



Tonga

SUPREME COURT ACT

1988 Revised Edition



SUPREME COURT ACT

Arrangement of Sections

Section

1	Short title.....	5
2	Districts.....	5
3	Venue.....	6
4	Jurisdiction.....	6
5	Powers.....	6
6	Supreme Court sessions.....	6
7	Registrar and Officers.....	6
8	Registrar of Supreme Court.....	7
9	Jurors.....	7
10	Penalty for non-attendance.....	7
11	Oath or affirmation of juror.....	7
12	Fees for Jurors.....	8
13	Non-jury actions.....	8
14	Criminal trial.....	8
15	Costs.....	9
16	Limitation of action.....	10
17	Licensed lawyers.....	10
18	Appeal and rehearing.....	11

THE SCHEDULE **12**

LAWYER'S LICENCE.....	12
-----------------------	----



SUPREME COURT ACT

Acts Nos. 4 of 1903, 17 of 1909, 24 of 1912; Ord. No. 5 of 1914; Acts Nos. 9 of 1918, 11 of 1926, 17 of 1927, 9 of 1933, 23 of 1942, 6 of 1950, 4 of 1952, 9 of 1955, 10 of 1957, 10 of 1962, 11 of 1963, 19 of 1966,¹ 13 of 1974, 9 of 1977, 23 of 1978, 12 of 1984, 14 of 1986, 46 of 1988.

AN ACT TO MAKE PROVISION FOR THE ADMINISTRATION OF JUSTICE

Commencement [8th July, 1903]

1 Short title.

This Act may be cited as The Supreme Court Act.

2 Districts.

It shall be lawful to hold Supreme Court in the following districts —

- (a) Tongatapu and 'Eua;
- (b) Ha'apai;
- (c) Vava'u, Niuafu'ou and Niuatoputapu. (*Substituted by Act 9 of 1933.*)

¹ *Not in force as at 31 December 1988.*

3 Venue.

All matters within the jurisdiction of the Supreme Court that shall arise in one or other of these districts shall be tried before the court held in that district provided that it shall be lawful for the Chief Justice or a Judge of the Supreme Court, upon the application of the Attorney-General, to order any case arising in Ha'apai or Vava'u to be tried in Tongatapu. *(Amended by Acts 6 of 1950 and 46 of 1988.)*

Provided further that any matter may, by consent of the parties thereto, and in the discretion of the Court, be heard and determined at the Supreme Court at Nuku'alofa, subject to such conditions as to the said Court may seem necessary. *(Added by Act 10 of 1957.)*

4 Jurisdiction.

The Supreme Court shall have jurisdiction in all civil cases in which the amount claimed exceeds \$500 and in all criminal cases for which the maximum penalty exceeds \$500 or 2 years imprisonment and in all divorce, probate and admiralty matters and in any other matter not specifically allotted to any other tribunal. *(Amended by Act 23 of 1978.)*

5 Powers.

The Supreme Court shall have power to issue warrants, writs, summonses and to subpoena witnesses, to exercise all the powers of the Magistrate's Court and to enforce agreements and protect property.

6 Supreme Court sessions.

It shall be lawful for the Chief Justice, or a Judge of the Supreme Court, to hold sittings of the Supreme Court in his discretion and to adjourn cases from time to time and to make rules for the practice and procedure of the courts. *(Amended by Act 6 of 1950.)*

7 Registrar and Officers.

There shall be in the civil service a Registrar of the Supreme Court and such number of clerks or officers as may be required for the purposes of this Act. *(Inserted by Act 14 of 1986.)*

8 Registrar of Supreme Court.

The Registrar shall have charge of the seal of the Supreme Court and shall have power to administer oaths and to take solemn declarations or affirmations in lieu of oaths, to take depositions of witnesses and to receive costs and fines.

The Registrar has charge of all records, books and papers of the Court and all documents filed in his office. The Registrar or a clerk shall attend all sittings of the Court and record its proceedings. The Registrar, the clerks and other officers shall be subject to such orders as they from time to time receive from the Chief Justice or a Judge. (*Amended by Act 10 of 1962 and Act 14 of 1986.*)

9 Jurors.

In the month of November in each year the district officer in each district shall deliver to the magistrate of the district a list of all Tongans of or over the age of 21 years resident in the district. The magistrate shall thereupon compile a list of all Tongans of or over the age of 21 years who are competent and liable under clause 28 of the Constitution to serve on juries and shall on or before the first day of January next following cause a copy of the list of jurymen so prepared for the district to be posted in a conspicuous place in the Court house and such jury list shall remain in force until the 31st day of December next following. (*Amended by Act 9 of 1977 and Act 14 of 1986.*)

10 Penalty for non-attendance.

Any person being liable to serve on a jury who shall disobey a summons to attend at any court for the purpose of serving on a jury shall unless prevented by sickness be liable on conviction to a fine of \$50:

Provided always that no person shall be compelled to serve on a jury more than once in any year. (*Amended by Act 14 of 1986.*)

11 Oath or affirmation of juror.

The following form of oath or affirmation shall be administered to or be made by a juror:

(a) The oath is —

“I swear that I will give a true verdict without favour or ill will according to the evidence given in this case. So help me God.”;

(b) the affirmation is —

“I do solemnly, sincerely and truly declare and affirm that I will give a true verdict without favour or ill will according to the evidence given in this case.” (*Substituted by Act 14 of 1986.*)

12 Fees for Jurors.

The Cabinet may from time to time make regulations providing for the payment of jurors and witnesses and fixing the amounts of such payments. (*Substituted by Act 9 of 1955; Amended by Act 14 of 1986.*)

13 Non-jury actions.

- (1) Civil actions shall be commenced by writ of summons and may by the consent of the parties thereto be tried by the Chief Justice, or a Judge of the Supreme Court, without a jury. (*Amended by Act 6 of 1950 and Act 14 of 1986.*)

Jury actions. Majority vote.

- (2) Where the action is tried before a jury, a jury of 7 shall be empanelled and both plaintiff and defendant shall be entitled to 6 challenges and it shall be lawful for the judge to accept a verdict agreed to by 5 out of the 7 jurymen. (*Amended by Act 9 of 1933.*)

Trial.

- (3) After the evidence has been heard the judge shall sum up the evidence and explain to the jury the law that bears upon the case. The jury shall then consider the evidence and deliver their verdict.

14 Criminal trial.

- (1) Subject to the provisions of Section 12 of the Magistrates' Courts Act, relating to the right of trial by jury, all indictable offences shall be tried by the Supreme Court and a jury of 7. (*Substituted by Act 4 of 1952.*)

Challenges.

- (2) Where one accused person is on trial before the Supreme Court it shall be lawful for the Prosecutor and the accused each to challenge peremptorily any number of jurymen up to the number of 6, and where several accused persons are tried together for an indictable offence, each has a right to the full number of his challenges. (*Substituted by Act 4 of 1952; Amended by Act 14 of 1986, and Act 46 of 1988.*)

Arraignment

- (3) When the jury have been empanelled and sworn the Prosecutor shall appoint a foreman and thereafter the clerk of the Court shall address the jury as follows:

“Members of the jury, the accused stands indicted for that he, on the (stating the substance of the offences charged in the indictment).”

“To this indictment he has pleaded not guilty and it is your charge to say, having heard the evidence, whether he be guilty or not.”. (*Substituted by Act 14 of 1986.*)

Judge to sum up.

- (4) The witnesses shall be examined according to the rules of evidence and after the evidence has been heard the judge shall sum up the evidence and explain to the jury the law that bears upon the case. (*Amended by Act 14 of 1986.*)

Duty of jury

- (5) The jury shall then consider among themselves whether the charge has or has not been proved. If necessary they shall retire and shall not be permitted any communication with any other person.

Form of verdict.

- (6) Upon their having reached a conclusion the foreman shall notify the clerk of the court who shall ask the foreman if they are all agreed upon their verdict. If they are all agreed he shall then ask him “what is your verdict? Is the prisoner guilty or not guilty?”.

Sentence.

- (7) Upon a verdict of not guilty the judge shall order that the accused be set at liberty forthwith; and upon a verdict of guilty the judge shall pass sentence in accordance with the law.

Jury to be unanimous.

- (8) Where the jury are unable to agree upon their verdict they shall be discharged and a new jury empanelled and the case shall be tried again before them.

15 Costs.

In every action the costs of the whole action of each particular proceeding therein and the costs of every proceeding in the court shall be in the discretion of the court as regards the person by whom they shall be paid:

Provided always that the court shall not order the successful party in an action to pay to the unsuccessful party the costs of the whole action but the court may order the successful party notwithstanding his success in the action to pay the costs of any particular proceedings therein.

16 Limitation of action.

- (1) It shall not be lawful to sue any person for debt or damages after the expiration of 5 years from the date on which such liability was incurred nor to sue for property which has been in the undisputed possession of any person for more than 5 years. But if any part of such liability or claim has been paid within such time or the claim or liability has been admitted in writing within such time the 5 years shall commence to run from the time of such payment or admission and if there be any deed or document between the parties covering a period of time the 5 years shall commence to run from the expiration of such period of time.
- (2) No action to recover from any person any tax or duty due and payable to the Crown shall be brought in any Court but within 5 years next after the liability to pay such tax or duty was incurred.

17 Licensed lawyers.

- (1) It shall not be lawful for any person to make any charge or receive any remuneration for appearing for or representing any person or party in any cause or proceeding before any of the Courts of the Kingdom or before any inquiry or commission under the Law of Tonga or for advising any party or person unless he shall have had first issued to him a licence under the hand of the Chief Justice, or an officer of the Supreme Court duly authorised by him in that behalf, which licence shall be in the form in the Schedule hereto:

Provided that the Registrar of the Supreme Court may renew licences which have been issued in accordance with the provisions of this section. *(Amended by Act 23 of 1942 and Act 6 of 1950.)*

- (2) Any person who may appear for or represent any person or party in any Court inquiry or commission without having obtained such licence above mentioned shall not be allowed to make any charge or receive any remuneration or fee for such services.
- (3) Any person who shall be guilty of a breach of sub-section (1) or who shall make any charge or receive any fee or remuneration in contravention of sub-section (2) hereof shall upon conviction be liable to a fine not exceeding \$40 or in default of payment to distress and he shall also return any fee or remuneration that he may have received.
- (4) The Registrar of the Supreme Court shall keep a register of all persons licensed under this section. *(Amended by Act 6 of 1950.)*
- (5) The Chief Justice, or an officer of the Supreme Court duly authorised by him in that behalf, may refuse in his discretion to issue a licence to an

undesirable person and he shall not issue such to any person who has been convicted of felony. *(Amended by Act 6 of 1950.)*

- (6) The Chief Justice, or an officer of the Supreme Court duly authorised by him in that behalf, may remove from the register the name of any person who has committed a breach of this section or who has been guilty of grave misconduct. *(Amended by Act 6 of 1950.)*
- (7) The Chief Justice, or a Judge of the Supreme Court, shall have the power to tax any account rendered or any fees or remuneration already paid for services rendered by any person licensed under this section and he may call upon any person to render accounts relating to such matters. *(Amended by Act 6 of 1950.)*
- (8) For every application to tax there shall be paid the fee of \$2.50 which shall be paid by such party as the Chief Justice, or a Judge of the Supreme Court, may direct. *(Amended by Act 6 of 1950 and Act 13 of 1974.)*
- (9) There shall be no appeal from any decision upon taxation. *(Amended by Act 6 of 1950.)*
- (10) There shall be paid for every licence issued under this section the yearly fee of \$60. *(Amended by Act 6 of 1950, Act 13 of 1974 and Act 12 of 1984.)*

18² Appeal and rehearing.

An appeal shall lie from the Supreme Court by way of petition to the King in Council but it shall be lawful for the Supreme Court to rehear civil cases. Petitions shall be presented through the Prime Minister.

² This section, (previously s.5), will be repealed if Act 19 of 1966 comes into force and it was omitted from the 1967 edition of the Laws of Tonga in anticipation of Act 19 of 1966 coming into force.

See also clause 50 of the Constitution (Cap. 2).

THE SCHEDULE

LAWYER'S LICENCE

Nodated theday of19

..... ofis hereby licensed to act as a Representative in the Courts of Tonga for the yearin all such cases in which representation is allowed by section 17 of The Supreme Court Act and also to act as an Adviser in Law.