



SAMOA

DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1961

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**DIVORCE AND MATRIMONIAL CAUSES ORDINANCE
1961**

1961

No.20

AN ORDINANCE to make provision for Divorce and other
Matrimonial Causes.

[Assent date: 28 December 1961]

[Commencement date: 1 January 1962]

**PART 1
PRELIMINARY**

1. Short title – This Ordinance may be cited as the
Divorce and Matrimonial Causes Ordinance 1961, and comes
into force on 1 January 1962.

2. Interpretation – In this Ordinance, unless the contrary
intention appears:

“Court” means the Supreme Court of Samoa and in relation to any act or power which under this Ordinance may be taken by the Registrar, includes the Registrar;

“Registrar” means the Registrar of the Court and includes a Deputy Registrar and Assistant Registrar;

3. Jurisdiction – (1) The Court has jurisdiction in divorce and other causes and matrimonial matters in accordance with the provisions of this Ordinance and all the powers and jurisdiction given to the Court may be exercised by any Judge of the Court.

(2) The powers and jurisdiction given to the Court in subsection (1) may be exercised by the Registrar in circumstances where a provision of this Ordinance so provides.

PART 1A JUDICIAL SEPARATION

4. Petition for judicial separation – A petition for judicial separation may be presented to the Court either by the wife or the husband that the marriage has broken down irretrievably.

5. Decree for judicial separation – The Court on being satisfied that the allegations contained in the petition are true may make, in its discretion, a decree of judicial separation. When such a decree is made the petitioner is no longer obliged to cohabit with the respondent.

6. Decree for judicial separation may be reversed – (1) The Court, on the application by petition of the husband or wife against whom a decree of judicial separation has been made, and on being satisfied that the allegations made in the petitions are true, may reverse the decree after the making thereof, on the ground that it was obtained in the absence of the person making the application or, if desertion was the ground of the decree, that such desertion was for a just cause.

(2) The reversal of a decree does not affect the rights or remedies which any other person would have had if the decree had not been reversed in respect of any debts, contracts or acts

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of the wife incurred, entered into or done between the date of the decree and of the reversal thereof.

**PART 2
DIVORCE**

7. Grounds for divorce – (1) An application under this Ordinance for a decree of divorce in relation to a marriage must be based on the ground that the marriage has broken down irretrievably.

(2) Subject to subsections (3) and (4), in a proceeding instituted by such an application, the ground is held to have been established, and the divorce order shall be made, if, and only if, the court is satisfied that the parties separated and thereafter lived separately for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for the divorce order.

(3) Where the court is satisfied that a party to the marriage is the subject of domestic violence, the court may hold that the marriage has broken down irretrievably even if the parties have not separated and thereafter lived separately for a continuous period of not less than 24 months.

(4) A decree of divorce is not to be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

7A. Meaning of separation – (1) The parties to a marriage may be held to have separated even if the cohabitation was brought to an end by the action or conduct of 1 only of the parties.

(2) The parties to a marriage may be held to have separated and to have lived separately and apart even if they have continued to reside in the same residence or that either party has rendered some household services to the other.

7B. Effect of resumption of cohabitation – (1) For the purposes of proceedings for a decree of divorce, where, after the parties to the marriage separated, they resumed cohabitation on 1 occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the date of the filing of the

application, the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation is not taken to be part of the period of living separately and apart.

(2) For the purposes of subsection (1), a period of cohabitation is taken to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

7C. When decree of divorce takes effect – (1) Subject to this section, a decree of divorce made under this Ordinance takes effect by force of this section:

- (a) at the expiration of a period of 1 month from the making of the decree; or
- (b) from the making of an order under section 7D, whichever is the later.

(2) If an appeal is instituted the decree of divorce order, unless reversed or rescinded, takes effect by force of this section:

- (a) at the expiration of a period of 1 month from the day on which the appeal is determined or discontinued; or
 - (b) on the day on which the decree of divorce would have taken effect under subsection (1) if no appeal had been instituted, –
- whichever is the later.

7D. Decree of divorce and children – A decree of divorce in relation to a marriage does not take effect unless the Court has, by order, declared that it is satisfied:

- (a) that there are no children of the marriage who have not attained 18 years of age; or
- (b) that the only children of the marriage who have not attained 18 years of age are the children specified in the order and that –
 - (i) proper arrangements in all the circumstances have been made for the care, welfare and development of those children; or
 - (ii) there are circumstances by reason of which the divorce order should take effect even

though the court is not satisfied that such arrangements have been made.

7E. Possibility of reconciliation – (1) Where an application under this Ordinance for a decree of divorce has been made, the Court and a legal practitioner representing a party shall consider the possibility of a reconciliation of the parties.

(2) Where the Court considers that there may be a possibility of reconciliation it may require the parties to undergo marriage counselling if appropriate.

7F. Rescission of divorce order where parties reconciled – Despite anything contained in this Ordinance, if a decree of divorce has been made in relation to a marriage, the Court may, before the decree of divorce takes effect, upon the application of the parties to the marriage, rescind the divorce order on the ground that the parties have become reconciled.

7G. Decree of divorce where there is consent or no opposition – (1) When an application under this Ordinance for a decree of divorce is made and the respondent either:

- (a) consents in writing to the application; or
- (b) does not otherwise oppose the making of the decree of divorce, –

the Court or a Registrar may make a decree of divorce.

(2) Sections 12 to 15 and 32 do not apply in relation to an application considered by a Registrar under this section.

(3) On application by the respondent and before the decree takes effect, an order of a Registrar under subsection (1) may be set aside by a Judge of the Court who may make such orders as are appropriate.

8. Degree of presumption of death and dissolution of marriage – (1) A married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may, if he or she is domiciled in Samoa, present a petition to the Court praying to have it presumed that the other party is dead and to have the marriage dissolved and the Court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage.

(2) In any such proceedings the fact that for a period of 5 years or upwards the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead in the absence of proof to the contrary.

(3) Unless the context requires otherwise, the provisions of this Ordinance and of any other Ordinance so far as they are applicable and with any necessary modifications, apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

9. Nullity of marriage – (1) A petition for nullity of marriage on any of the grounds specified in subsections (2) and (3) of this section may be presented to the Court in either of the following cases:

- (a) where the petitioner or the respondent is domiciled in Samoa at the time of filing the petition;
- (b) where the marriage was celebrated in Samoa.

(2) A marriage is void, whether or not a decree for nullity has been granted, where any of the following grounds exist, and in no other case:

- (a) that at the time of the ceremony of marriage either party to the marriage was already married;
- (b) that, whether by reason of duress or mistake or insanity or otherwise, there was at the time of the marriage an absence of consent by either party to marriage to the other party;
- (c) that the marriage is declared to be void by section 7 of the Marriage Ordinance 1961; or
- (d) that the marriage was not solemnised in due form.

(3) A marriage is voidable on any of the following grounds and on no other:

- (a) that the marriage has not been consummated owing to the incapacity or wilful refusal of the respondent to consummate the marriage;
- (b) that either party to the marriage was at the time of the marriage a mentally defective person within the meaning of the Mental Health Act 2007 although capable at that time of consenting to the marriage;

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- (c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form;
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner:

PROVIDED THAT in the cases specified in paragraphs (b), (c) and (d) of this subsection the Court shall not grant a decree unless it is satisfied —

- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (ii) that proceedings were instituted within 1 year from the date of the marriage (provided however that the Court may extend this period if it thinks fit);
- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery of the existence of the grounds for a decree;
- (iv) a decree for nullity granted in respect of a voidable marriage as defined in subsection (3) of this section declares the marriage annulled on and from the date of the decree. Each such marriage is taken to be and is valid from the time of its celebration until the date of a decree annulling it as aforesaid;
- (v) unless the context otherwise requires the provisions of this Ordinance and of any other Ordinance, so far as they are applicable and with any necessary modifications, shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

10-11. *Repealed by section 7 of the Divorce and Matrimonial Causes Amendment Act 1961.*

12. Court to satisfy itself as to facts – On a petition for divorce the Court shall satisfy itself so far as it reasonably can

as to the facts alleged, and shall inquire into any counter charge that is made against the petitioner.

13. Discretion of Court where collusion proved – Where there has been collusion between the petitioner and the respondent the Court has a discretion as to whether or not a decree of divorce is made.

14. Repealed by section 9 of the Divorce and Matrimonial Causes Amendment Act 1961.

15. When relief may be given to respondent – If in any suit or other proceeding instituted for divorce or judicial separation the respondent must allege in his or her answer any matter entitling either husband or wife to any relief under this Ordinance, the Court may give to the respondent in such suit, on his or her application, the same relief as he or she would have been entitled to if he or she had filed a petition seeking such relief.

16. Repealed by section 9 of the Divorce and Matrimonial Causes Amendment Act 1961.

17. Remarriage of divorced person – When a decree of divorce has been pronounced, but no sooner, the respective parties thereto may marry again as if the prior marriage had been dissolved by death.

18. Repealed by section 9 of the Divorce and Matrimonial Causes Amendment Act 1961.

19. Sale to defeat petitioner may be restrained – (1) Where it appears to the Court that there is reasonable ground for believing that a sale of real estate is about to be made by a respondent or co-respondent with intent to defeat a petitioner's claim, or any decree or order in respect of damages, alimony, maintenance of children or costs, the Court may by Order restrain such sale or order the proceeds of the sale to be paid into Court to be dealt with as the Court directs.

(2) Any sale made after an order of the Court restraining such sale as aforesaid has been served on or come to the notice of the person selling, or any auctioneer, agent, or solicitor,

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acting in such sale, is null and void; and the Court may consider any claim of any person interested, and may make such order in the premises as it thinks just.

20. Molestation of divorced wife by her husband – If after a decree of dissolution of marriage has been pronounced at the suit of the wife the husband from whom she has been so divorced:

- (a) commits any trespass by entering or remaining upon or in any land, house, or building which is in her occupation or in which she is dwelling; or
 - (b) attempts or threatens to commit any such trespass; or
 - (c) molests her by watching or besetting her dwelling house or place of business, employment or residence, or by following or waylaying her in any road or other public place, -
- he commits an offence and is liable to a fine of 1 penalty unit or imprisonment for up to 3 months.

21. *Repealed by section 9 of the Divorce and Matrimonial Causes Amendment Act 1961.*

PART 3

ALIMONY, MAINTENANCE, CUSTODY, ETC.

22. Alimony and maintenance – (1) In any proceedings for a decree of divorce or nullity of marriage, the Court may make such orders as it considers appropriate for the provision of alimony and maintenance and the Court may for that purpose order that it shall be referred to the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties, and may, if it thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.

(2) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (1) of this section, order that the husband or his personal representatives shall pay to the wife for any term not exceeding her life such monthly or weekly sum for her maintenance and support as the Court may think reasonable, and every such order made against the husband shall be enforceable against his personal representatives after his death.

PROVIDED THAT:

- (a) if the husband or his estate, as the case may be, after any such order has been made, becomes from any cause unable to make the payments, the Court may discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part as the Court thinks fit; and
 - (b) where the Court has made any such order as is mentioned in this subsection and the Court is satisfied that the means of the husband or of his estate, as the case may be, have increased, the Court may, if it thinks fit, increase the amount payable under the order.
- (3) On any petition for divorce or nullity of marriage the Court has the same power to make interim orders for the payment of money by way of alimony or otherwise to the wife as the Court has in proceedings for judicial separation.
- (4) In all cases where the Court makes an order for alimony the Court may direct the alimony to be paid either to the wife or to a trustee approved by the Court on her behalf, and may impose such terms or restrictions as the Court thinks expedient, and may appoint a new trustee if for any reason it appears to the Court expedient so to do.

22A.Orders relating to alimony and maintenance – (1) In considering under section 22 what orders may be appropriate for the provision of alimony and maintenance the Court must take into account the following matters:

- (a) the age and state of health of the parties;
- (b) the proper needs of each party to the marriage having regard to —
 - (i) the age of the person; and
 - (ii) any special needs of the person; and
- (c) the income, earning capacity, property and financial resources of the person to be paid maintenance having regard to —
 - (i) the capacity of the person to earn or derive income, including any assets of, under the control of or held for the benefit of

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- the person that do not produce, but are capable of producing, income; and
- (ii) disregard the income, earning capacity, property and financial resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them; and
 - (d) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage; and
 - (e) the commitments of each party to the marriage that are necessary to enable that party to support himself or herself or any other person that the party has a duty to maintain; and
 - (f) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

22B. Declaration of interest in property – (1) In proceedings between the parties to a marriage with respect to existing title or rights in respect of property, the court may declare the title or rights, if any, that a party has in respect of the property.

(2) Where a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

22C. Alteration of interest in property – (1) In proceedings with respect to the property of the parties to a marriage, the court may make such order as it considers appropriate altering the interests of the parties in the property, including:

- (a) an order for a settlement of property in substitution for any interest in the property; and
- (b) an order requiring either or both of the parties to make, for the benefit of either or both of the parties or a child of the marriage, such settlement or transfer of property as the court determines.

(2) In considering what orders may be appropriate with respect to any property of the parties to a marriage the Court may take into account the following matters:

- (a) the matters referred to in section 22A(1); and
- (b) the financial or other contribution made directly or indirectly by or on behalf of a party to the acquisition or improvement of any of the property of the parties to the marriage; and
- (c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent; and
- (d) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(3) Subject to subsection (4), for the purposes of subsection (2) the contribution of the parties to a marriage is presumed to be equal, but the presumption may be rebutted if a court considers a finding of equal contribution is on the facts of the case not appropriate.

(4) The presumption in subsection (3) does not apply in the circumstances of a marriage of less than 3 years duration.

(5) For the purposes of subsection (2), the property of each party brought into the marriage is not to be considered property of the marriage unless it would be inequitable not to do so.

(6) The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

22D. Setting aside of orders altering property interests –

If, on application by a person affected by an order made by a court under section 22C in proceedings with respect to the property of the parties to a marriage or either of them, the court is satisfied that:

- (a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance; or

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(b) in the circumstances that have arisen since the order was made it is impracticable for the order or a part of it to be carried out, –
the court may, in its direction, vary the order or set the order aside and, if it considers appropriate, make another order under section 22C in substitution for the order so set aside.

23. Wife left without maintenance – If a wife while separated from her husband is habitually and without just cause left by him without reasonable maintenance, the husband is deemed for the purposes of this Ordinance to have deserted his wife wilfully and without just cause for the period during which she has been left without maintenance as aforesaid, whether the separation of the parties has taken place or continued by agreement, or by virtue of a judicial decree or order or in any other manner.

24. Custody of children – In any proceedings for divorce, or nullity of marriage, or judicial separation, the Court may either before or by or after the final decree, make such provision as appears just with respect to the custody, maintenance, and education of the children, the marriage of whose parents is the subject of the proceedings, or, if it thinks fit, direct proper proceedings to be taken for placing the children under the protection of the Court.

25. Court may vary order for payment of money – (1)
The Court may vary or modify any order for the periodical payment of money made under the provisions of this Ordinance relating to matrimonial causes and matters either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part as the Court thinks just.

(2) An application for an order under this section may be made by the person entitled to the benefit of the order or by the person liable under the order or (after his or her death) by his or her personal representative or by any creditor or other person interested in the distribution of his or her estate.

26. Fraudulent deed may be set aside – (1) Where it is proved to the satisfaction of the Court that any deed, conveyance, agreement, or instrument has been executed or made by or on behalf of, or by direction of, or in the interest of a respondent husband or wife, or a co-respondent, in order to defeat the claim or rights of the petitioner in respect of damages, alimony, costs, or maintenance of children, such deed, conveyance, agreement, or instrument, may, on the application of the petitioner, and on such notices being given as the Court may direct be set aside, on such terms as the Court thinks proper.

(2) If the Court on the hearing of the application so orders and declares, any money or property, real or personal, dealt with by such deed, conveyance, agreement, or instrument as aforesaid may be taken in execution at the suit of the petitioner, or may be charged with the payment of such sum for the maintenance of the petitioner, or of the petitioner and children, as the Court directs.

(3) The Court may make such order for the protection of a bona fide purchaser as it thinks just.

(4) The respondent or co-respondent, as the case may be, and any one acting in collusion with the respondent or correspondent, may be ordered to pay the costs of the petitioner and of a bona fide purchaser of and incidental to the execution of such deed, conveyance, agreement, or instrument, and of setting the same aside.

PART 3A RESTRAINING ORDERS

26A. Interpretation – In this Part:

“aggrieved person” means a person who is the subject of domestic violence;

“domestic violence” has the same meaning ascribed to it under the Family Safety Act 2013;

“relevant person” means a spouse or child of a person and includes a step child of that person.

26B. Application for a restraining order – (1) In any proceedings under this Ordinance, the Court or a Registrar may make such restraining orders as it considers appropriate.

(2) In deciding an application for a restraining order, the Court or Registrar must give primary consideration to the need to ensure that the aggrieved person, and any child at risk of exposure to domestic violence, is protected from such domestic violence.

26C. Restraining order – (1) A restraining order restrains the respondent from engaging in conduct that constitutes domestic violence in relation to the aggrieved person and may be subject to such conditions or restrictions as the Court or Registrar consider appropriate.

(2) Without limiting subsection (1), the restraining order may do 1 or more of the following:

- (a) prohibit the person who is the subject of the order from being within a particular distance from the aggrieved person; or
- (b) prohibit the person who is the subject of the order from contacting, harassing, threatening or intimidating the aggrieved person or a child of the aggrieved person; or
- (c) state the conditions on which the person who is the subject of the order may —
 - (i) be on particular premises; or
 - (ii) be in a particular place; or
 - (iii) approach or contact a particular person.

(3) If a person engages in conduct that contravenes a restraining order (including a condition of the order) the person commits an offence and is liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding 20 penalty units or to both.

26D. Duration of restraining order – (1) A restraining order made by the Court remains in force for 2 years or such shorter period as is stated in the order.

(2) A restraining order made by a Registrar remains in force for 7 days or such shorter period as is stated in the order and any extension of that order may only be granted by the Court.

(3) However, the Court may make a restraining order that remains in force for longer than 2 years if satisfied that there are special or exceptional circumstances that justify the longer period.

26E. Intervention by Attorney-General – (1) The Attorney-General may intervene in, and contest or argue any question arising in:

- (a) any proceedings under this Ordinance where the Court requests the Attorney-General to do so or a matter arises that affects the public interest; or
- (b) any proceedings under this Ordinance for or in relation to an order relating to the welfare of a child.

(2) Where the Attorney-General intervenes in any proceedings, the Attorney-General is deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

PART 4 PROCEDURE

27. Affidavit verifying petition – A person seeking a divorce, or a decree of nullity of marriage, or a decree for judicial separation, or a decree in a suit of jactitation of marriage shall append to the petition or other application for relief an affidavit verifying the same so far as the deponent is able to do so, and stating that there is not any collusion between the deponent and the other party to the marriage.

28. Serving petition – (1) A petition is served on the party to be affected thereby, either within or without Samoa, in such manner as the Court by any general or special order directs, and for that purpose the Court has and may exercise all the powers it now possesses by law:

PROVIDED THAT the Court may dispense with such service altogether where it seems necessary or expedient so to do.

(2) In the case of a petition before a Registrar under section 7F, the power and jurisdiction of the Court to authorise service of a petition outside Samoa may be exercised by the Registrar.

29. Repealed by section 9 of the Divorce and Matrimonial Causes Amendment Act 1961.

30. Mode of taking evidence – The witnesses in all proceedings before the Court, where their attendance can be

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had, shall be sworn and examined orally in open Court, and such attendance and the production of documents by them shall be compelled in the same manner as in action at law; but the parties, with the leave of the Court, may verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit, on the application of the opposite party or by the direction of the Court, is subject to be cross-examined by or on behalf of the opposite party orally in open Court and after such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed.

31. Adjournment – The Court may adjourn the hearing of any petition, and may require further evidence thereon if it sees fit so to do.

32. Costs – Subject to the foregoing provisions of this Ordinance relating to costs, the Court on the hearing of any suit, proceeding, or petition under this Ordinance may make such order as to costs as to the Court seems just.

33. Enforcement of orders and decrees – All decrees and orders made by the Court in any suit, proceeding or petition instituted under this Ordinance shall be enforced and put in execution in the same or in the like manner as other judgments, orders and decrees of the Court may be enforced and put in execution.

34. Fees – The fees payable on all proceedings filed under this Ordinance shall be in accordance with the Rules made in that behalf by the Head of State, acting on the advice of Cabinet.

35. Proceeding may be heard in chambers – The Court, on the application of any party to any suit or proceedings under this Ordinance or at its own discretion, if it thinks proper in the interest of public morals, may hear and try any such suit or proceeding in chambers and may in any suit or proceeding, whether heard and tried in chambers or in open Court, make an order forbidding the publication of any report or account of the evidence or other proceedings therein either as to the whole or

any portion thereof; and the breach of any such order or any colourable or attempted evasion thereof may be dealt with as contempt of Court.

36. Appeal – (1) There is no right of appeal against any decree of presumption of death, or of dissolution of marriage, or of divorce, or of nullity, made by the Court under this Ordinance.

(2) Any party dissatisfied with the decision of the Court in respect of any other matter provided for in this Ordinance may appeal therefrom to the Court of Appeal within 6 weeks after the pronouncing of such decision.

37. Recognition of overseas divorces – (1) The validity of any decree or order or legislative enactment for divorce or nullity of marriage made (whether before or after the commencement of this Ordinance) by a Court or legislature of any country outside Samoa, shall, by virtue of this section, be recognised in Samoa if:

(a) that Court or legislature has exercised jurisdiction —

(i) in any case, on the basis of the domicile of one or both of the parties to the marriage in that country; or

(ii) in any case on the basis of the residence of one or both of the parties to the marriage in that country if at the commencement of the proceedings such party had been resident in that country for at least 2 years; or

(iii) in any case on the basis that one or both of the parties to the marriage are nationals or citizens of that country or of the sovereign state of which that country forms a part; or

(iv) in any case, on the basis that the wife has been deserted by her husband, or the husband has been deported, and that the husband was immediately before the desertion or deportation domiciled in that country; or

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(v) in any case on the basis that the wife was legally separated from her husband, whether by order of a competent Court or by agreement, and that the husband was at the date of the order or agreement domiciled in that country; or

(vi) in the case of nullity of marriage on the ground of non-consummation owing to incapacity or wilful refusal or on some ground existing at the time of the marriage, on the basis of the celebration of the marriage in that country; or

(b) the decree or order of enactment is recognised as valid in the Court of a country in which at least one of the parties to the marriage is domiciled or is deemed by the law of that country to be domiciled.

(2) Nothing in this section affects the validity of any decree or order or legislative enactment for divorce or nullity of marriage or of any dissolution of marriage otherwise than by judicial process that would be recognised in the Court apart from this section.

38. Power to make and alter rules of procedure –(1) The Head of State, acting on the advice of Cabinet, may by Order:

(a) make rules concerning the practice, pleading and procedure under this Ordinance;

(b) fix scales of costs and fees for all suits and proceedings and make rules regarding such costs and fees.

(2) Until such scales of costs and fees have been fixed as is herein provided, the Court may allow such costs as it thinks fit.

PART 5
REPEAL AND SAVINGS

39. Part XI of the Samoa Act 1921 (NZ) no longer part of the law of Samoa – As from the date of coming into force of this Ordinance, Part XI of the Samoa Act 1921 (NZ) shall cease to be part of the law of Samoa, provided however, that this Ordinance shall not apply to any petition for judicial separation,

divorce or nullity of marriage filed before the date of coming into force of this Ordinance, and such petition shall be dealt with by the Court as if this Ordinance had not been passed.

REVISION NOTES 2008 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2008 – 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”
 - (xii) Part numbering changed to decimal.

The following amendments have been made to specific sections of the Act to incorporate amendments made by Act of Parliament passed since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the *Matrimonial Divorce and Matrimonial Causes Amendment Act 2010*:

- Section 2** - Section 2 is deleted and replaced with a new section 2.
- Section 3(2)** - A new subsection (2) is inserted and the former section is renumbered as subsection (1).
- Section 4** - Section 4 is amended by omitting the words “and

on the ground of cruelty or adultery or desertion without just cause for not less than 2 years” and substituting “that the marriage has broken down irretrievably”. The Divorce and Matrimonial Causes Amendment Act 2010 incorrectly requires deleting the word “and” at the beginning of the deleted portion, as this word is not in the section. The amendment is made accordingly.

Sections 7A, 7B, - new sections inserted by section 6
7C, 7D, 7E, 7F,
7G

Section 13 - Section 13 is amended by omitting “, except in cases in which relief is sought on the ground of adultery”.

**Sections 22A, 22B,
22C & 22D** - New sections inserted after section 22.

Section 27 - Section 27 is amended by deleting “, and also, in every case where adultery is alleged, that there is not any connivance between the deponent and the other party to the marriage”.

By the *Divorce and Matrimonial Causes Amendment Act 2010* commenced on 16 August 2010 (being the date of assent).

Section 26A - definition of “domestic violence” amended.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Ordinance is administered by
the Ministry of Justice and Courts Administration.*
