



STATUTES

Prohibiting Alienation of Land

A.S.C.A. § 37.0204

and

Permitting Trust for Non-Native Children

ASCA § 37.0205

Statutes: Introduction

One of us said, recently at the courthouse, that “The Kneubuhls live in Court.” If so, their disagreements began with the statute which follows.

When Ben and Lena married, they did not count on conflict between Samoan custom as U.S. laws. They agreed that their children would have the finest education, in the states, and would definitely not live in Samoa “as Samoans.” It was inconceivable that she would ever have to part with her land, or lose the privilege to leave it to her children. She was well aware of conflicts over land, and bought it assiduously. Born in Western Samoa, she had led a nomadic life, across the oceans, even to New Zealand, with siblings coming and going, and a lineage and legacy with complicated adoptions and marriages. She had high personal aspirations, was married to an ambitious, resourceful, accomplished businessman. She worked long hours, commanding a staff of maids and helpers and employees. She was not used to hearing the word “no.”

Ben and Lena were unprepared for the changes that the post-war Fono imposed on them, as the Peace Corps replaced the military and the self-government movement descended onto American Samoa. They had become accustomed to being leaders on the island. Indeed, it was rumored Ben would be governor. Lena had even given land for the airport in Samoa to the NZ government during World War II. The urgent political call to “preserve the culture” by limiting the amount and kind of land non-Samoans could own came as an unwelcome and unwanted surprise.

They promptly wrote the Trust exactly as the statute allowed, hoping fervently that this would not last long. Lena always felt it was still “her” land, even after she gave it irrevocably to the trust, while many in her extended family believed that, despite selling it to her, it remained “family land” and that they retained rights and privileges over it. Only James, Ben and John accepted the “restraint on alienation,” knowing they could never own it, let alone sell it.

Thus the seeds of discord and controversy were born, and the Kneubuhls began to seek relief in large and small ways from the courts. Each set out to interpret their “rights” in their own way, always unsure what the laws required of them, or what their duties to one another were, and often landed in court.

They were not alone facing this dilemma; other mixed families did much the same, and, while the courts refined the interpretation of the statute over the years, it only became more stringent, making only the lawyers happy.

American Samoa Code Annotated:

Chapter 02

ALIENATION OF LAND

37.0204 Restrictions on alienation of land.

(a) It is prohibited for any matai of a Samoan family who is, as such, in control of the communal family lands or any part thereof, to alienate such family lands or any part thereof to any person without the written approval of the Governor of American Samoa.

(b) It is prohibited to alienate any lands except freehold lands to any person who has less than one-half native blood, and if a person has any nonnative blood whatever, it is prohibited to alienate any native lands to such person unless he was born in American Samoa, is a descendant of a Samoan family, lives with Samoans as a Samoan, lived in American Samoa for more than 5 years and has officially declared his intention of making American Samoa his home for life.

(c) If a person who has any nonnative blood marries another person who has any nonnative blood, the children of such marriage cannot inherit land unless they are of at least one-half native blood.

(d) This section does not prohibit the conveyance and transfer of native land for governmental purposes to the United States Government or to the Government of American Samoa or to a lawful agent or trustee thereof, or the conveyance and transfer, in the discretion and upon the approval of the Governor, to an authorized, recognized religious society, of sufficient land for erection thereon of a church, or dwelling house for the pastor, or both; provided, that the reconveyance and retransfer of such land shall be to native Samoans only and in the discretion and upon the approval of the Governor.

(e) The true children of the present record titleholder of Swains Island, which became a part of American Samoa some 25 years subsequent to the original enactment of this section and is not under the matai system, and their lineal descendants born in American Samoa, shall, notwithstanding any other provision of this section, be deemed to have heritable blood with respect to said island or any part thereof, and an otherwise valid devise of said island or any part thereof to any such true child of such descendant shall not be construed to be alienation in violation of this section.

History: 1949 Code § 1282: readopted 1980, PL 16.88 §§ 1, 2: 1982, PL 17-31 §§ 1,2.

Case Notes:

Individually owned land cannot be alienated to any person who has less than one-half native blood. Craddick v. Territorial Registrar, ASR (1979).

As used in this section, "Samoan" includes Western Samoans and is not limited to American Samoans. and "native." which under this chapter means "full-blooded Samoan," includes full-blooded Western Samoans, thus, person of 75 percent Western Samoan blood, though not an American Samoan, has at least one-half Samoan blood for purposes of this section. Moon v. Falemalama. 4 ASR 836 (1975).

Under this section, freehold land may be alienated to a person with less than one-half Samoan blood, alienation of communal land to any person who is not a full-blooded Samoan is prohibited unless he was born in American Samoa and is a descendent of a Samoan family and lives with Samoans as a Samoan and has lived in American Samoa for more than 5 years and has officially declared his intention of making American Samoa his home for life, and any other land may be alienated to a person with at least one-half Samoan blood. Moon v. Falemalama. 4 ASR 836 (1975).

The protection of Samoan lands is a permissible state objective "independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate". We find the prohibition against the alienation of land to non-Samoans to be necessary to the safeguarding of these interests. *Douelas O. Craddick and Magdalene v. Craddick v. Territorial Registrar of American Samoa*. ASR (1980).

Conveyance not prohibited to recognized religious society. *Reid V Tavete*. I ASR 2d 85 (1983).

Conveyance not prohibited to United States government. ASG. or authorized agents. *Burns Philip Co. and ASG v. Mageo*. I ASR 2d 95(1983).

The Governor and the Land commission must approve conveyances of communal land. A.S.C.A. §§ 37.0203-37.0204. *Maggie v. Atualevao*, 19 A.S.R.2d 86 (1991).

A matai's alienation of land must comply with certain statutory procedures, including the approval of the Governor of American Samoa. A.S.C.A. § 37.0204. *Alaimalo v. Sivia*, 17 A.S.R.2d 25 (1990).

Common law rule against perpetuities is designed to protect the free alien ability of land and therefore has no application to Samoan communal property, which are not freely alienable. A.S.C.A. § 37.0204. *Tufele v. Mose*, 7 A.S.R.2d 157 (1988).

Land registration statute gave competing claimants sixty days in which to urge any objection to the proposed registration, including objection that the land was communal and that no sale was approved by the Land Commission or by the Governor. A.S.C.A. §§ 37.0101 et seq., 37.0204. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Where objections to land registration based on statutory procedures for alienation of communal land were not raised within sixty days of proposed registration, the law conclusively presumes either that the procedures for alienation of communal land were met or that the land was not communal. A.S.C.A. §§ 37.0101 et seq., 37.0204. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Where statutory scheme including land registration procedure and restrictions on alienation of communal land effected its own reconciliation of competing policies, there was no need for a court to fashion a new and different one by refusing to enforce land registration statute. A.S.C.A. §§ 37.0101 et seq., § 37.0204. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

37.0205 Transfer in trust for use of child or issue of child married to nonnative.

This regulation shall not apply to any native proprietor of land other than communal family land, who desires to make provision for his son or daughter, in view of legal marriage with a nonnative, or for his son or daughter already married to a nonnative, or for any of the issue of any such marriage, by deed or will in favor of a trustee to hold in trust for the use of such son or daughter or such issue.

History: 1949 Code § 1287; readopted 1980. PL 16-88 §§ 1.2; 1982. PL, 17-31 §§ 1.2.