



SAMOA

JUDGMENT SUMMONSES ACT 1965

Arrangement of Provisions

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JUDGMENT SUMMONSES ACT 1965

1965

No.8

AN ACT to provide for limitation of imprisonment for debt.

[Assent and commencement date: 25 August 1965]

1. Short title – This Act may be cited as the Judgment Summonses Act 1965.

2. Interpretation – In this Act, unless the context otherwise requires:

“bailiff” means a person appointed as a bailiff pursuant to section 12 or 37 of the Judicature Ordinance 1961;
“Court” includes the Supreme Court and any District Court;
“prescribed” means prescribed by rules made under this Act;
“Registrar”, in respect of both Courts, includes a Deputy Registrar; and
“Rules Committee” means the Rules Committee established by and under section 40 of the Judicature Ordinance 1961.

3. In general no imprisonment for non-payment of money – With the exceptions mentioned in this Act, no person shall be arrested or imprisoned for making default in payment of a sum of money.

4. Some exceptions to the general rule – There shall be excepted from the operation of section 3:

- (a) default in payment of a penalty or sum in the nature of a penalty other than a penalty in respect of any contract;
- (b) default in payment of any sum recoverable otherwise than under the civil jurisdiction conferred by the Judicature Ordinance 1961;
- (c) default by a trustee or person acting in a fiduciary capacity, and ordered to pay any sum in his or her possession or control by a Court having jurisdiction in the matter;
- (d) default by a solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his or her character of an officer of the Court making the order; or
- (e) default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorised to make an order:

PROVIDED THAT:

- (i) in any case excepted as aforesaid, no person shall be imprisoned for a longer period than one year:

(ii) nothing in this section alters the effect of any judgment or order of any Court for payment of money, except as regards the arrest and imprisonment of the person making default in paying that money.

5. Discretion in some cases – In any case coming within either of the exceptions specified in section 4(c) and (d), any Court making the order for payment may, subject to the provisos contained in that section 4, grant or refuse, either absolutely or on terms, any application for a writ of attachment or other process or order of arrest or imprisonment, and any application to stay the operation of any such writ, process, or order, or for discharge from arrest imprisonment thereunder.

6. Court may imprison for non-payment of judgment debt – (1) Subject to the other provisions of this Act and of any rules made thereunder, any Court may commit to prison for a term not exceeding 6 months, or until sooner payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him or her in pursuance of any judgment or order of that or any other Court of competent jurisdiction.

(2) The jurisdiction given by this section shall be exercised only:

- (a) by an order made in open Court showing on its face the ground on which it is issued;
- (b) for a judgment or order not exceeding, exclusive of costs, such sum as is within the jurisdiction of the Court; and
- (c) in the cases hereinafter mentioned in this Act.

7. When application for judgment summons may be made – (1) Whenever and as often as any sum of money due under any judgment or order of any Court remains unsatisfied, it shall be lawful for the person entitled to recover that money (in this Act referred to as the judgment creditor), whether any writ of sale or any other writ or any warrant to levy on goods or any other warrant has or has not been issued for the same, to obtain from time to time from the Registrar of any Court of competent jurisdiction a summons in the prescribed form or to the like effect

(in this Act referred to as the judgment summons) directed to the person liable to pay that money.

(2) If the person summoned (in this Act referred to as the judgment debtor) appears in pursuance of the summons, he or she may be examined on oath:

- (a) as to the mode in which the liability the subject of the judgment or order was incurred;
- (b) as to the disposal he or she may have made of any property;
- (c) as to his or her estate and effects and as to the property and means he or she has had or has then of paying, satisfying, and discharging that sum of money; and
- (d) as to his or her intention to leave Samoa without paying so much of the money as is still unsatisfied, with intent to evade payment.

8. Judgment creditor and witnesses may be examined on oath – The judgment creditor, and all other witnesses whom the Court thinks requisite, may be examined on oath touching the matters referred to in section 7(2).

9. When order may be made – If:

- (a) the judgment debtor does not attend as required by the judgment summons, and does not allege a sufficient cause for not attending; or
- (b) the judgment debtor, if attending, refuses to be sworn or to disclose any of the things referred to in section 7(2); or
- (c) the judgment debtor does not make answer touching any of the things referred to in that subsection to the satisfaction of the Court; or
- (d) the Court is satisfied, by oral testimony or affidavit, or by both—
 - (i) that the judgment debtor contracted the liability which was the subject of the judgment or order by fraud;
 - (ii) that the judgment debtor has made or caused to be made any gift, delivery or transfer of any property, or charged, removed, or

concealed the same, with intent to defraud the judgment creditor, or with intent to defeat any execution issued upon the judgment or order;

(iii) that the judgment debtor has then, or has had since the judgment or order was obtained, sufficient means and ability (after providing for the reasonable maintenance of himself and his family) to pay the sum so recovered against him and so due and unsatisfied as aforesaid (or any instalment thereof when an order to pay by instalment has been made);
or

(iv) that the judgment debtor is about to leave Samoa without paying so much of the money as is still unsatisfied, with intent to evade payment, –

then in any of the cases aforesaid, but subject to the other provisions of this Act, the Court if it thinks fit so to do (by order to be called a judgment order) may order that, unless the judgment debtor pays into Court, either forthwith or by such instalments as the Court may fix, or within the time limited in the order, the money so unsatisfied and the costs of any fruitless writs or warrants of execution and of levies thereunder, together with the costs of and occasioned by the summons and examination, he or she shall be committed to prison for a period not exceeding 6 months.

10. No order of committal where judgment debt assigned to debt collector – Despite section 9, no judgment order shall be made where the judgment creditor is a person, firm, or company whose business is that of collecting or recovering debts, unless the Court is satisfied that the judgment debt was incurred to the judgment creditor directly, and was not acquired by assignment from the original creditor.

11. Original direction for payment by instalments – When giving any judgment or making any order for the payment of money, the Court, of its own motion, or on application of any of the parties, may direct that payment be made by instalments of

such amount, and at such periodical intervals, as the Court thinks fit.

12. Later direction for payment by instalments – For the purposes of this Act, any Court may direct any debt due from any person in pursuance of any judgment or order of that or any other Court to be paid by instalments, and may vary or rescind any such direction.

13. Committals to public prisons – A person committed under this Act may be committed to such public prison within Samoa as the Court thinks fit.

14. Bankruptcy of judgment debtor – (1) If the judgment debtor, upon the return day of a judgment summons, satisfies the Court that he or she has been adjudicated a bankrupt and that the debt was provable in his or her bankruptcy, a judgment order shall not be made.

(2) If the judgment debtor, after the making of a judgment order, but before the issue of the warrant of committal, satisfies the Court that he or she has been adjudicated a bankrupt and that the debt was provable in his or her bankruptcy, the warrant shall not be issued.

15. Warrant of committal – Whenever any judgment order has been made under this Act, and the money and the costs specified therein or any part thereof or any instalment have not been paid into Court in pursuance thereof, the Registrar, upon the request in writing of the judgment creditor, shall issue a warrant of committal in the prescribed form.

16. Execution of warrant – The bailiff of the Court, the constable and the officer-in-charge of the prison to whom the warrant is directed shall respectively execute and obey the warrant, and all constables shall aid and assist in the execution of the warrant.

17. Imprisonment not to discharge debt – No imprisonment under this Act operates as a satisfaction or extinguishment of any debt or cause of action, or deprives any

person of any right to issue execution against the lands, goods, or chattels of the person imprisoned in the same manner as if the imprisonment had not taken place.

18. Discharge from custody – A person imprisoned under this Act shall be discharged out of custody:

- (a) upon payment of the money for which the person was imprisoned; or
- (b) upon satisfying the Court that the person has been adjudicated a bankrupt and that the debt was provable in the person's bankruptcy; or
- (c) upon the Court granting a rehearing under section 19.

19. Rehearing of summons – (1) A person against whom a judgment order has been made may, at any time before or after the execution of any warrant issued under or by virtue of the judgment order, apply to the Court which made the judgment order or to the Supreme Court for a rehearing of the summons on which the judgment order was made.

(2) The Court applied to may, if under the special circumstances of the particular case it thinks fit so to do, grant a rehearing of the summons on which the judgment order was made, and thereupon all proceedings under such judgment order shall in the meantime be stayed.

(3) The rehearing shall take place at a time to be fixed by that Court, and shall be in all respects in accordance with the provisions of this Act relating to the hearing of a judgment summons in the first instance.

(4) That Court may, at any such rehearing, vary or cancel such judgment order, and cancel any warrant issued thereunder, or make such further or other order as it thinks fit.

20. Rules of Court – The Head of State may by Order, acting on the advice of the Prime Minister and with the concurrence of the Rules Committee, make, alter or revoke such rules as are consistent with this Act and with any other enactment giving jurisdiction to or relating to procedure in the Supreme Court or the District Court, for the purposes of regulating the practice and procedure of both Courts, prescribing forms and fixing scales of

costs, for judgment summonses, and may make such rules commence at the same time as this Act or later.

21. Regulations – (1) The Head of State may, acting on the advice of Cabinet and with the concurrence of the Rules Committee make regulations to give effect to the provisions or for the purposes of this Act, including fixing scales of fees for judgment summonses.

(2) The scales or amounts of fees prescribed under subsection (1):

- (a) shall be proposed by the Ministry with the concurrence of the Rules Committee; and
- (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

REVISION NOTES 2008 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2008 to 2020/3 March 2021 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) Section 16 revised to be consistent with the Prisons Act 2013.

This Act has been amended since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

Sections 20 and 21 were amended by the *Fees and Charges (Miscellaneous Amendments) Act 2017, No. 13*.

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