

# **PART I**

## **THE CONSTITUTIONAL AND COURT FRAMEWORK OF SAMOA**



# **1 The Constitutional Framework of Samoa**

## **1.1 The Constitution of the Independent State of Samoa Act 1960**

Samoa's Constitution was adopted by the people of Samoa through the Constitution Convention of 1960, following a plebiscite in which the majority of the people declared independence to be upon the Matai vote only.

The Constitution establishes Samoa's modern system of government and details its basic elements by defining:

- the organisation and structure of the legal system; and
- the roles, responsibilities and powers of the Executive, Parliament and the Judiciary.

The Constitution embodies the doctrine of the Separation of Powers.

### **The Doctrine of the Separation of Powers**

There should be three distinct and separate branches of government:

1. the Executive: administrator and policy maker;
2. the Parliament (Legislature): law maker;
3. the Judiciary: interpreter of law.

Each branch of government checks the roles and functions of the other branches. This checking maintains the balance of power between the three branches and does not allow the Executive to assume too much power.

The independence of the Judiciary is an important element of the doctrine of the Separation of Powers and is vital for maintaining the balance of power.

### **Independence of the Judiciary**

A pillar of the Constitution is that the Judiciary is independent of all political and other influence.

This independence is protected by:

- processes by which judicial officers are appointed, removed and paid;
- conventions and rules limiting criticism of Judges.

For example, a Judge cannot be removed because of disagreement with a decision. A Judge can be removed only due to extensive misconduct. Judges are immune from civil actions.

## **1.2 The Branches of Government in Samoa**

### **The Executive**

The role of the Executive is to formulate and implement government policy.

The Executive and Parliament are distinct even though they have many people and positions in common.

The Executive of Samoa has four parts:

#### 1. Head of State

O le Ao o le Malo:

- is elected by the Legislative assembly under the provisions of the First Schedule;
- must be qualified to be elected as a Member of Parliament or on resolution of the Legislative Assembly if they do not meet this requirement;
- shall hold office for a term of 5 years;
- generally acts as the ceremonial and diplomatic Head of State;
- calls Parliament together, prorogues or dissolves it on the advice of Ministers of the Government, even though the Head of State is not necessarily bound by such advice in all circumstances;
- assents to Bills;
- appoints Ministers;
- chairs meetings of the Executive Council.

## 2. Head of Government

Prime Minister:

- is appointed by the Head of State;
- must be a Member of Parliament and have the confidence of the majority of Parliament;
- presides over Cabinet.

A Deputy Prime Minister is appointed and will act when the Prime Minister is temporarily prevented from performing the functions of his office in Samoa.

## 3. Cabinet

Cabinet of Ministers:

- comprises the Prime Minister and 12 other Ministers appointed by the Head of State on the advice of the Prime Minister;
- makes government policy and conducts the business of government.

## 4. Executive Council

The Executive Council consists of Head of State, Prime Minister, Deputy Prime Minister and Cabinet.

## **The Parliament (The Legislature)**

Parliament consists of the Head of State together with the Legislative Assembly. It:

- is unicameral, with 49 Members;
- has Members of Parliament who are elected by popular vote;
- serves a five year term.

Parliament's role is to:

- pass laws;
- approve the expenditure of money;
- conduct debates on Bills and enact Statutes;
- provide a forum for political debate.

## **The Judiciary**

The Judiciary is the third branch of government in Samoa. It:

- is an **independent** body which is responsible for interpreting and applying Parliament's laws;
- creates and interprets case law;
- solves disputes of fact and law between individuals as well as between individuals and the State;
- comprises Judges of the Court of Appeal, the Supreme Court, the District Court and the Land and Titles Court.

## **2 The Court System of Samoa**

### **2.1 General Characteristics of the Samoan Court System**

The Samoan Court system has **two branches** (see Figure 1):

- One branch deals specifically with Samoan customary disputes. This is the Land and Titles Court.
- One branch deals with civil and criminal matters and matters relating to the Constitution. This is the Court of Appeal, the Supreme Court and the District Court.

The Samoan Court system is **hierarchical** (see Figure 1):

- This hierarchy is essential to the Doctrine of Precedent, meaning that decisions of a Court higher in the hierarchy are binding on the lower Courts.
- The hierarchy also provides an appeal system which allows decisions to be checked by more senior Courts. This helps prevent inconsistency within the Courts and provides a check and balance system.

## **2.2 Jurisdiction**

Jurisdiction is the power and authority to hear or determine a particular matter. Courts may only act within their jurisdiction, as defined by law.

If a non-Superior Court acts outside its jurisdiction, it is said to be acting *ultra vires* (outside its jurisdiction), which makes the Court's decision invalid on that matter.

An example where a Court would be acting outside its jurisdiction would be if the Land and Titles Court chose to hear a case for murder. The Court that has jurisdiction to hear this type of case in Samoa is the Supreme Court and not the Land and Titles Court.

There are different kinds of jurisdiction in Samoan Courts:

### **Jurisdiction derived from Statute**

A Court's power and authority comes from a Statute. For example, the power and authority given to the Samoan Lands and Titles Court is set out in s34 *Land and Titles Act 1981*.

### **Inherent jurisdiction**

Inherent jurisdiction means that the Court can fill in any gaps left by a Statute or by case law. The Court of Appeal and the Supreme Court have inherent jurisdiction.

### **Original jurisdiction**

This means that a Court is given power to hear certain kinds of cases in the first instance, for example:

- the Supreme Court has been given the power to hear first any cases dealing with fundamental rights;
- the Land and Titles Court has been given the power to hear first any cases related to customary land and titles.

The Constitution has specifically established the Supreme Court and the Land and Titles Court as Courts with original jurisdiction.

### **Appellate jurisdiction**

This is the right of a Court to hear appeals from a lower Court. The Court of Appeal has primarily appellate jurisdiction. The Supreme Court and the Land and Titles Court also have appellate jurisdiction.

### **Criminal jurisdiction**

A crime is:

- the commission of an act that is forbidden by Statute or the omission of an act that is required by Statute;
- an offence against the state.

There are different categories of crime and the penalty provided for a crime determines which Court has jurisdiction to hear and determine the matter.

Criminal prosecutions are generally brought by the State against a person who is alleged to have committed an offence but an individual may also bring a private prosecution.

### **Civil jurisdiction**

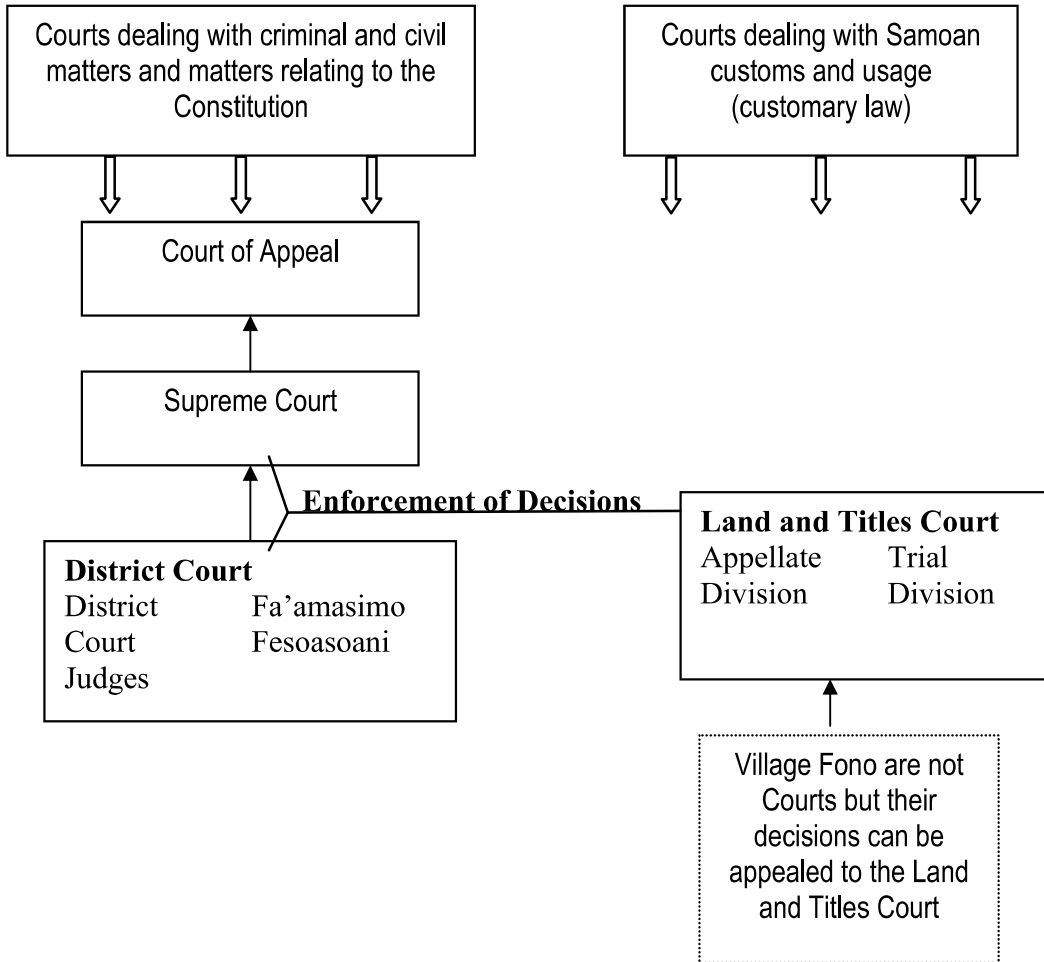
This covers disputes between individuals and between individuals and the State that are not criminal matters.

## **2.3 The Structure of the Samoan Courts**

Figure 1 on the following page outlines the structure of the Samoan Courts.



Figure 1      **The Structure of the Samoan Courts**



- *Ah Far v Ah Far* [2003] WSSC 1 (9 January 2003) for an example of civil jurisdiction. Both cases can be found at <http://www.paclii.org/ws/cases/WSSC>

The Supreme Court has **original** jurisdiction over cases dealing with fundamental rights or other constitutional matters.

The Supreme Court may have a question referred by the Head of State, on the advice of the Prime Minister, on a matter relating to the interpretation or effect of any provision of the Constitution which has arisen or is likely to arise in the future. The Court will give its opinion on any question such as this.

The Supreme Court may hear and determine **appeals** in the following circumstances:

1. Civil appeals from a District Court where:

- there has been a decision involving \$1000 or more;
- the title to land is in question.
  - ⇒ In this case they can determine whether land is freehold land, customary land or public land if it is in dispute. See *Board of Trustees of the Congregational Church of Samoa v Pouvi* [2003] WSSC 4 (14 February 2003). <http://www.paclii.org/ws/cases/WSSC>

In this case the defendants, a matai title-holder and his family, claimed that the land they were living on was customary land. The plaintiffs, the Congregational Church of Samoa, argued that the land was freehold land and that they could remove the defendants. At the hearing, the Supreme Court ruled part of the land was freehold land and part of the land was customary land. The Supreme Court used *s31 Judicature Ordinance 1961* to give itself jurisdiction to declare part of the land to be customary land which had been held and used by the defendants in accordance with Samoan custom and usage and customary law;

- leave has been granted by the District Court.

2. Criminal appeals brought by an appellant who has:

- been convicted; or
- had an order made against him/her other than for payment of costs on the dismissal of information.

### **District Court**

The District Court can be constituted by District Court Judges or by Fa'amasino Fesoasoani (assistant District Court Judge).

#### Court presided over by District Court Judges

The District Court, when presided over by District Court Judges, has jurisdiction to hear and determine:

- any action found in tort or in contract where the debt, demand or damage or value of chattels claimed is not more than \$10,000;
- claims for money recoverable by Statute;
- actions for the recovery of freehold land where the value of land or interest in land does not exceed \$10,000;
- claims in equity where the sum claimed does not exceed \$10,000;
- offences punishable by fine, penalty, forfeiture or a period of imprisonment not exceeding five years.

Customary land is excluded from the District Court's jurisdiction although it can enforce decisions, or sanction breaches of decisions, of the Land and Titles Court.

- See *Leavea v Lavasa* D.C. 14 February 2001.  
[http://www.vanuatu.usp.ac.fj/paclawmat/Samoa\\_cases/A-M](http://www.vanuatu.usp.ac.fj/paclawmat/Samoa_cases/A-M)

#### Courts presided over by Fa'amasino Fesoasoani

The District Court, when presided over by Fa'amasino Fesoasoani, has jurisdiction to hear and determine:

- any action found in contract or tort where the amount involved does not exceed \$1000;
- actions for recovery of any penalty (except a criminal fine), expense or contribution which is conferred by legislation and the amount claimed does not exceed \$1000;

- criminal matters. Under *s9 District Courts Amendment Act 1992/1993*, a Fa'amasino Fesoasoani may not impose a fine of more than \$1000 and may not impose a sentence of imprisonment instead of a fine unless it is a specific matter under *s39 District Court Acts 1969* or has been granted jurisdiction by the Chief Justice.

### **Land and Titles Court**

The Land and Titles Court is a Court of record established under Article 103 of the Constitution and the Land and Titles Act 1981.

The Land and Titles Court has **original** jurisdiction over:

- all matters relating to Samoan names and titles;
- all claims and disputes relating to customary land and the right of succession to property held in accordance with custom and usage.

The Land and Titles Court has **appellate** jurisdiction over decisions of Village Fono and its own decisions.

### **Village Fono**

A Village Fono is not a Court *per se* but is included here because it is a rule making body whose decisions can be appealed to the Land and Titles Court.

Village Fono have the power to deal with affairs of the village, in accordance with the custom and usage of that village. This authority is limited to persons ordinarily resident in the village.

Acts which are contrary to Samoan customary law may also be subject to criminal or civil proceedings. See for example:

- Criminal proceedings - *Police v Tofa* [1999] WSSC 2 (14 May 1999) and *Police v Pe'e (Sentence)* [2001] WSSC 5 (20 February 2001). [http://www.paclii.org/Samoa\\_cases](http://www.paclii.org/Samoa_cases)
- Civil proceedings - *Lemalu Pui'a v Jessop* [1969] WSSC 1 (30 July 1969); [1969] WSLR 214.