding:

PROVIDED THAT, in the case of a person called upon by a constable to assist in the arrest of any person whom the constable believes or suspects to have committed an offence, the provisions of this section shall not apply if the person called upon to assist knows that there is no good cause for the belief or suspicion.

(2) In the case of every person to whom this section applies, the protection from criminal responsibility and civil proceeding shall extend and apply to the use by him of such force as may be necessary to overcome any force used in resisting arrest, search or execution, unless the arrest, search or execution could have been made by reasonable means in a less violent manner:

PROVIDED THAT, except in the case of a constable or person called upon by a constable to assist him, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

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PART III **ASSESSORS IN SUPREME COURT TRIALS**

86. Constitution of Supreme Court on criminal trials - On a criminal trial the Supreme Court shall sit either with or without assessors in accordance with the provisions hereinafter contained.

87. Supreme Court with assessors - The Supreme Court shall sit with assessors on the trial of any person for an offence punishable by death or by imprisonment for more than 5 years if he pleads "**not guilty**" thereto:

PROVIDED HOWEVER THAT any person charged with an offence (other than perjury arising in proceedings before the Land and Titles Court), for which the punishment is other than by death or imprisonment for life, shall be entitled, before the charge is gone into but not afterwards, to be tried by a Judge of the Supreme Court sitting alone.

88. Supreme Court without assessors - The Supreme Court shall sit without assessors on the trial of any person for an offence or offences punishable only by fine.

89. Procedure in criminal trials with assessors - (1) Where an information is filed in the Supreme Court charging any person with an offence triable before the Supreme Court with assessors, the prosecution shall make available to the person so charged or his legal adviser copies of all statements made by witnesses proposed to be called, and by the person so charged whether given orally or in writing, within a reasonable time before the trial.

(2) Translating of all statements into the English language shall be certified correct by a commissioned officer of the Police.

90. Power of Supreme Court to order taking of depositions - Where any defendant is charged with an offence triable before the Supreme Court with assessors, the Supreme Court of its own motion or on the application of the prosecutor or the defendant may, if it considers it desirable in the interests of justice, order that depositions be taken before a Magistrate.

91. Discretion of Supreme Court as to assessors - (1) On every other trial for an offence or offences, the Supreme Court shall sit without assessors, unless the Supreme Court in its discretion orders otherwise, either of its own motion or on the application of either the prosecutor or the defendant.

(2) Any such order may be made at any time after the commencement of the prosecution, and whether before or during the trial; but if made after any evidence has been heard at the trial, all such evidence shall, except so far as repeated before the Court with the assessors, be of no force or effect.

42. List of assessors - (1) There shall be a list of assessors to be compiled and kept by the Registrar of the Supreme Court at the direction of the Judicial Service Commission.

(2) The list of assessors shall contain the names and addresses of such persons (whether men or women), not less than 250 in number, as are qualified to be assessors, in the opinion of the Judicial Service Commission, by reason of their character, education, ability and reputation.

(3) The Registrar of the Supreme Court at the direction of the Judicial Service Commission may at any time remove any person from the list of assessors, or add any person thereto.

(4) In the month of January in every year, the Registrar of the Supreme Court shall review the list of assessors and shall recommend to the Judicial Service Commission the deletion of persons who have died or who have become unable or unfit to sit as assessors, and the addition of such persons as he thinks to be so qualified and to be needed.

93. Number and choice of assessors - (1) On a trial in the Supreme Court with assessors the number of assessors shall be 4:

PROVIDED THAT in every trial in which the defendant is charged with an offence punishable by death the number of assessors shall be 5.

(2) The assessors for each trial shall be chosen from the list of assessors by the Judge who is to preside at the trial.

94. Remuneration of assessors - Every assessor who attends a trial shall be entitled to receive such remuneration, including travelling and incidental expenses, in respect of his services as may be authorised by the Judge presiding at the trial in conformity with any rules or regulations made in that behalf by the Head of State acting on the advice of the Prime Minister, and with the concurrence of the Rules Committee.

95. Default of assessor - If any person, who has been duly appointed as an assessor for a trial and has received reasonable notice of his appointment and of the time, date and place of the trial, fails without reasonable excuse to attend at the trial at the time and date specified or at any adjournment thereof, or to be sworn as an assessor, or duly to act as an assessor throughout the trial, he shall be guilty of contempt of the Supreme Court and shall be punishable accordingly.

96. Challenge - (1) At any time before an assessor is sworn, the prosecutor or the defendant may challenge him for Cause, or the presiding Judge may of his own motion remove him.

(2) The Judge shall not allow a challenge nor remove an assessor of his own motion unless he is satisfied that there is some reasonable and sufficient objection to the assessor.

(3) If the Judge is satisfied as aforesaid, he shall remove the assessor and substitute another.

97. Oath or affirmation - Before an assessor commences to act as such, he shall, in open Court and in the presence of the defendant, swear on oath or make an affirmation to act well and truly as an assessor and to decide in accordance with the evidence and the law.

98. Discharge of assessors and discretion of Judge - (1) If at any time after the commencement of a trial and before a verdict, the presiding Judge is of the opinion that, owing to the happening of any emergency or casualty or to the misconduct or disqualification of any assessor or his death or inability to continue to perform his duty, or to any other sufficient cause, it is necessary in the interests of justice to do so, the Judge may adjourn the trial or discharge the assessors and order a new trial.

(2) If the presiding Judge becomes incapable of trying; the case or of acting pursuant to subsection (1) of this section, the Registrar shall discharge the assessors.

(3) The exercise by the Judge of his discretion under this section shall not be reviewable by any Court.

99. Concurrence of assessors - On a trial with assessors no person shall be convicted of any offence unless the conviction is concurred in by not less than 3 of the assessors where there are 4 of them, and by not less than 4 of the assessors where there are 5 of them.

100. Concurrence of presiding Judge - If the presiding Judge is of the opinion that the defendant should not be convicted, or if less than 3 out of 4 or 4 out of 5, as the case may be, of the assessors concur in his conviction, the defendant shall be acquitted.

101. Concurrence of assessors not necessary except for conviction - The concurrence of assessors shall not be necessary for any act of the Supreme Court other than conviction, and in all other respects (including the sentence passed) the jurisdiction of the Supreme Court shall be exercised in the same manner as if it was sitting without assessors.

102. Verdict not affected by informalities - No verdict shall be in any way affected by reason of any error, omission or informality in or with respect to any list of assessors, nor by reason of any assessor having been notified to sit as an assessor otherwise than as hereinbefore in that behalf provided, nor by reason of any assessor not being qualified to sit as an assessor as hereinbefore in that behalf provided.

103. Adjournments - (1) From the time when the defendant is given in charge to the assessors the trial shall proceed continuously, subject to the power of the Supreme Court to adjourn it.

(2) Upon every such adjournment the Supreme Court may, if it thinks fit, direct that during the adjournment the assessors shall be kept together, and that proper provision be made for preventing the assessors from holding communication with anyone on the subject of the trial, but if no such direction is given, the assessors shall be permitted to separate.

PART IV **MISCELLANEOUS PROVISIONS AS TO TRIAL**

104. Power of Court to discharge defendant without conviction or sentence - (1) If, after inquiry into the circumstances of the case, any Court having jurisdiction to try any person for any offence is of the opinion that, although the charge is proved:

(a) The offence was in the particular circumstances of so trifling a nature that it is inexpedient to inflict any punishment or any other than a nominal punishment; or

(b) Having regard to the age or some other special circumstance of the offender, the entering of a conviction would of itself be a hardship out of proportion to the particular circumstances of the offence committed; it may discharge that person without convicting him, unless a minimum penalty is expressly provided for the offence by any enactment.

(2) Where any proceedings have been commenced under section 10 of this Act, the Judge, Magistrate or Fa'amasino Fesoasoani may, in his discretion, after perusal of the statements of the witnesses for the prosecution and any evidence taken under sections 26 or 28 of this Act, and any statement made under section 27 of this Act, and any depositions, direct that the defendant be discharged without trial.

(3) The Court may, in its discretion, at any stage of any trial, direct that the defendant be discharged.

(4) Notwithstanding anything in any enactment, the Court having jurisdiction to try any person for an offence to which he pleads guilty before his trial, and the Court in which any person is convicted of an offence on his trial, may, in his discretion, instead of sentencing the offender, direct that he be discharged.

(5) A discharge under this section shall be deemed to be an acquittal.

(6) A Court discharging any person under this section may, if it is satisfied that the charge is proved against him, make any order for the payment of costs, damages, or compensation, or for the restitution of any property, that it could have made under any enactment applicable to the offence with which he is charged if it had convicted and sentenced him, and the provisions of every such enactment shall apply accordingly.

(7) Nothing in this section shall affect any other power of any Court to convict and discharge any person.

105. Record of proceedings - (1) The Registrar of each Court shall keep a Criminal Record Book in the prescribed form, or until prescribed, in such form as the Registrar thinks fit.

(2) In the Criminal Record Book there shall be entered the name of the Judge, Magistrate or Fa'amasino Fesoasoani presiding over the Court and a memorandum of the substance of all proceedings at every trial and of the result of every trial. Every such memorandum shall be signed by the said Judge, Magistrate or Fa'amasino Fesoasoani and shall be deemed a record of that trial.

(3) Any entry, in the Criminal Record Book or a copy thereof or extract therefrom, sealed with the seal of the Court and purporting to be signed and certified by the Registrar as a true copy or correct extract, shall at all times without further proof be admitted in all Courts and places whatsoever as evidence of the contents thereof and of the regularity of the proceedings.

(4) Any such copy or extract or so much thereof as is material, may be referred to in any proceeding by way of appeal.

(5) Any such copy or extract may be given to any person who, in the opinion of the Registrar, has a genuine and proper interest in obtaining the same. In any case of doubt or difficulty the Registrar may refer the matter to a Magistrate, whose decision shall be final.

(6) Any erroneous or defective entry in the Criminal Record Book may at any time be amended by the Judge, Magistrate or Fa'amasino Fesoasoani who presided at the trial or, if that Judge, Magistrate or Fa'amasino Fesoasoani is not available, by any Judge or Magistrate.

(7) The Judge, Magistrate or Fa'amasino Fesoasoani presiding at the trial shall take notes of all proceedings before the Court.

106. Adjourning trial for witnesses - (1) If the Court is of opinion that the defendant is taken by surprise, in a manner likely to be prejudicial to his defence, by the production on behalf of the prosecutor of a witness:

(a) Who has not made any written statement, and of the intention to produce whom the defendant has not had sufficient notice; or

(b) Who has made a written statement, but whose written statement has not been made available to the defendant in sufficient time,-

the Court may, on the application of the defendant, either adjourn the further hearing of the case or, where the case requires, discharge the assessors from giving a verdict, and postpone the trial.

(2) If the Court is of opinion that any witness who is not called for the prosecution ought to be so called, it may require the prosecutor to call him, and, if the witness is not in attendance, make an order that his attendance shall be procured, and the Court may, if it thinks proper, adjourn the further hearing of the case to some other time until that witness attends.

(3) If in such case the Court is sitting with assessors and is of opinion that it would be conducive to the ends of justice to do so, it may, on the application of the accused, discharge the assessors and postpone the trial.

107. Retrials generally - (1) In this section, unless the context otherwise requires, the term "**lower Court**" means any Court cited in the first column of the table appended hereto in relation to the Court cited opposite thereto in the second column of that table; and the term "**upper Court**" means any Court cited in the second column of that table in relation to the Court cited opposite thereto in the first column of that table.

TABLE

<i>First Column</i>	<i>Second Column</i>
Magistrate's Court presided over by a Fa'amasino Fesoasoani without extended jurisdiction	Magistrate's Court presided over by a Fa'amasino Fesoasoani with extended jurisdiction
Magistrate's Court presiding over by a Fa'amasino Fesoasoani with extended jurisdiction	Magistrate's Court presiding over by a magistrate
Magistrate's Court presiding over by a Magistrates	Supreme Court

(2) Where any person has been tried in any lower Court for any offence and has been acquitted or convicted or had an order made against him by that Court, either the prosecutor or the defendant may apply in writing to the upper Court for a retrial.

(3) Any such application shall be made within 14 days of the acquittal or the conviction or the making of the order or within such further period as upper Court may allow if satisfied that the application could not reasonably have been made sooner.

(4) Any such application shall state the grounds thereof, and whether a complete retrial is sought, and if not what limit retrial is sought.

(5) As soon as reasonable possible after the making of any such application, the applicant shall serve a copy thereof on the opposite party, and file another copy thereof in the office of the lower Court.

(6) On the hearing of any such application, the upper Court may in its discretion refuse a retrial, or grant a retrial before itself or order a retrial before the lower Court (whether as constituted for the trial or otherwise) and in either case either as a complete retrial or as a retrial with specified limitations and on such terms as it thinks fit.

108. Retrials by Supreme Court only - (1) Where any person has been tried in the Supreme Court (whether sitting with or without assessors) for any offence, and has been convicted by that Court, the defendant may apply in writing to the Judge who presided at the trial for a retrial:

PROVIDED THAT if, since the date of the trial, that Judge has ceased to hold that office or died or left Western Samoa or become for any other reason unavailable to deal with the application, the same may be dealt with by any Judge.

(2) Any such application shall be made within 14 days of the conviction.

(3) Any such application shall state the grounds thereof, and whether a complete retrial is sought and if not what limited retrial is sought.

(4) As soon as reasonably possible after the making of any such application, the defendant shall serve a copy thereof on the prosecutor.

(5) On the hearing of any such application, the Judge may in his discretion refuse a retrial, or grant a retrial before the Supreme Court (whether as constituted for the trial or otherwise), and either as a complete retrial or as a retrial with specified limitations and on such terms as he thinks fit.

109. Practice on retrials - On any order for a retrial being made under sections 107 or 108 of this Act, the following provisions shall apply:

(a) If the defendant was on conviction sentenced to a term of imprisonment which has not expired, and the retrial cannot be held immediately, the Court ordering the retrial shall, subject to the provisions of this Act relating to bail, remand the defendant in custody until the date fixed for the retrial;

(b) In other respects the acquittal, conviction, sentence or order made on the trial shall cease to have effect;

(c) The Court of retrial shall have the same powers and follow the same procedure as if it were the Court of trial;

(d) If the applicant does not appear at the time and place appointed for the retrial, the Court of retrial may in its discretion, without holding a retrial, order that the original acquittal, conviction, sentence or order be confirmed.

110. Removal of trial on question of law arising - (1) If a question of law arises on a trial before a Fa'amasino Fesoasoani of any person for any offence, the Fa'amasino Fesoasoani, whether on the application of the prosecutor or the defendant or of his own motion, shall refuse to continue the trial and shall adjourn it for retrial before a Magistrate.

(2) Thereupon the information or charge on which the trial before the Fa'amasino Fesoasoani was based shall remain valid; but every other step taken, document filed or direction or determination given in that trial shall be void, unless ordered by the Magistrate to remain valid.

(3) The retrial of that person for that offence shall thereupon commence and proceed before a Magistrate as if no steps, other than those saved in accordance with subsection (2) of this section had been taken.

111. Reservation by Magistrate of question of law for determination by Supreme Court-

(1) A Magistrate may reserve for determination by the Supreme Court any question of law which arises on the trial of any person for any offence, or on any of the proceedings preliminary, subsequent or incidental thereto, and may give any decision subject to the determination by the Supreme Court of that question; and the Supreme Court shall have power to consider and determine that question.

(2) Either the prosecutor or the defendant may during the trial apply to the Magistrate presiding at the trial to reserve any such question, and the said Magistrate, if he refuses so to do, shall nevertheless take a note of the application.

(3) If the result of the trial is acquittal, the defendant shall be discharged, subject to being again arrested if the Supreme Court orders a new trial.

(4) If the result of the trial is conviction, the said Magistrate may in his discretion postpone sentence, or respite the execution of the sentence until the question reserved has been determined, and in either case shall in his discretion either remand the offender in custody or grant him bail on such terms and subject to such conditions as the said Magistrate thinks fit.

(5) If the said Magistrate decides to reserve a question under this section, he shall state a case for the determination of the Supreme Court.

(6) Where the said Magistrate decides to reserve a question under this section on an application so to do made under subsection (2) of this section, the applicant shall, within 21 days after being notified of that decision or within such further time as the said Magistrate may in his discretion allow, submit a draft of the case stated, through the Registrar of the said

Magistrate's Court, to the said Magistrate, and deliver or post a copy of the draft to the respondent or his solicitor. Thereupon subsections (4) to (7) inclusive of section 131 of this Act shall apply.

PART V
SENTENCE AND ENFORCEMENT OF PENALTIES

112. Discretion of Court as to lesser penalties - (1) Except where otherwise expressly provided, everyone liable to imprisonment for any term for any offence may be sentenced to imprisonment for any shorter term, and everyone liable to a fine of any amount may be sentenced to pay a fine of any less amount.

(2) Where under any enactment a Court may sentence any person to imprisonment, or to imprisonment or to a fine, that Court may sentence that person to pay a fine in addition to or instead of sentencing him to imprisonment, unless there is express provision to the contrary in that enactment:

PROVIDED THAT:

(a) No person shall be sentenced to pay a fine exceeding in amount any maximum fine prescribed by the enactment; and

(b) Where no maximum fine is prescribed by the enactment, no person shall be sentenced by a Magistrate's Court if presided over by a Magistrate to pay a fine exceeding \$2,000 or by that Court if presided over by a Fa'amasino Fesoasoani to pay a fine exceeding the fine which may be imposed by that Fa'amasino Fesoasoani pursuant to the Magistrates' Courts Act 1969.

(3) Where a corporation is convicted of an offence punishable only by imprisonment, the corporation may be sentenced to pay a fine:

PROVIDED THAT no corporation shall be sentenced by a Magistrate's Court if presided over by a Magistrate to pay a fine exceeding \$2,000 or by that Court if presided over by a Fa'amasino Fesoasoani to pay a fine exceeding the fine which may be imposed by that Fa'amasino Fesoasoani pursuant to the Magistrates' Courts Act 1969.

(4) In fixing the amount of any fine to be imposed on any offender, the Court shall take into consideration, among other things, the means of the offender so far as they appear or are known to the Court.

113. Power of Court to order offender to come up for sentence - (1) Any Court by or before which any person is convicted of any offence, or before which any person appears for sentence, may, having regard to the circumstances, including the nature of the offence and the character of the offender, instead of passing sentence, order the offender to appear for sentence if called upon to do so, on such conditions as the Court thinks fit.

(2) The making of an order under this section shall not limit or affect the power of the Court, under any enactment applicable to the offence, to make any order for the payment of costs, damages or compensation, or for the restitution of any property, notwithstanding that the

offender is not sentenced on conviction, and the provisions of every such enactment shall apply accordingly.

(3) Any person in respect of whom an order is made under this section may be called upon to appear for sentence within any period specified by the Court in the order, being a period not exceeding 3 years from the date of the conviction, or, if no period is so specified, within one year from the date of the conviction.

(4) Where any person is brought up for sentence under this section, any Judge, Magistrate or Fa'amasino Fesoasoani having jurisdiction to deal with offences of the same kind, whether or not he is the Judge, Magistrate or Fa'amasino Fesoasoani before whom the case was heard, may, after inquiry into the circumstances of the case and the conduct of the offender since the order was made, sentence or otherwise deal with the offender for the offence in respect of which the order was made.

114. Cumulative sentences - (1) In imposing any sentence of imprisonment, the Court may direct that the sentence shall commence on the expiry of any other sentence or sentences of imprisonment specified in the direction, whether then imposed by the Court or then being undergone or to be undergone by the offender, including any sentence or sentences in respect of which any such direction is or has been given.

(2) Where a term of imprisonment is imposed in respect of the non-payment of any sum adjudged or ordered to be paid on any conviction or by any order whether as a fine or for costs or otherwise, or where a warrant of commitment is issued in respect of the non-payment of any such sum, the Court or, as the case may require, the Magistrate or Fa'amasino Fesoasoani issuing the warrant, may direct that the imprisonment shall commence on the expiry of any sentence or sentences of imprisonment specified in the direction, whether then imposed by the Court or then being undergone or to be undergone by the offender, including any sentence or sentences in respect of which any such direction is or has been given.

(3) Save as provided by this section, every sentence of imprisonment shall take effect on the day on which the sentence is pronounced.

115. Warrant of commitment where punishment is imprisonment - (1) Where any Court passes any sentence of imprisonment, a warrant shall be issued stating briefly the particulars of the offence and directing the detention of the offender in accordance with the sentence.

(2) Where the sentence is imposed by the Supreme Court, any Judge may sign the warrant.

(3) Where the sentence is imposed by a Magistrate's Court, any Magistrate or Fa'amasino Fesoasoani who could have passed such a sentence may sign the warrant.

(4) Any warrant under this section may be issued in respect of any number of sentences imposed on the offender at the same sitting of the Court.

116. Execution of warrant of commitment - (1) Every warrant of commitment (whether issued under this Part of this Act or otherwise) shall be directed either to any constable or bailiff by name or generally to every constable and bailiff and any such warrant may be executed by any constable or bailiff.

(2) For the purpose of executing any warrant of commitment, the constable or bailiff executing it may at any time enter any premises if he has reasonable cause to believe that the person named in the warrant is on those premises:

PROVIDED THAT, if the constable or bailiff executing the warrant is not in uniform and any person in actual occupation of the premises requires him to produce evidence of his authority, he shall, before entering on the premises, produce the warrant or his badge or other evidence that he is a constable or bailiff as the case may be.

(3) The constable or bailiff by whom any warrant of commitment is executed shall convey the person therein named or described to the prison named in the warrant or to some other prison and there deliver him, together with the warrant, to the Gaoler, who shall give the constable or bailiff, as the case may be, a receipt in the prescribed form for that person.

117. Enforcement of penalties - (1) In this section, unless the context otherwise requires, references to the sum adjudged to be paid by any person on a conviction shall be deemed to include any sum of money adjudged or ordered to be paid on any conviction entered or by any order made in any criminal proceedings, whether as a fine or for costs, damages, compensation, restitution or otherwise.

(2) Every sum adjudged to be paid by any person on a conviction shall constitute a judgment debt due by that person to the State of Western Samoa and payment thereof shall be enforceable and recoverable accordingly by civil process of execution in the same manner in all respects as if the State had obtained judgment therefor in civil proceedings.

(3) Where the Court on a conviction adjudges any person to pay a sum of money, it may do all or any of the following things:

(a) Allow time for payment, in which case the Court may impose a period of imprisonment determined in accordance with the provisions of subsection (7) of this section in default of payment of the sum adjudged to be paid by the expiry of that time;

(b) Direct payment to be made by instalments, in which case if default is made in the payment of any one instalment the same proceedings may be taken as if default had been made in the payment of all the instalments then remaining unpaid;

(c) Direct payment to be made to such person or persons and in such place or places as the Court may specify.

(4) If the Court which adjudges any sum to be paid by any person on a conviction is of the opinion:

(a) That the person has sufficient means to pay the sum adjudged to be paid forthwith;
or

(b) That the person has no fixed place of residence; or

(c) That for any other reason, having reference to the gravity of the offence, the character of the person, or other special circumstances, execution should issue without delay,-

the Court may impose on the person a period of imprisonment determined in accordance with the provisions of subsection (7) of this section in default of payment of the sum adjudged to be paid and may direct that a warrant of commitment be issued forthwith.

(5) Every direction or sentence of the Court under subsection (3) or subsection (4) of this section, shall be entered in the Criminal Record Book and shall be signed by the presiding judicial officer.

(6) Where any sum of money adjudged to be paid by any person on a conviction is not paid within 28 days thereafter or within such time as may have been allowed by the Court for payment thereof; or in any case where subsection (4) of this section applies, a Judge, Magistrate or Fa'amasino Fesoasoani who has been granted extended jurisdiction pursuant to section 18 of the Magistrates' Courts Act 1969 may issue a warrant of commitment for such period of imprisonment as the Court has determined on conviction, or, if no period has been determined on conviction, for a period of imprisonment determined in accordance with the provisions of subsection (7) of this section, unless the sum adjudged to be paid and the fee for the issue of the warrant are sooner paid.

(7) The period of imprisonment imposed under this section shall be such period as, in the opinion of the Judge, Magistrate or Fa'amasino Fesoasoani who has been granted extended jurisdiction pursuant to section 18 of the Magistrates' Courts Act 1969 fixing the period, will satisfy the justice of the case, not exceeding in any case a period of one day for each 50 sene or part thereof of the amount due (including the fee for the issue of the warrant) at the time of the issue of the warrant of commitment, or a period of 180 days, or the maximum period (if any) prescribed in respect of the offence on which the conviction is founded, whichever is the least.

(8) When any person has been committed to prison under this section and has served a term of imprisonment determined in accordance with subsection (7) of this section, no proceedings or further proceedings shall thereafter be taken by way of civil process under this section for the enforcement or recovery of the sum adjudged to be paid.

118. Enforcement of Court orders - (1) Where a Judge, Magistrate or Fa'amasino Fesoasoani who has been granted extended jurisdiction pursuant to section 18 of the Magistrates' Courts Act 1969, on a conviction orders a person to do some act other than the paying of money, that in the opinion of the Court will satisfy the justice of the case, he may at the same time order that, if the person neglects or refuses to do that act, he shall be imprisoned for such period as, in the opinion of the Court, will satisfy the justice of the case, not exceeding the maximum period (if any) prescribed in the enactment on which the order is founded, or, where no such maximum is prescribed, a period of 180 days.

(2) If the person neglects or refuses to do that act, a warrant of commitment may be issued by a Judge, Magistrate or Fa'amasino Fesoasoani who has been granted extended jurisdiction pursuant to section 18 of the Magistrates' Courts Act 1969, and shall require that the person be imprisoned for such period as a Judge, Magistrate or such Fa'amasino Fesoasoani has

fixed at the time of the hearing or such shorter period as the Judge, Magistrate or such Fa'amasino Fesoasoani issuing the warrant thinks reasonable.

119. Putting under bond - (1) Where any offender is convicted of an offence for which he is liable to imprisonment for any term not exceeding 3 years, the Court may, if it thinks fit, instead of or in addition to imposing any other punishment authorised by law, order him to enter, with or without sureties, as the Court thinks fit, into a bond in such sum or sums as the Court thinks sufficient, subject to the condition that the offender keep the peace and be of good behaviour for such time, not exceeding 3 years from the date of the bond, as is fixed by the order.

(2) If any offender refuses to enter into a bond under this section when ordered, or fails to obtain a surety or sureties as required by the order, the Court may, if it thinks fit, order that he be imprisoned until he enters into the bond or obtains the surety or sureties, or until the Court sooner orders his release.

(3) The Court may in its discretion suspend such last mentioned imprisonment on such conditions as it thinks fit, or limit the term of such imprisonment.

(4) No one shall be imprisoned pursuant to an order under this section for more than one year, exclusive of any other term for which he may be imprisoned or detained under any sentence imposed on his conviction.

PUNISHMENTS

Death

120. Form of sentence in capital cases - (1) Where any person is sentenced to death under section 28 or 66 of the Crimes Ordinance 1961 the form of the sentence shall be that he shall suffer death in the manner prescribed by law.

(2) No variation in the form in which the sentence is pronounced shall affect the validity of the sentence.

(3). A sentence of death shall be carried out by hanging.

(4) The provisions set out in the First Schedule to this Act shall apply to the carrying out of the sentence.

121. Sentence of death not to be passed on person under 18 years of age or on pregnant woman - (1) Where any person convicted of an offence punishable with death was under the age of 18 years at the time of the commission of the offence, or if a woman is pregnant, the sentence to be passed on him or her shall be a sentence of imprisonment for life, instead of a sentence of death.

(2) Where any person convicted of an offence punishable with death alleges that he or she was under the age of 18 years at the time of the commission of the offence, or if a woman that she is pregnant, or if the Court before which that person is so convicted thinks fit, the question of the age or pregnancy of that person shall, before sentence is passed, be determined by that Court.

(3) The question of the age or pregnancy of that person shall be determined by the Court sitting with the assessors with whom the Court sat on the trial of that person for the offence of which he or she was convicted:

PROVIDED THAT if any assessor dies or is discharged by the Court as being through illness incapable of continuing to act or for any other cause, the inquiry as to the age or pregnancy of that person shall be held or continue without that assessor.

(4) The question of the age or pregnancy of that person shall be determined by the Court on such evidence as may be put before it, either on the part of that person or on the part of the State.

(5) The Court shall find that that person was under the age of 18 years at the time of the commission of the offence, or if a woman that she is pregnant, only if it is affirmatively so proved to the satisfaction of the Court (including a majority of the assessors).

(6) Where, on proceedings, under this section, the Court finds that that person was not under the age of 18 years at the time of the commission of the offence, or if a woman that she is not pregnant, that person may appeal as of right to the Court of Appeal against that finding, and that Court, if satisfied for any reason that the finding should be set aside, shall quash the sentence of death and instead pass on that person a sentence of imprisonment for life. Application to the Court for leave to appeal under this subsection shall be made in accordance with section 54 of the Judicature Ordinance 1961. The provisions of Part III of that Ordinance shall apply accordingly as if the appeal were one to which that Part III relates.

Imprisonment

122. No sentence of solitary confinement to be passed - (1) No offender shall be sentenced to solitary confinement.

(2) Subject to subsection (3) of this section, every reference in any enactment to solitary confinement, or to imprisonment in solitary confinement, shall hereafter be construed as a reference to imprisonment.

(3) Nothing in this section shall be construed to limit or affect any of the provisions of the Prisons Act 1967, or of any regulations thereunder, in respect of offences against discipline.

PART VI **PRESERVATION OF THE PEACE**

123. Application for order for bond to keep the peace - Any person may apply to a Court presided over by a Magistrate for an order requiring any other person to enter into a bond, either with or without sureties, for keeping the peace, on any of the following grounds:

(a) That the applicant has cause to fear that the defendant:

(i) Will do him or his wife or child or any member of his household bodily harm; or

(ii) Will destroy or damage his house; or

(iii) Will procure any other person to do any such injury as aforesaid; or

(b) That the defendant has to or in the presence of the applicant, for the purpose of annoyance and provocation or to the common annoyance of members of the public:

(i) Used provoking or insulting language; or

(ii) Exhibited any offensive writing or object; or

(iii) Done any offensive act; or

(c) That the defendant has threatened to do, or to procure some other person to do, any act which if done would constitute an offence under either of the following provisions of the Crimes Ordinance 1961:

(i) Section 112 (which relates to the offence of arson); or

(ii) Section 113 (which relates to the offence of wilful damage).

124. Application to be treated as information - An application under section 123 of this Act shall be made by motion, and shall be received by the Court and be proceeded with in all respects as if it is an information laid by the applicant against the defendant for an offence and is if the ground of the application is the alleged offence, and the provisions of Part II of this Act shall apply to the hearings of such applications insofar as they are consistent with this Part of this Act,

125. Making of order for bond - (1) If on the hearing of any such application the Court considers that there is good ground to do so, it may order the defendant to enter, with or without a surety or sureties, as the Court thinks fit, into a bond in such sum or sums as the Court thinks sufficient, subject to the condition that the defendant keep the peace towards the applicant and refrain from doing the act feared or from repeating the conduct complained of or from doing the act threatened, as the case may be, for such time, not exceeding one year from the date of the bond, as is fixed by the order.

(2) No order shall be made under this section, unless:

(a) In the case of an application upon the ground or grounds provided in paragraph (a) of section 123 of this Act, the Court is satisfied that the applicant has just cause for his fear, or

(b) In the case of an application upon the ground or grounds provided in paragraph (b) of that section, the Court is of opinion that the conduct complained of is likely to be repeated and may tend to provoke a breach of the peace; or

(c) In the case of an application upon the ground or grounds provided in paragraph (c) of that section, the Court is satisfied that there is just cause for fear that the defendant will, if not prevented, carry the threats into execution.

(3) A bond under this section shall be in form 3 set out in the Second Schedule to this Act, and may be entered into by any of the parties to it before any Magistrate or Registrar, and it shall not be necessary for all the parties to the bond to be present at the same time or at the same place, and more than one form of bond may be signed. The person before whom any bond is entered into shall give to each of the persons entering into it before him a notice in form 4 set out in the said Second Schedule.

(4) In any case where a surety or sureties are required, the Court may at any time, if it is satisfied that the defendant is unable to obtain the surety or sureties, order that the surety or any or all of the sureties be dispensed with.

126. Making of order for bond where person charged with offence - Where any person is charged before a Court presided over by a Magistrate or Fa'amasino Fesoasoani with an offence and the evidence establishes one of the grounds which would justify the making of an order for a bond for keeping the peace, then, whether or not the defendant is convicted of the offence and whether or not any penalty is imposed on him in respect of the offence, the Court may make such an order as if an application therefor had been made under section 123 of this Act.

127. Refusal to enter into bond - If a defendant refuses to enter into a bond for keeping the peace when ordered so to do or fails to obtain a surety or sureties as required by the order, the Court (excluding, however, any Court presided over by a Fa'amasino Fesoasoani without extended jurisdiction granted pursuant to section 18 of the Magistrates' Courts Act 1969) may order that he be committed to a prison for any period not exceeding 2 months:

PROVIDED THAT a defendant who has failed to obtain the required surety or sureties shall not be ordered to be committed to a prison if he satisfies the Court that he has taken reasonable steps to obtain the surety or sureties:

PROVIDED FURTHER THAT a defendant who has been committed to a prison shall be immediately released if his committal was based on refusal to enter into a bond and he enters into the bond; or if his committal was based on failure to obtain a surety or sureties and he obtains the required surety or sureties, or before the expiry of the period of his detention satisfies a Court presided over by a Magistrate or such Fa'amasino Fesoasoani that he had taken reasonable steps to obtain the surety or sureties.

128. Person imprisoned in default of finding sureties may be released - If the person for whose protection a Court has required the defendant to find a surety or sureties of the peace dies or for some other reason that person no longer requires protection and the defendant is then in a prison in default of finding the surety or sureties, a Court presided over by a Magistrate may, if it thinks fit, order that the defendant be released from custody without finding the surety or sureties.

129. Order calling up bond - (1) Any person who has obtained an order requiring any other person to enter into a bond for keeping the peace may apply by motion to a Court presided over by a Magistrate for an order calling up the bond on the ground that that other person has failed to keep the condition of the bond.

(2) On the filing of the application the Registrar shall fix a time and place for the hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed.

(3) If on the hearing of any application made under this section it is proved to the satisfaction of the Court that the condition of the bond has not been kept, the Court may make an order in form 5 set out in the said Second Schedule to call up the bond to such an amount as it thinks fit as to any person bound thereby on whom notice is proved to have been served in accordance with this section. Any penalty payable in accordance with this subsection shall be recoverable as if it were, in respect of the bond out of the sum it thinks fit to have payable in respect of a fine.

PART VII

APPEALS FROM MAGISTRATES' COURTS TO SUPREME COURT

130. Appeal where Magistrate refuses to reserve question - (1) If the prosecutor or the defendant applies to a Magistrate under section 111 of this Act to reserve a question of law for the determination of the Supreme Court, and the said Magistrate refuses so to do, the party applying may, within 21 days of such refusal, appeal to the Supreme Court against such refusal by filing a notice of appeal in writing in the office of the said Magistrate's Court, lodging a copy of the notice in the office of the Supreme Court, and serving a copy of the notice on the respondent or his solicitor. The notice shall be in the prescribed form (if any).

(2) Thereupon the Registrar of the said Magistrate's Court shall send all papers relating to the trial in which the question arose to the Registrar of the Supreme Court and that Registrar shall set the appeal down for hearing on the first practicable sitting day in convenient place where sittings of the Supreme Court are held, and shall notify the parties to the appeal of the time and place appointed for the hearing.

(3) The Supreme Court, after hearing the parties, and considering such evidence (if any) as it thinks fit to require or admit, shall allow or refuse the appeal.

(4) If the appeal is allowed:

(a) A case shall be stated for the determination of the Supreme Court by the said Magistrate as if the question had been reserved; and

(b) Subsection (6) of the said section 111, and the incorporated subsections (4) to (7) inclusive of section 131 of this Act, shall apply with the substitution of notification of the allowance of the appeal for notification of the decision of the said Magistrate.

131. Appeal on question of law only by way of case stated - (1) Where any information has been decided by a Magistrate, either party may, if dissatisfied with the decision as being erroneous in point of law, appeal to the Supreme Court by way of case stated for the determination of that Court on a question of law only.

(2) An appellant under this section shall, within 21 days after the decision, file in the office of that Magistrate's Court a notice of appeal in writing, lodge a copy of the notice in the office of the Supreme Court, and serve a copy of the notice on the respondent or his solicitor. The notice shall be in the prescribed form (if any).

(3) The appellant shall, within 21 days after the filing of the notice of appeal, or within such further time as the said Magistrate may in his discretion allow, submit a draft of the case stated (setting out the facts and the grounds of the decision and specifying the question of law on which the appeal is made), through the Registrar of the said Magistrate's Court to the said Magistrate, and deliver or post a copy of the draft to the respondent or his solicitor.

(4) As soon as may be practicable after receiving the draft case stated, the said Magistrate shall, after hearing the parties if he considers it necessary to do so, settle the case, sign it, and transmit it to the said Registrar. The settling and signing of the case shall be deemed for the purposes of this Part of this Act to be the statement of the case by the Magistrate's Court.

(5) Where the said Magistrate has, since the date of his decision ceased to hold that office or died or left Western Samoa, or is incapable for any other reason of acting as such, any Magistrate may extend the time for submission of a draft case stated, and may settle and signed the case.

(6) The said Registrar shall send to the Supreme Court nearest to the said Magistrate's Court the case signed by the Magistrate, together with any bail-bond entered into by the appellant, and shall make a copy of the case available to each party.

(7) When the Registrar of the Supreme Court receives the case stated, he shall set it down for hearing on the first practicable sitting day in the most convenient place where sittings of the Supreme Court are held, and shall notify the parties to the appeal of the time and place appointed for the hearing.

(8) Where any appeal under this section relates to a conviction, the notice of appeal shall not be filed until after the defendant has been sentenced or otherwise dealt with.

132. No appeal on ground of improper admission or rejection of evidence - No decision shall be appealed against under section 131 of this Act by reason only of the improper admission or rejection of evidence.

133. Magistrate may refuse a case if he thinks appeal frivolous - (1) If the Magistrate, whether before or after having had a draft of the case stated submitted to him, is of the opinion that the appeal is merely frivolous, but not otherwise, he may refuse to state a case, and shall, on the request of the applicant for the case, sign and deliver to him a certificate of that refusal.

(2) Where the Magistrate refuses to state a case under section 131 of this Act, the appellant may, within 21 days of such refuse, apply to the Supreme Court for an order requiring the Magistrate to state a case. A copy of the application shall be served on the Magistrate and on the other party, and the Magistrate and that other party shall be entitled to appear and be heard.

(3) The Supreme Court may, if it thinks fit, make an order requiring the Magistrate to state a case, and the Magistrate on being served with the order shall state a case accordingly.

(4) On the making and service of such an order, subsections (3) to (7) inclusive of section 131 of this Act shall apply with the substitution of service of the order for the filing of the notice of appeal.

134. Certifying that a case stated has not been prosecuted - If within the 21 days, allowed under sections 111, 130, 131 or 133 of this Act for the submission by the applicant or appellant as the case may be of a draft of a case stated, or within such further time as may be allowed, no such action is taken, any Magistrate may certify that the application or appeal as the case may be has not been prosecuted.

135. Case may be sent back for amendment - The Supreme Court may, if it thinks fit, cause any case stated under this Part of this Act to be sent back for amendment, and it shall be the duty of the Magistrate to amend the case accordingly and return it to the Supreme Court.

136. Supreme Court to determine the questions on the case - The Supreme Court shall hear and determine the question or questions of law arising on any case stated under this Part of this Act, and shall thereupon do any one or more of the following things:

- (a) Remit the matter to the Magistrate's Court with the determination of the Supreme Court thereon and any consequential directions; or
- (b) On an appeal, reverse, confirm or amend the decision in respect of which the case has been stated; or
- (c) Exercise any power conferred by section 144 of this Act; or
- (d) Make such other order in relation to the matter as it thinks fit, including an order as to costs, but costs shall not be allowed against the Magistrate.

137. Defendant appealing by way of case stated not allowed to appeal otherwise - A defendant who appeals by way of case stated against any decision shall not be entitled to appeal to the Supreme Court against the same decision in accordance with any of the other provisions of this Part of this Act, unless the Supreme Court grants leave to the defendant to withdraw his appeal by way of case stated and if necessary extends the time within which a notice of appeal under those other provisions may be filed.

General Appeals

138. Defendant's general right of appeal to Supreme Court - (1) Except as expressly provided by this Act or by any other enactment, whereby the decision of any Magistrate or Fa'amasino Fesoasoani on any information any defendant is convicted or any order is made for the estreat of a bond or any order is made other than for the payment of costs on the dismissal of the information, the person convicted or against whom any such order is made may appeal to the Supreme Court.

(2) In the case of a conviction, the appeal may be against the conviction and the sentence passed on the conviction, or against the conviction only, or against the sentence only; and, in the case of an order for the payment of money, the appeal may be against the order and the

amount of the sum ordered to be paid, or only against the amount of the sum ordered to be paid.

(3) No appeal against conviction shall be brought until the person convicted has been sentenced or otherwise dealt with.

(4) Every appeal under this section is hereinafter referred to as a general appeal.

138A. Right of prosecution to appeal to Supreme Court - (1) Where on the trial of a person on any charge that person is acquitted of that charge the Attorney-General may on behalf of the prosecution appeal to the Supreme Court against that acquittal.

(2) The Attorney-General on behalf of the prosecution may appeal to the Supreme Court against the sentence passed on any person, unless the sentence is one fixed by law.

(3) No appeal under subsection (1) of this section against a sentence of imprisonment that is unheard before the date on which the person convicted has completed serving that sentence shall lapse, and if the Supreme Court upholds the appeal and imposes an increased sentence the convicted person shall be recalled to serve the additional period of imprisonment so imposed.

139. Notice of appeal - (1) Where a convicted person desires to appeal to the Supreme Court against conviction or sentence, or the Attorney-General desires to appeal against the sentence passed on the conviction of any person, or to appeal against an acquittal, the appellant shall give notice of appeal by filing in the office of the Court whose decision is appealed against within 14 days after the date of sentence, or as the case may be, the date of acquittal a notice in writing of the appeal and of the grounds thereof. The notice shall be filed in quadruplicate and shall be in the prescribed form (if any).

(2) The Registrar receiving the notice shall forthwith deliver or post one copy to the respondent or his solicitor, another copy to the Magistrate or Fa'amasino Fesoasoam whose decision is appealed against, and another copy to the nearest Supreme Court office.

(3) The time within which notice of appeal may be given may be extended at any time by the Supreme Court where the Court is satisfied that there were reasonable grounds for the delay and that in the interests of justice such extension ought to be granted.

140. Transmission of documents to Supreme Court - The Registrar of the Magistrate's Court shall send to the said Supreme Court office, with the copy of the notice of appeal, or as soon as possible thereafter:

(a) Any bail-bond entered into by the appellant;

(b) The information or charge sheet;

(c) A certified copy of the entry (if any) in the Criminal Record Book containing the conviction, sentence or order;

(d) A copy of any notes made by the Magistrate or Fa'amasino Fesoasoani of the evidence given at the hearing and of any questions of law raised at the hearing and of any submissions made by either party;

(e) Where the defendant pleaded guilty, a summary of the facts stated by the informant;

(f) A copy of any evidence taken under section 28 of this Act (which relates to taking the evidence of a witness at a distance) or under section 26 of this Act (which relates to taking the evidence of a person about to leave the country), and any statement admitted under section 27 of this Act (which relates to the admissibility of a statement made by a person who is seriously ill), and any affidavit filed;

(g) A copy of any written judgement which the Magistrate or Fa'amasino Fesoasoani may have delivered; and

(h) Any exhibit remaining in his custody.

141. Setting down appeal for hearing - When the registrar of the Supreme Court receives the documents referred to in section 140 of this Act, he shall set the appeal down for hearing on the first practicable sitting day in the most convenient place where sittings Supreme Court are held, and shall notify the parties to the appeal time and place appointed for the hearing.

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

(2) Where any question of fact is involved in any appeal evidence taken in the Magistrate's Court, bearing on the question shall, unless the Supreme Court otherwise directs, be brought before the Supreme Court by production of the documents specified in section 140 of this Act, any exhibits which are in the custody of either party, and such other materials as the Supreme Court may deem expedient:

PROVIDED THAT the Supreme Court may in its discretion rehear the whole or any part of the evidence, and shall rehear the evidence of any witness if the Court has reason to believe that any note of the evidence of that witness made by the Magistrate or Fa'amasino Fesoasoani is or may be incomplete in any material particular.

(3) The Supreme Court shall have the same jurisdiction and authority as the Magistrate's Court, including powers as to amendment, and shall have full discretionary power to hear and receive further evidence, if that further evidence could not in the circumstances have reasonably been adduced at the hearing, and for that purpose shall have the same jurisdiction and authority to make any order under section 26 or 28 of this Act as a Magistrate had.

143. Defects in notice of appeal - On the hearing of and general appeal no objection to any defect in the notice of appeal shall be allowed, unless the Supreme Court is of opinion that the respondent has been substantially prejudiced thereby:

PROVIDED THAT, whether or not any objection is allowed, the Court may direct or allow the notice to be amended on such terms as to costs or otherwise as it thinks fit.

144. Supreme Court to hear and determine appeal - (1) The Supreme Court shall hear and determine every general appeal and make such order in relation to it as the Court thinks fit, and, without limiting the generality of the power conferred by this subsection, may exercise any of the powers referred to in the succeeding provisions of this section.

(2) In the case of an appeal against conviction the Supreme Court may:

- (a) Confirm the conviction, or
- (b) Set it aside and direct either an entry of acquittal or a new trial; or
- (c) amend it and, if the Court thinks fit, quash the and either impose any sentence (whether more or less severe) that the convicting Court could have imposed on the conviction as so amended, or deal with the offender in any other way that the convicting Court could have dealt with him on the conviction as so amended.

(2A) In the case of an appeal against an acquittal the Supreme Court may:

- (a) Dismiss the appeal; or
- (b) Uphold the appeal and direct a new trial, or
- (c) Uphold the appeal and convict the respondent on the charge in respect of which the appeal is made; or
- (d) Where it is satisfied that the acquittal should not set aside but that the respondent ought to have been convicted of some other offence and that the Magistrate's Court had jurisdiction to convict the respondent of that other offence, instead of dismissing the appeal, convict the appellant of that the offence.

(2B) Where the Supreme Court convicts a respondent pursuant to subsection (2A) of this section it may:

- (a) Refer the matter back to the District Court instance for sentence; or
- (b) Itself sentence the respondent.

(3) In the case of an appeal against sentence, the Supreme Court may:

- (a) Confirm the sentence; or
- (b) If the sentence (either in whole or in part), is one which imposing it had no jurisdiction to impose, or is one which is clearly excessive or inadequate or inappropriate, or if the Supreme Court is satisfied that substantial facts relating to the offence or to the offender's character or personal history were not before the Court imposing sentence or that those facts were not substantially as placed before or found by that Court, either:
 - (i) Quash the sentence and either pass such other sentence warranted in law (whether more or less severe) in substitution therefore as the Supreme Court

thinks ought to have been passed or dealt with the offender in any other way that the Court imposing sentence could have dealt with him on the conviction, or

(ii) Quash any invalid part of the sentence that is severable from the residue; or

(iii) Vary within the limits warranted in law, the sentence or any part of it or any condition imposed in it.

(4) In the case of an appeal against an order, the Supreme Court may:

(a) Confirm the order, or

(b) Set it aside, or

(c) Quash it and make such other order warranted in law (whether more or less severe) in substitution therefor as the Court thinks ought to have been made, or

(d) Vary, within the limits warranted in law, the order of any part of it or any condition imposed in it.

(5) In the case of an appeal against the amount of any Sum ordered to be paid, the Supreme Court may confirm the amount or increase or reduce it within the limits warranted in law.

(6) In any case, the Supreme Court may exercise any power that the Court whose decision is appealed against might have exercised.

145. Power to forbid report of proceedings, etc. - On any general appeal the Supreme Court shall have the same powers as a trial Court has under sections 61 and 62 of this Act.

Provisions Relating to all Appeals

146. Powers of Judge as to extension of time - (1) Any Judge of the Supreme Court may, on the application of any time of the appellant or intending appellant, extend any time prescribed or allowed under this Part of this Act for the filing of any notice or the submission of a draft of any case stated or the doing of any other thing in respect of any appeal or proposed appeal to the Supreme Court.

(2) Any appellant or intending appellant may at any time apply to a Judge to review any decision of a Magistrate refusing an extension of time for the submission of a draft of any case stated under this Part of this Act. On any such application a Judge may, in his discretion, confirm the decision or reverse it and allow such extension of time as he thinks fit.

147. Provisions as to issue of warrant pending appeal - (1) Where under any decision against which the defendant appeals the defendant has been sentenced to imprisonment, the warrant of commitment in execution of the sentence shall be issued, notwithstanding that notice of appeal has been given.

(2) Where notice of appeal has been given and the defendant is released on bail before the warrant of commitment is executed, the warrant shall be suspended until the appeal has been determined or, as the case may be, until a Magistrate has certified under section 134 of this Act that it has not been prosecuted, or the Registrar of the Supreme Court has certified that it has been dismissed for non-prosecution.

(3) Except as provided in subsection (1) of this section or in any other enactment, no warrant or order shall be issued or execution of any decision in respect of which a notice of appeal has been filed until the appeal has been determined or, as the case may be, until a Magistrate has certified under section 134 of this Act that it has not been prosecuted, or the Registrar of the Supreme Court has certified that it has been dismissed for non - prosecution.

(4) Where any warrant of distress is issued before a notice of intention to appeal is filed, then:

(a) If the warrant has not been executed, it shall be suspended until the appeal has been determined or, as the case may be, until a Magistrate has certified under section 134 of this Act that it has not been prosecuted, or the Registrar of the Supreme Court has certified that it has been dismissed for non - prosecution;

(b) If the warrant has been executed, any goods that have been seized but not sold shall be returned to the owner.

148. Granting of bail to appellant and custody pending appeal - (1) An appellant who is in custody only under the conviction to which the appeal relates shall be bailable, at any time before the hearing of the appeal, at the discretion of the Magistrate or Fa'amasino Fesoasoani who presided over the Court whose decision is appealed against, or, if that Magistrate or Fa'amasino Fesoasoani is not available, at the discretion of some other remanding officer.

(2) Where an appellant is granted bail, he shall, if he is in custody only under the conviction to which the appeal relates, be released from custody on entering into a bond before a remanding officer in such sum or sums and with or without a surety or sureties as the Magistrate or Fa'amasino Fesoasoani granting bail directs, subject to the condition that he attend personally at the Supreme Court on the day on which the appeal is to be heard and on any day to which the hearing may be from time to time adjourned.

(3) Where an appellant is granted bail under the provisions of this section, the provisions of subsection (1) of section 75 of this Act and of sections 76, 77, 78 and 79 of this Act, as far as they are applicable and with the necessary modifications, shall apply as if he were a defendant remanded in custody who had been granted bail.

(4) An appellant who is in custody only under the conviction to which the appeal relates may at any time apply to a Judge to review any decision of a Magistrate or Fa'amasino Fesoasoani granting or refusing bail under this section. On any such application the Judge may in his discretion confirm, modify or reverse the decision.

(5) The time during which an appellant is on bail shall not count as part of his term of imprisonment.

(6) Where a case is stated under this Part of this Act, this section shall apply to any person in relation to whose conviction the case is stated as it applies to an appellant.

(7) For the purposes of this Part of this Act, an appellant shall not be deemed to be in custody only under the conviction to which the appeal relates if a direction has been given that another sentence or term of imprisonment is to follow the sentence imposed on that conviction, and he has not appealed against in respect of which that other sentence or term was imposed.

149. Arrest of appellant who has absconded or is about to abscond while on bail - Where an appellant is released on bail, any remanding officer if satisfied on the oath of the respondent or of any surety or on the oath of some person on behalf of the respondent or surety, that the appellant has absconded or is about to abscond for the purpose of evading justice, may issue a warrant, which shall be in prescribed form (if any), to arrest him and bring him before a Magistrate or Fa'amasino Fesoasoani. When the appellant is arrested pursuant to the warrant, any Magistrate or Fa'amasino Fesoasoani, on being satisfied that the appellant had absconded or was about to abscond, may commit him to a prison until the hearing.

150. Surrender of appellant released on bail and discharge of surety - (1) An appellant who has been released from custody on bail pending the hearing of the appeal may surrender himself and apply to any Magistrate or Fa'amasino Fesoasoani for the discharge of his bail-bond, and the Magistrate or Fa'amasino Fesoasoani may thereupon issue a warrant, which shall be in the prescribed form (if any), for the arrest of the appellant and for his committal to a prison for the unexpired term of the sentence originally imposed.

(2) Any surety for an appellant released as aforesaid may apply to any Magistrate or Fa'amasino Fesoasoani to be discharged from his obligation under the bail-bond, and the Magistrate or Fa'amasino Fesoasoani may thereupon issue a warrant, which shall be in the prescribed form (if any), for the arrest of the appellant. If he has not surrendered himself, and for his committal to a prison for the unexpired term of the sentence originally imposed.

(3) On the arrest of an appellant under the foregoing provisions of this section, his sureties shall be discharged from their obligations under the bail-bond.

151. Abandonment of appeal - An appellant may, at any time after he has given notice of appeal, or after he has applied for an extension of time for such a notice, abandon his appeal by giving the Registrar of the Supreme Court and the respondent notice to that effect and upon the giving of the notice the appeal shall, subject to the right of the respondent to apply for an order as to costs, be deemed to have been dismissed by the Supreme Court for non-prosecution. Any such notice shall be in the prescribed form (if any).

152. Presentation of case by party in custody - (1) Any party to an appeal who is in custody shall be entitled to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the Supreme Court.

(2) On the hearing of any general appeal against a conviction and the sentence passed on the conviction or against the conviction only, the appellant, if he is in custody, whether or not he is represented by counsel, shall be entitled to be present, and the Gaoler of the prison in which the appellant is detained shall, without further authority than this subsection, cause him to be taken to the Supreme Court for the hearing.

(3) On the hearing of any general appeal against sentence only or of any appeal by way of case stated on a question of law only, any party to the appeal who is in custody, whether or not he is represented by counsel, shall not be entitled to be present except with the leave of the Supreme Court, which may be given on the application in writing of that party.

(4) Where the leave of the Supreme Court is given for a party to an appeal who is in custody to be present at the hearing of the appeal, the Registrar of that Court shall notify the Gaoler of the prison in which that party is detained, and the Gaoler shall, without further authority than this subsection and that notification, cause him to be taken to the Supreme Court for the hearing.

(5) Any party to an appeal who is taken to the Supreme Court pursuant to subsection (2) or (4) of this section shall, unless his release is ordered by the Supreme Court, and except while he is in the custody of the Court, remain in the custody of the escorting officer until returned to the prison in which he is to be detained.

153. Power of Supreme Court to direct retrial - (1) On any appeal the Supreme Court may remit the decision appealed against to the Magistrate's Court with a direction that the information to which it relates be retried.

(2) Where any decision is remitted to the Magistrate's Court under subsection (1) of this section, the Registrar of the Supreme Court shall transmit a certificate to that effect to the Registrar of the Magistrate's Court whose decision was appealed against, together with in the case of a general appeal the documents and exhibits referred to in section 140 of this Act, and the case shall be dealt with as if a retrial as to the whole matter had been granted under section 107 of this Act, and the provisions of that section and of section 109 of this Act, as far as they are applicable and with the necessary modifications, shall apply accordingly.

154. Amendment of conviction by substituting one offence for another - (1) If on any appeal against a conviction for any offence (whether or not the appeal is against the sentence also) it appears to the Supreme Court that the evidence is insufficient to support a conviction for that offence, but is sufficient to support a conviction for some other offence of a similar character within the jurisdiction of the convicting Court, and that the defendant has not been prejudiced in his defence, the Supreme Court may, on such terms as to costs and otherwise as it thinks fit:

(a) Amend the conviction by substituting the last - mentioned offence for the offence mentioned in the conviction, and, if it thinks fit, quash the sentence imposed and either impose any sentence that the convicting Court could have imposed (whether more or less severe), or deal with the defendant in any other way that the convicting Court could have dealt with him, on the conviction as amended; or

(b) Remit the conviction to the Magistrate's Court with a direction that it be amended accordingly.

(2). Where any conviction is remitted to the Magistrate's Court under paragraph (b) of subsection (1) of this section, the Registrar of the Supreme Court shall transmit a certificate to that effect to the Registrar of the Magistrate's Court whose decision was appealed against, and the Magistrate's Court shall amend the conviction and, if it thinks fit, quash the sentence

imposed, and impose any sentence which it has jurisdiction to impose (whether more or less severe.) or deal with the defendant in any other way that it has power to deal with him, in respect of the conviction as amended.

155. Dismissal of appeal for non - prosecution - (1) If an appellant does not appear at the hearing of the appeal and, if he is in custody, he has not presented any case or argument in writing as provided in section 152 of this Act, or if an appellant, having appeared at the hearing, does not prosecute his appeal, the Supreme Court may, if it thinks fit, dismiss the appeal for non-prosecution.

(2) Where the Supreme Court dismisses any appeal for non-prosecution, the Registrar of that Court shall transmit a certificate to that effect to the Registrar of the Magistrate's Court whose decision was appealed against.

156. Registrar to certify determination on appeal - After the determination by the Supreme Court of any appeal, the Registrar of the Supreme Court shall transmit a certificate of the determination to the Registrar of the Magistrate's Court whose decision was appealed against, and shall send a copy of the certificate to any party to the appeal who is in custody and was not present when the determination was made.

157. Execution of determination of Supreme Court - (1) Where on any appeal the Supreme Court confirms any conviction, sentence, order or amount of any sum to be paid, or where the appeal is dismissed for non - prosecution, or where a certificate has been given under section 134 of this Act that the appeal has not been prosecuted, the decision of the Magistrate's Court shall be enforced.

(2) Where on any appeal the Supreme Court sets aside or reverses any conviction, order, or other decision, or amends any conviction or other decision, or quashes or varies any sentence or order, or increases or reduces the amount of any sum ordered to be paid, the Registrar of the Magistrate's Court shall make a note of the determination of the Supreme Court in the entry in the Criminal Record Book relating to the decision appealed against.

(3) In any case to which subsection (2) of this section applies, the determination of the Supreme Court or the decision of the Magistrate's Court as amended or varied by the Supreme Court, as the case may be, shall take effect as if it were the decision of the Magistrate's Court:

PROVIDED THAT, where the Supreme Court imposes a sentence of imprisonment, the warrant to be issued, shall be issued out of the Supreme Court and be signed by a Judge:

PROVIDED ALSO THAT, where the Supreme Court varies a sentence of imprisonment imposed by the Magistrate's Court, it shall not be necessary to issue a warrant of commitment in respect of the sentence as so varied.

(4) Where the appellant has paid a fine in accordance with a sentence of the Magistrate's Court and on the determination of the appeal:

(a) His conviction is set aside; or

(b) The sentence is quashed and any other sentence imposed is not for the payment of a fine or is for the payment of a smaller fine; or

(c) The sentence is varied by a reduction in the amount of the fine imposed,-

the appellant shall be entitled, subject to the order of the Supreme Court, to a return of the sum paid or part thereof, as the case may be. For the purposes of this subsection the term "**fine**" includes any costs or other money ordered by the Court to be paid on the conviction of the appellant.

158. Custody of person after determination of appeal - (1) Where the determination of the Supreme Court on any appeal has been given, or where an appeal has been dismissed for non - prosecution or a certificate has been given under section 134 of this Act that an appeal has not been prosecuted, any person who is liable under that determination or, as the case may be, under the decision appealed from to serve a sentence of imprisonment and who is not in custody may be arrested without warrant by any constable or any officer of a prison.

(2) Where the Supreme Court in giving any such determination quashes a sentence of imprisonment imposed by the Magistrate's Court and does not impose another sentence of imprisonment, the Registrar of the Supreme Court at the place where the determination is given shall send to the Gaoler of the prison in which the appellant is detained or from which he was released on bail a certificate setting out the result of the appeal, and, if the appellant is in the custody of the Gaoler and is not in custody for any other matter, he shall be released.

(3) Where the Supreme Court in giving any such determination varies a sentence of imprisonment imposed by the Magistrate's Court, or amends the conviction in respect of which a sentence of imprisonment was imposed by the Magistrate's Court, the Registrar of the Supreme Court at the place where the determination is given shall send to the Gaoler a certificate as aforesaid, and the warrant issued in execution of the sentence of the Magistrate's Court shall have effect as if it were amended in accordance with the certificate.

(4) Where under section 134 of this Act a Magistrate has certified that an appeal has not been prosecuted, the Registrar of the Magistrate's Court shall send that certificate to the Gaoler of the prison in which the appellant is detained. Where an appeal has been dismissed for non - prosecution, the Registrar of the Supreme Court shall send a certificate to that effect to the said Gaoler.

159. Resumption of probation on determination of appeal - Where under any determination in respect of which the defendant appeals a Magistrate's Court having jurisdiction has released the defendant on probation, and:

(a) When the appeal is determined neither the decision to release the defendant on probation nor the conviction on which it was made is set aside; or

(b) The appeal is not prosecuted or is dismissed for non-prosecution,-

the term of probation as specified by a Magistrate's Court or as varied by the Supreme Court, as the case may be, shall be resumed as from the day the appeal is determined or, as the case may be, the Magistrate or Fa'amasino Fesoasoani having jurisdiction under any enactment conferring power to release a defendant on probation certifies that it has not been prosecuted

or the Registrar of the Supreme Court certifies that it has been dismissed for non - prosecution.

160. Estreat of bail-bond where appeal against decision - (1) Where an appellant who has entered into a bail-bond pursuant to section 148 of this Act fails to attend personally at the Supreme Court in accordance with the condition of his bond, the Registrar of that Court shall certify upon the back of the bond the non - performance of the condition, and shall return the bond to the Registrar of the Magistrate's Court whose decision was appealed against, and the provisions of section 81 of this Act shall apply as if the certificate of the Registrar were the certificate of a remanding officer given under that section.

(2) If any order to estreat the bond to any amount is made, the order may include an order for the payment out of that amount of such sum as has been directed to be paid to any party by the original conviction or by the order of the Supreme Court.

161. Costs on appeals and cases stated - (1) On the determination of any appeal the Supreme Court may make such order as to payment and amount of costs to either party as it thinks fit.

(2) No Magistrate or Fa'amasino Fesoasoani who states a case in accordance with this Part of this Act shall be liable to costs by reason of the appeal against his decision.

(3) if the Supreme Court is of opinion that an appeal includes any frivolous or vexatious matter, it may, if it thinks fit, irrespective of the result of the appeal, allow the respondent the whole or any part of his costs in disputing the frivolous or vexatious matter.

162. Party not prosecuting appeal may be ordered to pay costs - (1) In any case where notice of appeal is given but the appeal is dismissed for non - prosecution or a certificate is given under section 134 of this Act that the appeal has not been prosecuted, the Supreme Court may allow the respondent such costs as it thinks fit.

(2) No costs incurred after notice has been given by the appellant abandoning the appeal shall be allowed.

163. Enforcement of order as to costs - Where on the determination of any appeal either party is ordered to pay costs, the order as to costs shall be included in the certificate of the determination transmitted in accordance with section 156 of this Act, and shall be enforceable as if it were a fine imposed by the Magistrate's Court.

164. No Court fees payable on appeal by person sentenced to imprisonment - Where an appellant has been sentenced to imprisonment under the conviction to which his appeal relates, no Court fees shall be payable in respect of the appeal either in a Magistrate's Court or in the Supreme Court.

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PART VIIA CRIMINAL APPEALS FROM SUPREME COURT

164A. Interpretation - In this Part of this Act, unless the context otherwise requires:

"Appellant" includes a person who has been convicted and desires to appeal under this Part of this Act.

"Court of Appeal" means the Court of Appeal of Western Samoa.

"Court of Appeal Rules" means rules relating to the practice and procedure of the Court of Appeal made under this Act and has the extended meaning required by subsection (4) of section 176 of this Act.

"Judge" means a Judge of the Supreme Court of Western.

"Sentence" includes any order of the Supreme Court made on conviction, and includes a discharge without conviction pursuant to section 104 of this Act; and the power of the Court of Appeal to pass a sentence includes a power to make any such order or to direct a discharge under section 104 of this Act.

164B. Right of appeal on certain matters arising before trial - (1) At any time before the trial, either the prosecutor or the accused person, with the leave of the Court of Appeal, may appeal to that Court against the making of an order or the refusal to make an order as to any of the following matters:

- (a) The severance or joinder of charges;
- (b) Directing separate trials of persons jointly charged;
- (c) The admissibility or inadmissibility of evidence;
- (d) The amendment of charges;
- (e) The quashing or amendment of an information on the that the information does not state in substance a crime or offence.

(2) At any time before the trial, the accused person, with the leave of the Court of Appeal, may appeal to that Court against a refusal to make an order for further particulars of any matter which is the subject of an information.

(3) On any appeal under this section, the Court of Appeal may confirm the decision of the Supreme Court or Judge or vary it, or set it aside and make such other order as the Court of Appeal thinks ought to have been made in the first place.

(4) Where a person desires to obtain the leave of the Court of Appeal to appeal to that Court under this section, that person shall give notice of his or her, application for leave to appeal, in such manner as may be directed by the Court of Appeal Rules, within 14 days after the decision of the Supreme Court or Judge is given, irrespective of whether reasons for the decision are given at a later date and irrespective of whether any formal steps to sign, enter, or otherwise perfect the decision are necessary or are afterwards taken.

(5) The time within which notice of an application for leave to appeal under this section may be given may be extended at any time by the Court of Appeal.

(6) Notwithstanding that an application for leave to appeal under subsection (1) of this section has been made, the Supreme Court may, if it is satisfied that it is in the interests of justice to do so, proceed with the trial without awaiting the determination of the application.

164C. Granting of bail to appellant, and custody pending appeal - (1) The Court of Appeal or the Judge who presided at the trial in the Court below may, if the Court or the Judge thinks fit, on the application of an appellant and on such terms and subject to such conditions as the Court or Judge thinks fit, grant bail to the appellant pending the determination of the appeal, if the appellant is in custody only under the conviction to which the appeal relates.

(2) The time during which an appellant is released on bail pending the determination of the appeal shall not count as part of any term of detention under his or her sentence, whether it is the sentence passed by the Court from which the appeal is brought or the sentence passed or varied by the Court of Appeal.

(3) Where a case is stated under this Part of this Act, this section shall apply to any person in relation to whose conviction the case is stated as it applies to an appellant.

164D. Appeal from decision of Judge relating to bail - (1) Subject to subsection (4) of this section, this section applies to any decision made by any Judge whereby:

(a) Any person is granted or refused bail; or

(b) Any condition of bail is imposed or substituted or revoked or varied; or

(c) The imposition of any condition of bail, or any particular condition of bail, is refused; or

(d) The variation or revocation of any condition of bail is refused.

(2) Either the prosecutor or the person to whom the decision relates may appeal to the Court of Appeal against any decision to which this section applies.

(3) For the purposes of this section, the failure of a Judge to impose any condition of bail, or any particular condition of bail, on any occasion on which any such condition could lawfully have been imposed shall be deemed to be a refusal to impose such a condition.

(4) Nothing in this section applies in respect of any decision made by a Judge if that decision was made on appeal from any decision of a District Court Judge or a Fa'amasino Fesoasoani.

164E. Procedural provisions relating to appeal on question of bail - (1) Every person wishing to appeal under section 164D of this Act shall file notice of that person's intention to appeal with the Registrar of the Court of Appeal within 14 days after the date of the decision to be appealed against.

(2) Every appeal under section 164D of this Act that is not heard before the date on which the decision appealed against ceases to be of any effect shall lapse on that date, and shall be deemed to have been dismissed by the Court of Appeal for non - prosecution.

(3) No decision of a Judge appealed against under section 164D of this Act shall be suspended only by reason of the fact that notice of that appeal has been given.

(4) On any appeal under section 164D of this Act the Court of Appeal may confirm the decision appealed against, or vary it, or set it aside and make such other order as the Court of Appeal thinks ought to have been made in the first place.

164F. Execution of decision of Court of Appeal - (1) Where, on any appeal under section 164E of this Act against a refusal to grant bail to any person, the Court of Appeal determines that bail shall be granted, the Court of Appeal shall order that the person be released on bail, subject to such conditions as the Court of Appeal thinks fit.

(2) Where, on an appeal under section 164E of this Act in respect of any condition of bail, the Court of Appeal cancels or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against shall send written notice to the person bailed and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail-bond containing the conditions (if any) required to give effect to the Court of Appeal's decision.

(3) If, in any case to which subsection (2) of this section applies, the person bailed fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail-bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the person bailed.

(4) If on an appeal under section 164E of this Act against a grant of bail, the Court of Appeal determines that bail shall not be granted or, as the case may be, should not be continued, a warrant for the detention in custody of the person to whom the determination relates shall be issued out of the Court of Appeal and signed by a Judge; and the person who executes that warrant shall ensure that a copy of the notice of the result of the appeal is given to the person arrested when the warrant is executed or as soon as practicable after the warrant is executed.

(5) Any person to whom subsection (4) of this section applies and who is not in custody may be arrested without warrant by any constable or any officer of a penal institution.

164G. Reserving question of law - (1) The Court before which any accused person is tried may, before, during or after the trial, reserve for the opinion of the Court of Appeal, in accordance with the succeeding provisions of this section, any question of law arising either on the trial or on any of the proceedings preliminary, subsequent or incidental to the trial.

(2) If the decision of the question may in the opinion of the Supreme Court depend on any questions of fact, the Judge may when he is sitting with Assessors, ask the Assessors questions as to the facts separately, and the Court shall make a note of those questions and the findings on those questions.

(3) Either the prosecutor or the accused may during the trial apply to the Court to reserve any such question, and the Court, if it refuses to reserve it, shall nevertheless take a note of the application, unless it considers the application to be frivolous.

(4) If the result of the trial is acquittal, the accused shall be discharged, subject to being again arrested if the Court of Appeal orders a new trial.

(5) If the result of the trial is conviction, the Supreme Court may respite the execution of the sentence, and shall where the sentence is death respite the sentence, until the question reserved has been decided; and the Court shall either commit the offender to prison, or grant the offender bail on such terms and subject to such conditions as the Court thinks fit.

(6) If the question is reserved, a case shall be stated for the opinion of the Court of Appeal, to be approved and signed by the Judge who presided at the trial, or if that Judge is unable to perform his duties or is absent from Western Samoa, by another Judge.

(7) Where the question is reserved on application, the case shall be stated by the party who applied for the question to be reserved, and where the question is reserved by the Judge on his own motion the case shall be stated by that Judge.

164H. Appeal on question of law question not reserved - (1) If the Supreme Court refuses to reserve a question, the party applying may move the Court of Appeal for leave to appeal against that refusal.

(2) The Court of Appeal may upon the motion, and upon considering such evidence, if any, as it thinks fit to require, grant or refuse such leave.

(3) If leave to appeal is granted, a case shall be stated for the opinion of the Court of Appeal as if the question had been reserved.

Note: The numbering in this section appears as it is in the original-without any section 164I)

164J. Powers of Court of Appeal where appeal is on question of law - (1) The Court of Appeal may of its own motion restate any case.

(2) Upon the hearing of any appeal under the preceding provisions of this Part of this Act, other than section 164B, the Court of Appeal may:

(a) Confirm the ruling appealed from; or

(b) If it is of the opinion that the ruling was erroneous, and that there has been a mistrial in consequence, direct a new trial; or

(c) If it considers the sentence erroneous pass such a sentence as ought to have been passed, or set aside any sentence passed by the Court below, and remit the case to the Court below with a direction to pass the proper sentence; or

(d) If it is of the opinion, where the accused has been convicted, that the ruling was erroneous, and that the accused ought to have been acquitted, order that the conviction be set aside, which order shall be deemed to be an acquittal; or

(e) Make such other order as justice requires.

(3) No conviction or acquittal shall be set aside, nor any new trial directed, even though it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial, or some misdirection given, unless, in the opinion of the Court of Appeal, some substantial wrong or miscarriage of justice was thereby occasioned on the trial.

(4) if it appears to the Court of Appeal that such wrong or miscarriage of justice did not affect all of the charges, the Court of Appeal may give separate directions as to each charge, and may pass sentence on any charge that stands good and unaffected by such wrong or miscarriage of justice, or remit the case to the Court below with a direction to pass such sentence as justice requires.

(5) The order or direction of the Court of Appeal shall be certified under the hand of the presiding Judge to the Registrar of the Court before which the case was tried, and such order or direction shall be carried into effect.

164K Right of appeal against conviction or sentence - (1) Any person convicted in the Supreme Court except on appeal from a decision of the District Court may appeal to the Court of Appeal:

(a) Against conviction; and

(b) Against the sentence passed, unless the sentence is one fixed by law.

(2) Any person convicted or sentenced in the Supreme Court on appeal from the District Court may with leave of the Court of Appeal, appeal to the Court of Appeal:

(a) Against conviction; and

(b) Against the sentence passed, unless the sentence is one fixed by law.

164L. Right of Attorney-General to appeal against sentence or acquittal - (1) The Attorney-General may appeal to the Court of Appeal against the sentence passed on any person, unless the sentence is one fixed by law.

(2) No appeal under subsection (1) of this section against a sentence of imprisonment that is unheard before the date on which the person convicted has completed serving that sentence shall lapse, and if the Court of Appeal upholds the appeal and imposes an increased sentence the convicted person shall be recalled to serve the additional period of imprisonment so imposed.

(3) Where on the trial of a person on any charge before a Judge alone that person is acquitted of that charge the Attorney-General may appeal to the Court of Appeal against that acquittal.

(4) Where on the trial of a person on any charge before a Judge sitting with Assessors that person is acquitted of that charge, the Attorney-General, on the grounds that an error of law has occurred, may appeal to the Court of Appeal against that acquittal.

(5) Upon the hearing of an appeal under subsection (3) or subsection (4) of this section the Court of Appeal may:

- (a) Dismiss the appeal; or
- (b) Uphold the appeal and direct a new trial.

164M. Right of appeal against sentence or conviction for contempt of Court - Where any person is found guilty in the Supreme Court of a criminal contempt of that Court or of any other Court, that person may appeal to the Court of Appeal against the finding, or against any sentence imposed in respect of the contempt, or against both the finding and the sentence, and the provisions of this Part of this Act shall apply accordingly as if the finding were a conviction.

164N. Determination of appeals in ordinary cases - (1) On any appeal against conviction, the Court of Appeal shall allow the appeal if it is of the opinion:

- (a) That the verdict of the Assessors should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or
- (b) That the judgment of the Court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law; or
- (c) That on any ground there was a miscarriage of justice; or
- (d) That the trial was a nullity.

(2) In any other case, the Court of Appeal shall dismiss the appeal.

(3) The Court of Appeal may, even though it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(4) Subject to the special provisions of this Part of this Act, the Court of Appeal shall, if it allows an appeal against conviction, quash the conviction, and direct a verdict of acquittal to be entered, or direct a new trial, or make such other order as justice requires.

(5) On any appeal against sentence, the Court of Appeal, if it thinks that a different sentence should have been passed, shall either quash the sentence passed and pass such other sentence warranted in law (whether more or less severe) in substitution for the original sentence, or vary the sentence or any part of it or any condition imposed in it; and in any other case the Court shall dismiss the appeal.

164O. Powers of Court of Appeal in special cases - (1) If on any appeal under section 164J of this Act it appears to the Court of Appeal that an appellant, though not properly convicted on some charge, has been properly convicted on some other charge, the Court may either affirm the sentence passed on the appellant or pass such sentence in substitution for the original sentence as it thinks proper and as may be warranted in law by the verdict on the charge on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the Judge or the Assessors could, on the charge or charges, have found the appellant guilty of some other offence, and

on the finding of the Judge or Assessors it appears to the Court of Appeal that the Judge or Assessors must have been satisfied on facts that proved the appellant guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the verdict found by the Judge or Assessors a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed as may be warranted in law for that other offence.

(3) If on any such appeal it appears to the Court of Appeal that the appellant was insane at the time of the commission of the offence and should have been acquitted on account of his or her insanity, the Court may quash the conviction; and thereupon sections 11, 12, 13, 14, and 15 of the Mental Health Ordinance shall apply, so far as they are applicable, as if the appellant had been so acquitted and as if references in any of those sections to the Court or a Judge were references to the Court of Appeal.

164P. Revesting and restitution of property on conviction - (1) The operation of any order for the restitution of any property to any person made on a conviction, and the operation in case of any such conviction, of the provisions of section 24 (1) of the Sale of Goods Act 1975 as to the revesting of the property in stolen goods on conviction, shall (unless the Court before which the conviction takes place directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended:

(a) In any case, until the expiry of 14 days after the date of the conviction; and

(b) In cases where notice of appeal or leave to appeal is given within 14 days after the date of conviction, until the determination of the appeal,-

and in cases where the operation of any such order or the operation of those provisions is suspended until the determination of the appeal, the order or those provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal.

(2) Provision may be made by Rules for securing the safe custody of any property, pending the suspension of the operation of any such order or of those provisions.

(3) The Court of Appeal may, by order, annul or vary any order made on a trial for the restitution of any property to any person, even though the conviction is not quashed, and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

164Q. Time for appealing - (1) Where a convicted person desires to appeal to the Court of Appeal against conviction or sentence, or to obtain the leave of that Court to so appeal, or where the Attorney-General desires to appeal against the sentence passed on conviction of any person, or to appeal against an acquittal, the appellant or Attorney-General shall give notice of appeal or notice of application for leave to appeal in such manner as may be directed by the Court of Appeal Rules within 14 days after the date of sentence, or as the case may be, the date of acquittal.

(2) The Court of Appeal Rules shall enable any person to present his or her case and his or her argument in writing instead of by oral argument if that person so desires; and any case or argument so presented shall be considered by the Court.

(3) The time within which notice of appeal or notice of application for leave to appeal may be given may be extended at any time by the Court of Appeal.

164R. Supplemental powers of Court of Appeal - (1) For the purposes of any appeal or application for leave to appeal against conviction or sentence, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice, do all or any of the following things:

(a) Order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to the Court to be necessary for the determination of the case;

(b) Order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether there were or were not called at the trial, or order the examination of any such witnesses to be conducted in the manner prescribed by the Court of Appeal Rules before any Judge of the Court or before any officer of the Court, Judge or other person appointed by the Court of Appeal for the purpose, and allow the admission of any depositions so taken as evidence before the Court;

(c) Receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness;

(d) Where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before the Court, order the reference of the question in manner prescribed by the Court of Appeal Rules made under this Act for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner so far as the Court thinks fit to adopt it;

(e) Appoint any person with special expert knowledge to act as adviser to the Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case.

(2) In any such proceedings, the Court of Appeal may exercise in relation to the proceedings any other powers that may for the time being be exercised by the Court of Appeal on appeals in civil matters, and issue any warrants necessary for enforcing the orders or sentences of the Court.

(3) In no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

164S. Duties of Registrar with respect to notices of appeal, etc. - (1) The Registrar of the Court of Appeal shall take all necessary steps for obtaining a hearing of any appeal or application for leave to appeal of which notice is given to him, and shall obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things connected with the proceedings in the Court whose decision is appealed against, which appear necessary for the proper determination of the appeal or application.

(2) Any documents, exhibits, or other things connected with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal against conviction or sentence shall be kept in the custody either in the custody of the Supreme Court or the Court of Appeal, in accordance with Rules made for the purpose, for such time as may be provided by those Rules, and subject to such power as may be given by those Rules for the conditional release of any such documents, exhibits or things from that custody.

(3) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application to any person who demands them, and to officers of the Court, Superintendents of Prisons, and such other offices or persons as the Registrar thinks fit, and the Superintendent of Prisons shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part of this Act, and shall cause any such notice given by a prisoner in that institution to be forwarded on behalf of the prisoner to the Registrar.

(4) The Registrar shall report to the Court of Appeal or a Judge of that Court any case in which it appears to the Registrar that, although no application has been made for the purpose, legal aid ought to be granted to an appellant.

164T. Evidence for Court of Appeal - (1) On any appeal or application for leave to appeal under this Act, the Court before which the appellant was convicted shall, if it thinks necessary or if the Court of Appeal so desires, send to the Court of Appeal in addition to any documents referred to in section 164T of this Act or in any Rules, a copy of the whole or of such part as is material of any notes taken by the judge presiding at the trial.

(2) The Court of Appeal may, if it considers the notes defective, refer to such other evidence of what took place at the trial as it thinks fit.

164U. Right of appellant to be represented - (1) On the hearing of an appeal or on any proceedings preliminary or incidental to an appeal, the appellant, shall be entitled to be represented by counsel; but if the appellant is in custody, he or she shall not be entitled to be present, except where the Court of Appeal Rules provide that the appellant shall have the right to be present. or where the Court of Appeal gives the appellant leave to be present.

(2) The power of the Court of Appeal to pass any sentence under this Act may be exercised even though the appellant is for any reason not present

164V. Power to forbid report of proceedings, etc. - The Court of Appeal shall have the same powers as the Supreme Court has under section 61 of this Act, and the provisions of that section, so far as they are applicable and with necessary modifications, shall apply to proceedings before the Court of Appeal.

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PART VIII **MISCELLANEOUS**

165. Compensation for loss of property - (1) On the conviction of any person for any offence the Court may order the offender to pay to any person such sum as it thinks fit by way of compensation for any loss of or damage to property suffered by that person through or by means of the offence.

(2) Where on the arrest of the offender any money was taken from him the Court may in its discretion order the whole or any part of the money to be applied to any such payment.

(3) Any order for payment under this section may be enforced in the same manner as a fine.

(4) An order under this section shall not affect the right of any person to recover by civil proceedings any sum in excess of the amount recovered under the order.

166. Revesting and restitution of property - (1) Where any one is convicted of any offence, any property found in his possession, or in the possession of any other person for him, may be ordered by the Court to be delivered to the person who appears to the Court to be entitled thereto.

(2) Where an order is made under subsection (1) of this section, and it appears to the Court that a purchaser has bought the property in good faith and without knowledge that it was dishonestly obtained, the Court may order that on the restitution of the property the offender shall pay to the purchaser a sum not exceeding the amount paid by him. The provisions of subsections (2) to (4) of section 165 of this Act shall apply to any such order.

(3) No order made under this section shall have any further effect than to change the possession, and no such order shall prejudice any right of property, or any right of action in respect of any property, existing or acquired in the goods either before or after the offence was committed.

(4) The operation of any order for the restitution of any property to any person, and the operation of the provisions of subsection (1) of section 26 of the Sale of Goods Act 1908 (N.Z.) as to the revesting of the property in stolen goods on conviction, shall (unless the Court by which the order was made or by which the defendant was convicted directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended:

(a) In any case until the expiration of 21 days after the date of the conviction; and

(b) In cases where notice of appeal is given within 21 days after the date of conviction, until the determination of the appeal,-

and, in cases where the operation of any such order or the operation of the said provisions is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal.

(5) The Supreme Court may by order annul or vary any order for the restitution of any property to any person, although the conviction is not quashed; and the last - mentioned order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

167. Costs - (1) Where the Court convicts a defendant, it may order him to pay to the informant such costs as it thinks just and reasonable for Court fees, witnesses' and interpreters' expenses, and solicitor's fees.

(2) Where the Court dismisses any information, it may order the informant to pay to the defendant such costs as it thinks just and reasonable for Court fees, witnesses' and interpreters' expenses, and solicitor's fees.

(3) Any order under subsection (1) or (2) of this section may include such costs as the Court thinks just and reasonable for the Court fees, witnesses' and interpreters' expenses, and solicitor's fees of or in relation to any adjournment or the taking of evidence under section 26 or 28 of this Act.

(4) Where the Court convicts the defendant and the informant has not prepaid any fees of Court, the Court may order the defendant to pay the fees of Court.

(5) Costs allowed under this section shall in no case exceed the amount provided for in any scale prescribed by regulations or rules made under this or any other Act.

(6) Any costs allowed under this section shall be specified in the conviction or order for dismissal, and may be recovered in the same manner as a fine.

168. Witnesses' expenses - (1) The Court may order any party at whose instance a witness appears at the Court to pay the costs and expenses of that witness, not exceeding the amount provided for in any scale prescribed by regulations or rules made under this or any other Act.

(2) Any such order may be enforced in the same manner as a fine.

169. Acts not generally to be done on Sunday - (1) Except as provided in subsection (2) of this section, no warrant shall be issued or executed, no summons or other document shall be issued or served, and no other act shall be done or proceeding taken, in respect of any matter to which this Act applies, on a Sunday.

(2) The following acts may be done and proceedings taken as effectually on a Sunday as on any other day, namely:

(a) A warrant to arrest any person charged with any offence may be issued and may be executed;

(b) A warrant to arrest, or for the appearance of, any person required to give evidence may be issued and may be executed;

(c) A search warrant may be issued and may be executed;

(d) Any information may be laid or any step taken if it is necessary to enable the issue of any warrant referred to in paragraph (a) or (b) or (c) of this subsection;

(e) A warrant of commitment (except for non - payment of a sum of money) may be executed;

(f) Any arrest authorised to be made without warrant may be made, and any person authorised to be taken into custody without warrant may be taken into custody;

(g) Any person may be granted bail or released on bail;

(h) Any statement may be taken under the provisions of section 27 of this Act.

(3) Every person commits an offence and is liable to a fine not exceeding \$20 who does any act in contravention of subsection (1) of this section:

PROVIDED THAT no act done on a Sunday in breach of the provisions of that subsection shall be invalidated solely on the ground that it was done on a Sunday.

170. Proceedings not to be questioned for want of form - No information, complaint, summons, conviction, sentence, order, bond, warrant, or other document, and no process or proceeding shall be quashed, set aside, or held invalid by any Court by reason only of any defect, irregularity, omission, or want of form unless the Court is satisfied that there has been a miscarriage of justice.

171. Consent of Attorney-General to proceedings in certain cases for offences on ships or aircraft - Proceedings for the trial and punishment of any person who:

(a) Whether or not he is a citizen of Western Samoa or a person ordinarily resident in Western Samoa, is charged with having committed beyond Western Samoa an offence on board or by means of any ship or aircraft which is not a Western Samoa ship or a Western Samoa aircraft; or

(b) Whether or not he is a citizen of Western Samoa or a person ordinarily resident in Western Samoa, is charged with having committed, anywhere within Western Samoa or in the space above Western Samoa, an offence on board or by means of any ship or aircraft which belongs to the Government of any country other than Western Samoa or is held by any persons on behalf or for the benefit of that Government, whether or not the ship or aircraft is for the time being used as a ship or aircraft of any of the arm forces of that country,-

shall not, by virtue only of the provisions of this Act, be instituted in any Court except with the consent of the Attorney-General and on his certificate that it is expedient that the proceedings should be instituted; and where the proceedings would be instituted only by virtue of the jurisdiction conferred by paragraph (c) of subsection (1) of section 6 of the Crimes Ordinance 1961 the Attorney-General shall not give his consent unless he is satisfied that the Government of the country to which the ship or aircraft belongs has consented to the institution of the proceedings:

PROVIDED THAT a person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

172. Civil remedy not suspended - No civil remedy for any act or omission shall be suspended by reason that such act or omission amounts to an offence.

173. Contempt of Court - (1) If any person, in any criminal or civil proceeding:

(a) Assaults, threatens, intimidates, or wilfully insults a Judge, Magistrate, Fa'amasino Fesoasoani or any Registrar, or any officer of the Court, or any assessor, or any witness, or any constable during his sitting or attendance in Court, or in going to or returning from the Court; or

(b) Wilfully interrupts or obstructs the proceedings of the Court or otherwise misbehaves in Court; or

(c) Wilfully and without lawful excuse disobeys any order or direction of the Court in the course of the hearing of any proceedings; or

(d) Wilfully aids, abets, counsels, procures, or incites any other person to do any of the things described in paragraphs (a) to (c) hereof inclusive,-

any constable or officer of the Court, with or without the assistance of any other person, may, by order of the Court, take the offender into custody and detain him until the rising of the Court.

(2) In any such case as aforesaid, the Court (excluding, however, any Court presided over by a Fa'amasino Fesoasoani without extended jurisdiction granted pursuant to section 18 of the Magistrates' Courts Act 1969), if it convicts the alleged offender after giving him a reasonable opportunity of being heard in his defence, may, for each such offence, sentence him to imprisonment for any period not exceeding 3 months, or to pay a fine not exceeding \$100; and in default of payment of any such fine may direct that the offender be imprisoned for any period not exceeding 3 months, unless the fine is sooner paid.

(3) Nothing in this section shall limit or affect any power or authority of any Court to punish any person for contempt of Court in any case to which this section does not apply.

174. Felonies, misdemeanours and mode of trial - (1) There shall be no distinction between felonies and misdemeanours or between offences punishable on indictment and by way of summary conviction; and, so far as may be necessary for the purpose of any rule of the common law or of any enactment in force in Western Samoa, all offences shall be deemed to be misdemeanours.

(2) In every enactment in force in Western Samoa every reference to the trial of offences by way of indictment or by way of summary proceedings shall, in the application of that enactment to Western Samoa, be construed as a reference to the trial of such offences by the Courts of Western Samoa in the ordinary course of their criminal jurisdiction and procedure.

175. Regulations - (1) The Head of State may, from time to time, acting on the advice of Cabinet, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power to make regulations conferred by subsection (1) of this section, regulations may be made under this section:

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

(b) Prescribing the solicitors' fees payable by parties in proceedings to which this Act applies;

(c) Prescribing the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings to which this Act applies;

(d) Prescribing the costs and charges payable by parties in proceedings to which this Act applies;

(e) Prescribing the procedure for the taking of the evidence of witnesses under sections 26 and 28 of this Act, including provisions for requiring the attendance of witnesses, the answering of questions, and the production of documents;

(f) Providing for any other matter in respect of which regulations are contemplated under this Act.

176. Rules of Court - (1) The Head of State may, from time to time, acting on the advice of the Prime Minister, and with the concurrence of the Rules Committee, make, alter or revoke rules regulating the practice and procedure of the Magistrates' Courts and the Supreme Court and the Court of Appeal under this Act and forms of proceedings thereunder:

PROVIDED THAT such rules shall be subject to and shall not be inconsistent with any provision of this or any other Act.

(2) The power of making rules shall extend to all matters of practice or procedure and matters relating to or concerning the effect or operation in law of any practice or procedure in any case within the cognisance of the Courts under this Act.

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

(a) Prescribing the forms of notice of appeal and case stated and any other forms to be used in respect of appeals to which this Act applies;

(b) Fixing scales of fees and costs payable in respect of proceedings to which this Act applies;

(c) Prescribing the duties of Registrars in respect of appeals, including the preparation of the record, setting down the time for hearing and the notification of the determination.

(4) Parts I, II and IV of the Court of Appeal Rules 1961, and the Schedules to those Rules shall apply to Part VIIA of this Act as if they were Rules made under this Act.

177. Repeals and savings - (1) The enactments mentioned in the Third Schedule to this Act are hereby repealed and shall cease to be in force in Western Samoa.

(2) All powers, jurisdictions, officers, appointments, orders, warrants, rules, regulations, seals, forms, books, records, instruments, and generally all acts of authority which originated under any of the said enactments or any enactments thereby repealed, and are subsisting or in

force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and, accordingly shall, where necessary, be deemed to have so originated.

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

SCHEDULES

FIRST SCHEDULE

Section 120

CARRYING OUT OF SENTENCE OF DEATH

1. Execution of sentence of death - (1) Where sentence of death is passed by a Court or Judge, the Head of State, if he decides not to interfere with the sentence shall by warrant in writing, state that he will not interfere with the sentence and authorise the Registrar of the Court, or any named Deputy Registrar of the Court, to carry out the sentence; and it shall be the duty of such Registrar or Deputy Registrar, with such assistants as he may require, to carry out the sentence at the place appointed under subclause (5) of this Clause.

(2) Subject to the provisions of section 58 of the Judicature Ordinance 1961, the sentence shall be carried out within 7 days after the Registrar or Deputy Registrar has received such a warrant in writing from the Head of State; and neither the Registrar nor any Deputy Registrar shall carry out the sentence before he has received such warrant.

(3) Notwithstanding that any such warrant has been given, the Head of State may from time to time direct in writing that the carrying out of the sentence be postponed, including any sentence the carrying out of which has already been postponed under this subclause.

(4) Whenever any direction is given under subclause (3) of this clause, the Registrar or Deputy Registrar shall not carry out the sentence during the postponement, but shall carry it out within 7 days after the expiration of the postponement, unless the Head of State sooner otherwise directs in writing.

(5) The sentence shall be carried out within the walls of such prison, or in such other enclosed place, as the Minister of Justice may from time to time appoint, either generally in respect of all such sentences or in any particular case.

2. Superintendent to deliver condemned person to Registrar - Every Superintendent, Chief Gaoler or other person in whose custody any, person condemned to death may be shall deliver the condemned person to such Registrar or Deputy Registrar on his demand. On such delivery the liability of the Superintendent, Chief Gaoler or other person shall cease, and the condemned person shall thenceforth be deemed to be in the legal custody of such Registrar or Deputy Registrar.

3. Registrar and other persons to witness execution - (1) There shall be present at the execution the Registrar or the Deputy Registrar whose duty is to carry out the sentence, the Superintendent of Prisons, any prison officers, Police guard and other assistants whose attendance the Registrar or Deputy Registrar may require, a medical practitioner, any minister

of religion who is attending the person to be executed, and such other adult spectators, not exceeding 10 in all, as the Registrar or Deputy Registrar thinks fit to admit.

(2) There may also be present at the execution such one Magistrate and such one Fa'amasino Fesoasoani as shall be nominated by the Chief Justice.

4. Medical practitioner to sign certificate - Every person present at the execution shall remain within the walls of the prison or enclosed place until the sentence has been carried into execution and completed according to law, and until the medical practitioner has signed and delivered to the Registrar or Deputy Registrar a certificate in Form 1 hereunder.

5. Witnesses to sign declaration - The Registrar or Deputy Registrar, the Superintendent and other prison officers, and such other of the persons present as think fit, shall, before their departure from the prison or other place of execution, sign a declaration in Form 2 hereunder.

6. Certificate and declaration to be recorded and gazetted - (1) The Registrar or Deputy Registrar shall cause the certificate and declaration to be gazetted, and to be kept in his office as a record of the Supreme Court.

(2) Everyone is liable to imprisonment for a term not exceeding 7 years who signs any such certificate or declaration, knowing it to be false or to contain any false statement.

7. Inquest to be held on body - (1) Where any sentence of death is carried into execution it shall be the duty of the Registrar or Deputy Registrar forthwith to give notice thereof to a Coroner, who, as soon as may be practicable, shall hold an inquest on the body of the person on whom the sentence has been executed.

(2) The Coroner shall inquire and find whether the sentence was duly carried out on the body of the person condemned to execution.

8. Burial of body - The body of any person on whom sentence of death is carried into execution shall be buried under such conditions and in such place as the Minister of Justice may direct, either generally in respect of all executions or in any particular case.

FORMS

FORM 1

Clause 4

Certificate of Execution of Sentence of Death

I, A.B., the medical practitioner in attendance at the execution of C.D., at:

.....
....., (specify name of prison or other place of execution) hereby certify that I have this day witnessed his execution by hanging, pursuant to the sentence passed on him by the Supreme Court.

Dated at this day of 19.....

A.B.

FORM 2

Clause 5

Declaration of Execution of Sentence of Death

WE HEREBY declare that we have this day been present at the execution of C.D. who was convicted by the Supreme Court at on theday of 19, and sentenced to death, and that the said sentence was carried out by hanging.

Dated at thisday of 19.....

Registrar (or Deputy Registrar).

- Superintendent.
- Prison Officer.
- Other spectators.
-

SECOND SCHEDULE

FORM 1

Section 13

I, [i>Full name], of [i>address, occupation], say on oath that I have reasonable cause to suspect, and do suspect, that at

.....
on[i>Full name], of [i>address, occupation], [i>here set out *the nature of the offence*] [i>Here add section and statute applicable].

.....
Signature of Informant.

Sworn before me at this day of..... 19.....

.....
(Deputy) Registrar.

FORM 2

Section 20

Summons to Accused

In the Supreme Court of Western Samoa
Magistrates'

HELD AT:

BETWEEN:, Informant,
AND....., Defendant.

WHEREAS an information has been laid against you by the above named informant that on the day of 19..... at you did

You are therefore summoned to appear before this Court at Court Room No. on the day of 19....., at o'clock in the forenoon, at the Court - house at, there to answer the charge so made against you.

Dated at: this day of 19.....

.....
(Deputy) Registrar.
To the abovenamed Defendant

FORM 3

Section 125

No.,/19.....

**Bond for keeping the peace
Section 125 - Criminal Procedure Act 1972**

[.....], Applicant.
(Full name)

[.....], Defendant.
(Full name)

APPLICATION was made by [.....]
.....]
(Full name of Applicant)

against [.....]
that (Full name of Defendant)

[.....]
.....]
(Here set out grounds of application)

On an order was made by the
Magistrate's Court at that the Defendant enter into a
bond as follows to keep the peace:

I, [.....]
of
(Full name)
[.....]
, (Address, occupation)

the Defendant, bind myself to perform the following obligations, to keep the peace towards
the applicant and to refrain from doing the act feared by the applicant (or from repeating the
conduct complained of) (or from doing the
act threatened) for the space
of from this date.

And I, the Defendant, acknowledge myself bound to forfeit to the State the sum of
\$..... in the event that I fail to perform any of my obligations under this bond.

And I (We) [.....]
(Full name(s), address(es) and occupation(s)) the surety(ies), acknowledge(s) myself
(ourselves) bound to forfeit to the State the sum of \$..... (each) in the event that the
Defendant fails to perform any of his obligations under this bond.

..... Defendant.
....., Surety (or Sureties)

Taken before me at this day
of 19.....

.....
Magistrate (or Registrar).

FORM 4

Section 125

No. / 19.....

**Notice of Bond
Section 125 - Criminal Procedure Act 1972**

TO [.....]
(hereinafter

(Full name)

called the Defendant) and [.....]

(Full name)

and [.....] (Full
name) (hereinafter called the surety(ies))

Take notice that if the Defendant fails to perform the condition(s) following or any of them,
namely

.....]

then you, the Defendant will forfeit the (Here set out condition(s) as in bond) sum \$
(and you, the surety(ies), will forfeit the sum of \$ (each))

Dated at: this day of 19

.....
Magistrate (or Registrar)

FORM 5

Section 129

No. / 19.....

Order to Call Up Bond

Section 129 - Criminal Procedure Act 1972

I HEREBY ORDER that the within bond (or the bond [.....]
(here describe bond)

be called up to the amount of \$..... in respect of the Defendant (and to the amount of \$..... in respect of (each of) the surety(ies) or [.....], (a surety)).

(Full name)

Dated at this day of 19.....

.....
Magistrate.

THIRD SCHEDULE

Section 177

ENACTMENTS REPEALED

- 1921 - No. 16: (New Zealand) - The Samoa Act 1921: sections 213 to 216 inclusive, 218, 220 to 239 inclusive, 241 to 246 inclusive (being the balance of Part VI), 356 and 369
- 1961 - No. 13: The Crimes Ordinance 1961, sections 8A, 8B and 117 to 127 inclusive and both Schedules.
- 1961 - No. 15: The Police Offences Ordinance 1961: sections 23 and 27 to 33 inclusive and the Second Schedule.
- 1963 - No. 10: The Crimes Amendment Act 1963: The Whole Act (which added two words to the heading of Part I of the principal Ordinance and inserted therein sections 8A and 8B, and added two Schedules).
- 1965 - No. 10: The Crimes Amendment Act 1965: The Whole Act (which added to the principal Ordinance Part X, comprising sections 117 to 124 inclusive).
- 1965 - No. 22: The Police Offences Amendment Act 1965: section 6 (which added to the principal Ordinance a heading, sections 27 to 33 inclusive and a Second Schedule).
- 1969 - No. 2: The Magistrates' Courts Act 1969: section 122.
- 1969 - No. 13: The Crimes Amendment Act 1969: section 10 (which added to the principal Ordinance Part XI, comprising sections 125 to 127 inclusive).

NOTES

The Criminal Procedure Act 1972 appearing in this reprint comprises that Act as it appears in the 1977 reprint amended by the Criminal Procedure Amendment Act 1992/1993 as set out below:

- Section 2:** A definition of "Rule" was added by section 2 of the 1992/1993 Amendment Act.
- Section 138(1):** A new section added by section 4 of the 1992/1993 Amendment Act.
- Section 139:** Subsection (1) was repealed and replaced by the present (1) by section 5 of the 1992/1993 Amendment Act.
- Section 140:** Paragraph (c), the words "any entry" were deleted and "the entry (if any)" substituted by section 6 of the 1992/1993 Amendment Act.
- Section 144:** Two new subsections (2A) and (2B) were added by section 7 of the 1992/1993 Amendment Act.
- Sections 164A- 164V:** These 22 new sections, comprising Part VIIA were added 164V: by section 8 of the 1992/1993 Amendment Act.
- Section 176:** Subsection (1) amended by adding "and the Court of Appeal" after the reference to the "Supreme Court" and a new subsection (4) was added, by section 9 of the 1992/1993 Amendment Act

Section 112 of this Act has been amended by section 27 (2) of the Districts Courts Amendment Act 1992/1993 by increasing the maximum fines specified in subsections (2) (b) and the proviso to (3) from \$500 to \$2,000. However, neither the District Courts Act nor the 1992/1993 Amendment Act have yet become effective.

The Criminal Procedure Act 1972
is administered in the Department of Justice