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**CHAPTER 2**  
**THE GENERAL PRINCIPLES OF EVIDENCE**

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**§ 2501. One Witness Sufficient.**

The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact, except in those instances specifically provided for in Title 8, Chapter 95 of this Code (Criminal Procedure).

**SOURCE:** CCP §§ 1844, as modified.

**COMMENT:** Chapter 95 of Title 8 (Criminal Procedure) provides exceptions to the general rules applicable to criminal cases, including the requirements for more than one witness to prove particular facts (8 GCA § 95.20).

**§ 2502. Testimony to be in Presence of Persons Affected.**

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A witness can be heard only in the presence and subject to the examination of all the parties, if they choose to attend and examine.

**SOURCE:** CCP § 1846.

**CROSS-REFERENCES:** See § 804.1 of this Chapter relative to child witnesses and their protection.

**§ 2503. Witness Presumed to Speak the Truth.**

A witness is presumed to speak the truth. This presumption, however, may be contradicted by the manner in which he testifies, by the character of his testimony, or by the evidence affecting his character for truth, honesty or integrity, or his motives, or by contradictory evidence, and the judge or jury, as the case may be, is the exclusive judge of his credibility.

**SOURCE:** CCP § 1847, as modified.

**COMMENT:** This Section, as a general statement, will be governed by the specific provisions of Div. 1, Art. 6 - Witnesses.

This Section has been modified to refer to both the judge and jury as exclusive determiners of the credibility of the witnesses each hears. CCP § 1847 was enacted prior to the existence of jury trials on Guam and, to be consistent with current law, must be modified to reflect juries.

**§ 2504. Rights of One Not Affected by Another.**

The rights of a party cannot be prejudiced by the declaration, act or omission of another, except by virtue of a particular relation between them; therefore, proceedings against one cannot affect the another.

**SOURCE:** CCP § 1848.

**CROSS-REFERENCE:** Jury Instructions for Interpretation of this Section found in Div. 1 § 105.

**§ 2505. Declarations of Predecessor in Title Evidence.**

Where, however, one derives title to real property from another, the declaration, act or omission of the latter, while holding the title, in relation to the property, is evidence against the former.

**SOURCE:** CCP § 1849.

**§ 2506. Declarations Which Are a Part of the Transaction.**

Where, also, the declaration, act or omission forms a part of a transaction, which is itself the fact in dispute or evidence of that fact, such declaration, act or omission is evidence, as part of the transaction.

**SOURCE:** CCP § 1850.

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**CROSS-REFERENCE:** See Div. 1 §§ 803-806 for Rules governing the admission of this type of evidence as, where applicable, exceptions to the hearsay rule.

**§ 2507. Evidence Relating to Third Persons.**

And where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against such person is prima facie evidence between the parties.

**SOURCE:** CCP § 1851.

**§ 2508. Declaration of Decedent Evidence in Pedigree.**

The declaration, act or omission of a member of a family who is a decedent or out of the jurisdiction, is also admissible as evidence of common reputation, in cases where, on questions of pedigree, such reputation is admissible.

**SOURCE:** CCP § 1852.

**CROSS-REFERENCE:** See Div. 1 § 803(19) for exclusion of this type of evidence from the hearsay rule.

**§ 2509. Declaration of Decedent Evidence Against His Successor in Interest.**

The declaration, act or omission of a decedent, having sufficient knowledge of the subject, against his pecuniary interest, is also admissible as evidence to that extent against his successor in interest.

**SOURCE:** CCP § 1853.

**§ 2510. Proof of Contents of Lost Public Records.**

When, in any action, it is desired to prove the contents of any public record or document lost or destroyed by conflagration or other public calamity and, after such proof of such loss or destruction, there is offered in proof of such contents:

(a) Any abstract of title made and issued and certified as correct prior to such loss or destruction, and purporting to have been prepared and made in the ordinary course of business by any person, firm or corporation engaged in the business of preparing and making abstracts of title prior to such loss or destruction; or

(b) Any abstract of title or any instrument affecting title, made, issued and certified as correct by any person, firm or corporation engaged in the business of insuring titles to real estate, whether the same was made, issued or certified before or after such loss or destruction, and whether the same was made from the original records

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or from abstracts and notes or either, taken from such records in the preparation of and upkeep of its, or his, plant in the ordinary course of business, the same may, without further proof, be admitted as evidence for the purpose aforesaid.

No proof of the loss of the original document or instrument shall be required other than the facts that the same is not known to the party desiring to prove its contents to be in existence; provided, nevertheless, that any party so desiring to use said evidence shall give reasonable notice in writing to all other parties to the action who have appeared therein, of his attention to use the same in the trial of said action, and shall give all such other parties a reasonable opportunity to inspect the same, and also the abstracts, memoranda or notes from which it was compiled, and to make copies thereof.

**SOURCE:** CCP § 1855a.

**COMMENT:** While Division 1 generally covers the issue of lost documents, the Legislature believes that this specific section should be retained because it covers not generally addressed in that Division, and which circumstances have occurred on Guam.

**§ 2511. An Agreement Reduced to Writing Deemed the Whole.**

When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives, or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

1. Where a mistake or imperfection of the writing is put in issue by the pleadings; or
2. Where the validity of the agreement is the fact in dispute.

But this Section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in § 2515 [Circumstances to be Considered], or to explain an extrinsic ambiguity, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties.

**SOURCE:** CCP § 1856.

**COURT DECISIONS:** See *McNamara v. Jones & Guerrero Co.*, 417 F.2d 1188 (1969) for a determination that this Section prevented parol evidence to be introduced to modify a written contract.

**COMMENT:** This is the classic Parol Evidence Rule. This Rule is not contained in Division 1, nor in the Federal Rules of Evidence.

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**§ 2512. Construction of Language Relates to Place Where Used.**

The language of a writing is to be interpreted according to the meaning it bears in the place of its execution, unless the parties have reference to a different place.

**SOURCE:** CCP § 1857.

**§ 2513. Construction of Laws and Instruments; General Rule.**

In the construction of a law or instrument, the office of the judge or jury, as the case may be, is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted, and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will affect all.

**SOURCE:** CCP § 1858.

**COMMENT:** Reference to juries is added. It is understood that construction of the law remains with the judge (§ 2118 of this Division). However, other instruments can be subject to jury interpretation.

**§ 2514. The Intention of the Parties.**

In the construction of an instrument, the intention of the parties is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

**SOURCE:** CCP § 1859.

**§ 2515. The Circumstances to be Considered.**

For the proper construction of an instrument, the circumstances under which it is made, including the situation of the subject of the instrument and of the parties to it, may also be shown so that the judge or jury be placed in the position of those whose language he is or they are to interpret.

**SOURCE:** CCP § 1860, modified to reflect juries.

**§ 2516. Terms to be Considered in Their General Acceptation.**

The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is nevertheless admissible that they have a local, technical or otherwise particular significance, and where so used and understood in the particular instance, in which case the agreement must be construed accordingly.

**SOURCE:** CCP § 1861.

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**§ 2517. Written Words Control Printed Words in Blank Forms.**

When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter.

**SOURCE:** CCP § 1862.

**CROSS-REFERENCE.** 13 GCA § 1205 (UCC), Course of Dealing and Usage of Trade. See also 13 GCA § 3118 (UCC) relative to Commercial Paper.

**§ 2518. Persons Skilled May Testify to Decipher Characters.**

When the characters in which an instrument is written are difficult to decipher, or the language of the instrument is not understood by the court, the evidence of persons skilled in deciphering the characters or who understand the language, is admissible to declare the characters or the meaning of the language.

**SOURCE:** CCP § 1863.

**CROSS-REFERENCE:** See Div. 1 § 604, for the Rule governing Interpreters.

**§ 2519. Of Two Constructions, Which Preferred.**

When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood, and when different constructions of a provision are otherwise equally proper, that is to be taken which is most favorable to the party in whose favor the provision was made.

**SOURCE:** CCP § 1864.

**§ 2520. Written Instrument Construed as Understood by the Parties.**

A written instrument, as well as every other writing, is to be construed according to the ordinary acceptance of its terms. Thus a notice to the drawers or indorsers of a bill of exchange or promissory note, that it has been protested for want of acceptance or payment, must be held to import that the same has been duly presented for acceptance or payment and the same refused, and that the holder looks for payment to the person to whom the notice is given.

**SOURCE:** CCP § 1865.

**CROSS-REFERENCE:** 13 GCA § 3508, § 3509 and § 3510 (UCC) provide the specific law dealing with notices and protest of commercial paper. 13 GCA § 3510 gives specific examples of admissible evidence.

**§ 2521. Construction of Natural Right Preferred.**

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When a law or instrument is equally susceptible of two interpretations, one in favor of a natural right, and the other against it, the former is to be adopted.

**SOURCE:** CCP § 1866.

**§ 2522. Material Allegation Only to be Proved.**

None but a material allegation need be proved.

**SOURCE:** CCP § 1867.

**§ 2523. Affirmative Only to be Proved.**

Evidence need not be given in support of a negative allegation, except when such negative allegation is an essential of the statement of the right or title on which the cause of action or defense is founded, nor even in such case when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party.

**SOURCE:** CCP § 1867.

**NOTE:** Former CCP § 1870 permits the admission of many types of evidence. This subject matter is contained throughout Div. 1 and, therefore, is omitted here. See *Gaspard & Co. v. GovGuam*, 427 F.2d 276 (1980) regarding a declaration of a litigant as an admission.

**§ 2524. Material Objects.**

Whenever an object, cognizable by the senses, has such a relation to the facts in dispute as to afford reasonable grounds for belief respecting them, or to make an item in the sum of evidence, such object may be exhibited to the judge or jury or its existence, situation or character may be proved by witnesses.

**SOURCE:** CCP § 1954.

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