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DIV. 2 PRINCIPLES OF EVIDENCE
CH. 1 GENERAL PRINCIPLES

DIVISION 2
PRINCIPLES OF EVIDENCE

CHAPTER 1
GENERAL PRINCIPLES

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§ 2101. Division 1 to Control.

Except for § 8207 and for Chapter 9 of this Division, if there is a conflict between this Division and Division 1, then Division 1 shall control.

SOURCE: New Section. Compare CCP § 66.1.

COMMENT: When the Legislature passed P.L. 15-115:8, it intended that the primary law of Evidence on Guam be the Guam Rules of Evidence, which are found unchanged in Division 1 of this Title. In enacting the Guam Rules of Evidence, the Legislature also repealed all of the remainder of Guam's Evidence laws which were in conflict with the new Rules. The Law Revision Commission has taken the remainder of that law - Part IV of the Code of Civil Procedure except for the Civil Arbitration Act - and has attempted to remove all of those provisions which were in conflict with the new Rules and to modify other parts of the former Code of Civil Procedure - Evidence in order to bring them into conformity with the Rules. However, the Commission is not perfect and it cannot forecast all of the circumstances the courts will be called upon to interpret. Therefore, while the Commission believes that there are no conflicts in this Division 2, it wants to make clear that, if the courts do find any conflicts, then the Guam Rules of Evidence will prevail.

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§ 2102. Definition of Evidence.

Judicial Evidence is the means, sanctioned by law, of ascertaining in a judicial proceeding the truth respecting a question of fact.

SOURCE: CCP § 1823.

COMMENT: This Section, and those following in this Chapter, contain definitions and provisions which are used in the Guam Rules of Evidence and in this Division. However, no definition of terms and general provisions are found in the Rules (Division 1) and, therefore, are included here having been modified to insure compatibility with the Rules.

§ 2103. Definition of Proof.

Proof is the effect of evidence, the establishment of a fact by evidence.

SOURCE: CCP § 1824.

§ 2104. Definition of Law of Evidence.

The Law of Evidence, which is the subject of this Title, is a collection of rules established by law:

1. For declaring what is to be taken as true without proof;
2. For declaring the presumptions of law, both those which are disputable and those which are conclusive;
3. For the production of legal evidence;
4. For the exclusion of whatever is not legal; and
5. For determining, in certain cases, the value and effect of evidence.

SOURCE: CCP § 1825.

COMMENT: The word general has been removed from the first clause because the Rules of Evidence, as enacted by this Title, are far more than just a "collection of general rules," but are a collection of both general rules and some very particular rules.

§ 2105. Degree of Certainty Required to Establish Facts.

The law does not require demonstration, that is, such a degree of proof as, excluding possibility of error, produces absolute certainty; because such proof is rarely possible. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

SOURCE: CCP § 1826.

CROSS-REFERENCE: Compare 8 GCA § 90.23 for the Criminal Standard of **Proof Beyond a Reasonable Doubt**.

§ 2106. Kinds of Evidence Specified.

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There are four kinds of evidence:

1. The knowledge of the court, that is, knowledge of which judicial notice is taken;
2. The testimony of witnesses;
3. Writings;
4. Other material objects presented to the senses.

SOURCE: CCP § 1827, as modified.

COMMENT: The modification here is an expansion upon the first type of evidence, i.e., the knowledge of the court. § 201 of Division 1 describes the means by which judicial notice is taken. See Article 10 of Division 1 for a definition of "writings." See Article 6 of Division 1 for Rules pertaining to testimony of witnesses.

§ 2107. Primary Evidence.

Primary Evidence is that kind of evidence which, under every possible circumstance, affords the greatest certainty of the fact in question. Thus, a written instrument is itself the best possible evidence of its existence and contents.

SOURCE: CCP § 1829.

§ 2108. Secondary Evidence.

Secondary Evidence is that which is inferior to primary. Thus, a copy of an instrument or oral evidence of its contents is secondary evidence of the instrument and contents, provided that the copy is not introduced as an original as allowed by 1003 of this Title.

SOURCE: CCP § 1830, as modified.

COMMENT: See Article 10 of Division 1 for the rules governing the admission of secondary evidence. See § 1001 for definitions of writings, original and duplicate. This Section has been modified by the final proviso which conforms this Section to Division 1, dealing with the introduction of other than original documents.

§ 2109. Direct Evidence.

Direct Evidence is that which proves a fact in dispute, directly, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. For example, if the fact in dispute be an agreement, the evidence of a witness who was present and witnessed the making of it, is direct.

SOURCE: CCP § 1831.

§ 2110. Indirect Evidence.

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Indirect Evidence is that which tends to establish the fact in dispute by proving another, and which though true, does not of itself conclusively establish that fact, but which affords an inference or presumption of its existence. For example, a witness proves an admission of the party to the fact in dispute. This proves a fact, from which the fact in dispute is inferred.

SOURCE: CCP § 1832.

§ 2111. Prima Facie Evidence.

Prima Facie Evidence is that which suffices for the proof of a particular fact, until contradicted and overcome by other evidence. For example, the certificate of a recording officer is prima facie evidence of a record, but it may afterwards be rejected upon proof that there is no such record.

SOURCE: CCP § 1833.

CROSS-REFERENCE: See § 901 and § 902, Division 1 for the Rules relative to authentication and identification of records, and the like. See Art. 10, Div. 1, for the Rules governing the admission of contents of writings, recordings and photographs.

§ 2112. Partial Evidence Defined.

Partial Evidence is that which goes to establish a detached fact in a series of facts tending to prove the fact in dispute. It may be received, subject to being rejected as incompetent unless connected with the fact in dispute by proof of other facts. For example, on an issue of title to real property, evidence of the continued possession of a remote occupant is partial, for it is of a detached fact, which may or may not be afterwards connected with the fact in dispute.

SOURCE: CCP § 1834.

CROSS-REFERENCE: See Div. 1, § 104 for the rules of Admissibility of Partial Evidence.

§ 2113. Indispensable Evidence.

Indispensable Evidence is that without which a particular fact cannot be proved.

SOURCE: CCP § 1836.

§ 2114. Conclusive Evidence Defined.

Conclusive or unanswerable evidence is that which the law does not permit to be contradicted. For example, the record of a court of competent jurisdiction cannot be contradicted by the parties to it.

SOURCE: CCP § 1837.

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CROSS-REFERENCE: See Div. 1 § 902 for a description of those documents which are self-authenticating, and the Rules relative to their admission.

§ 2115. Cumulative Evidence.

Cumulative Evidence is additional evidence of the same character to the same point.

SOURCE: CCP § 1838.

CROSS-REFERENCE: Div. 1 § 403 - Admission or exclusion of cumulative evidence.

§ 2116. Corroborative Evidence.

Corroborative Evidence is additional evidence of a different character to the same point.

SOURCE: CCP § 1839.

CROSS-REFERENCE: Div. 1 § 804(b)(3) - instances requiring corroboration. See, also, § 8206 of this Division 2 for the law respecting corroboration in certain matters of sexual assault.

§ 2117. Trial of Questions of Fact.

All questions of fact, on trial before a jury, judge, referee or other officer are to be decided by the jury, judge, referee or other officer, and all evidence thereon is to be addressed to them.

SOURCE: CCP § 2101, as modified.

COMMENT: The modification of this Section reflects the institution of jury trial and the fact that the CCP, at least here, has not been amended heretofore to reflect jury trials.

§ 2118. Questions of Law Addressed to the Court.

All questions of law in both criminal and civil proceedings, including the admissibility of testimony, the facts preliminary to such admission, and the construction of laws and other writings, and other rules of evidence, are to be decided by the court, and all discussion of law addressed to it.

Questions of law once decided by the court may not, thereafter, be raised for reconsideration by the jury.

SOURCE: CCP § 2102, as modified.

CROSS-REFERENCE: Parallel provision - Div. 1 § 104. See 8 GCA § 65.15 for the requirement of raising certain motions before trial in criminal cases.

COMMENT: The modification reflects the fact that this Section should apply to both criminal and civil proceedings. Recent cases have indicated that there is no clear law governing the case in criminal proceedings, except for this Section. Therefore, in the

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absence of any particular law or even particular case law, the Commission has made sure that this Section refers to both criminal and civil proceedings.

The final paragraph of this Section has been added because of a criminal case wherein the question was raised governing the admissibility of evidence and no clear law was found on the subject, not even in the Guam Rules of Evidence (Division 1) [Case unreported at this time.] Utilizing case law, the trial judge ultimately decided the law in the manner of the final sentence, which is why this final sentence is written as it is.
