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DIV. 2 PRINCIPLES OF EVIDENCE
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CHAPTER 4
WRITINGS

- Article 1. Writings in General.
- Article 2. Public Writings.
- Article 3. Private Writings.

ARTICLE 1
WRITINGS IN GENERAL

- § 4101. Public and Private Writings.
- § 4102. Public Writings Defined.
- § 4103. Private Writings.

§ 4101. Public and Private Writings.

SOURCE: CCP § 1887, modified grammatically only. Repealed by implication.
Found in 5 GCA Chapter 10.

§ 4102. Public Writings Defined.

SOURCE: CCP § 1888, modified to refer to the Trust Territory; amended by P.L. 18-44:24. P.L. 18-44 repealed by P.L. 19-5:139. This section repealed by implication - totally replaced 5 GCA Chapter 10.

§ 4103. Private Writings.

SOURCE: CCP § 1889. Repealed by implication - totally replaced 5 GCA Chapter 10.

ARTICLE 2
PUBLIC WRITINGS

- § 4205. Laws, Written and Unwritten.
- § 4206. Other Evidence of Laws of Any States.
- § 4207. Extent of Recitals in Laws as Evidence.
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- § 4223. Applicability to Territories, etc.
- § 4224. Certificates of Title Primary Evidence.
- § 4225. Entries by Officers, etc.
- § 4226. Deeds as Evidence.

NOTE: CCP §§ 4201-4204 were repealed by P.L. 18-47:1 and P.L. 19-5:137.

§ 4205. Laws, Written and Unwritten.

(a) Laws, whether organic or ordinary, are either written or unwritten.

(b) A written law is that which is promulgated in writing, and of which a record is in evidence.

(c) An unwritten law is the law, not promulgated and recorded as mentioned in subsection (b), but which is, nevertheless, observed and administered in the courts of Guam. It has no certain repository, but is collected from the records of the decisions of the courts, and the treatises of learned men.

SOURCE: Combination of CCP § 1895, § 1896 & § 1899 - with grammatical changes only.

CROSS-REFERENCES: 1 GCA 700.

COMMENT: This Section describes both the written, or statutory, law and the unwritten, or "common law". Subsection (c) is changed from prior law by referencing "Guam" rather than "country", since it is by no means certain that the "common law" has been adopted generally on Guam. This is seen by the specific omission of 1 GCA 705 which would have, had it been adopted, adopted the common law for Guam. In any event, this Section does not mandate the use of any particular part, or any of the "common law", it merely describes it should it be used.

NOTE: CCP § 1898, relative to public and private laws, is deleted here because Guam has developed no distinction between public and private laws. All laws enacted by the Guam Legislature are denominated as "Public Laws".

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§ 4206. Other Evidence of Laws of Any States.

The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of any state or foreign country, as are also printed and published books of reports of decisions of the courts of such state or foreign country, as proved to be commonly admitted in such courts.

SOURCE: CCP § 1902.

CROSS-REFERENCES: § 201 of this Title; Rule 44.1 FRCP; Rule 26.1 FRCrP; 8 GCA § 95.80 [Criminal Procedure].

§ 4207. Extent of Recitals in Laws as Evidence.

The recitals in a public law are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private law of another state or foreign country or the United States are conclusive evidence between parties who claim under its provisions, but no further.

SOURCE: CCP § 1903 modified.

COMMENT: Occasionally, Guam Public Laws will contain recitals of fact. While Guam has no private laws, claimants in an action may rely upon the private laws of another jurisdiction. This section limits the scope of all such recitals.

§ 4208. Oral Evidence of a Foreign Record.

A copy of the judicial record of a foreign country is also admissible in evidence, upon proof:

1. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it;
2. That such original was in the custody of the clerk of the court or other legal keeper of the same; and
3. That the copy is duly attested by a seal which is proved to be the seal of the court wherein the record remains, if it be the record of a court, or if there be no such seal, or if it be not a record of a court, by the signature of the legal keeper of the original.

SOURCE: CCP § 1907

CROSS-REFERENCES: § 902 of Div. 1.

COMMENT: This Section is an additional means of admitting official records to that provided by § 902. Most likely, this method would be used when it is necessary to translate the official record from some foreign language into English.

§ 4209. Effect of Judgment or Final Order.

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The effect of a judgment or a final order in an action or special proceedings before a court or judge of Guam, or of the United States, having jurisdiction to pronounce the judgment or order, is as follows:

1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition or relation of the person;

2. In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided that they have notice, actual or constructive, of the pendency of the action or proceedings.

SOURCE: CCP § 1908.

§ 4210. Effect of Other Judicial Orders; When Conclusive.

Other judicial orders of a court or judge of Guam, or of the United States, create a disputable presumption, according to the matter directly determined, between the same parties and the representatives and successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity.

SOURCE: CCP § 1909

COMMENT: This Section, with § 4209, state the rules of *Res Judicata*.

§ 4211. Where Parties Deemed the Same.

The parties are deemed to be the same when those between whom the evidence is offered were on opposite sides of the former case, and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either.

SOURCE: CCP § 1910.

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§ 4212. What Is Adjudged in a Judgment.

That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

SOURCE: CCP § 1910.

§ 4213. Principal Bound With Sureties.

Whenever, pursuant to the last four Sections [4209-4212 inclusive) a party is bound by record, and such party stands in the relation of a surety for another, the latter is also bound from the time that he has notice of the action or proceeding, and an opportunity at the surety's request to join the defense.

SOURCE: CCP § 1912.

COURT DECISIONS: For a similar situation see *McDonald et ux. v. Velasco et al and Benson Guam Enterprises, Inc. (Cross-Plaintiff) v. Velasco et al*, Sup. Ct. Civil #354-79 (4-81).

§ 4214. Effect of State Record.

The effect of a judicial record of a state, territory, commonwealth, possession or trust territory of the United States and the District of Columbia is the same in Guam as in the place where it was made, except that it can only be enforced in Guam by an action, and except, also, that the authority of a guardian or a committee, or of an executor or administrator, does not extend beyond the jurisdiction of the Government under which the person was invested with his authority.

SOURCE: CCP § 1913 modified.

COMMENT: Commonwealths of the United States and the Trust Territory are added to the coverage of this Section.

§ 4215. Effect of Foreign Judgments.

A final judgment of any tribunal of a foreign country having jurisdiction, according to the laws of such country, to pronounce the judgment, shall have the same effect as a judicial record of a state, as provided by 4214, above.

SOURCE: CCP § 1915 modified.

COMMENT: A literal reading of former CCP § 1915 indicates that a foreign judgment carries greater weight in Guam than does the judgment of a state, etc., of the United States. While the record of the latter must be enforced through an action, the effect of a foreign judgment is treated as if it were a final judgment rendered on Guam,

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permitting the holder thereof to proceed as if it were a final judgment without the necessity of maintaining an action as required by 4214.

Foreign judgments should not be given greater weight than judgment of United States courts, which are protected by the Constitution. (Organic Act 5(u)).

§ 4216. Records of Courts of Admiralty.

The effect of the judicial record of a court of admiralty of a foreign country is the same as if it were the record of a court of admiralty of the United States.

SOURCE: CCP § 1914.

COMMENT: The law of Admiralty has developed its own traditions apart from those of the common law and the courts of the U.S. and its states, etc. In the U.S. most admiralty has been made statutory under the jurisdiction of the United States. This is not the case in many countries. Therefore, this Section is retained as being necessary to this Title.

§ 4217. Impeaching a Record.

Any judicial record may be impeached by evidence of a want of jurisdiction in the court of judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings.

SOURCE: CCP § 1916.

COMMENT: The Advisory Committee's Note to FRE Rule 902, as promulgated by the Supreme Court, states that in no instance is the opposite party foreclosed from disputing authenticity of a document covered by FRE (GRE) 902. This Section, therefore, adds to 902 by providing the means by which a judicial record may be impeached, and gives substantive reasons not related to the authenticity of the actual record.

§ 4218. Jurisdiction Required for a Judgment.

The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment.

SOURCE: CCP § 1917.

§ 4219. Church Records As Evidence.

Church records and/or registers, and/or entries therefrom, and/or certificates kept or issued by a clergyman or other person in accordance with law or in accordance with the rules, regulations and/or requirements of a religious denomination, society or a church, shall be competent evidence

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of the facts recited therein, if properly proved, attested and authenticated as provided in § 4220, below.

SOURCE: CCP § 1919a.

§ 4220. Proof of Church Records.

Church records or registers of entries therefrom or certificates of the character mentioned in 4219, in order to be admissible in evidence shall be proved by the original or by a copy thereof certified by the clergyman or other person having the custody of the original, provided that the genuineness of the signature of the clergyman or other person issuing such certificate or certifying a copy of the same, or of such record or register or entries therefrom, and the fact that he is the person having the custody of such record or such register and place or certificate, and that such certificate or copy of such certificate, record, register or entries therefrom was duly issued by the person issuing the same shall be attested either by the bishop, chief priest, president, district superintendent, or other presiding officer of such religious denomination, society or church, under his seal if he has a seal, or by a notary public or other civil officer authorized by law to take acknowledgments or to issue certificates as to the genuineness of signatures and/or the correctness of documents or of copies thereof, under his seal if he has a seal; provided, further, that the fact that such record, register and/or certificate is a document kept in accordance with law or in accordance with the rules, regulations and/or requirements of a religious denomination, society or church may be proved by the certificate of such bishop, chief priest, president, district superintendent, or other presiding officer of such religious denomination, society or church, or of a notary public or other civil officer authorized by law to take acknowledgments and/or issue certificates as the genuineness of signatures and/or the correctness of documents or of copies thereof, under his seal if he has a seal; and provided, further, that the genuineness of the signature and the statutes of such bishop, chief priest, president, district superintendent or other presiding officer of such religious denomination, society, or church and/or of such notary public or other civil officer shall, in any state, territory, possession, commonwealth or Trust Territory of the United States be authenticated as required by the laws of Guam for the authentication of similar civil documents attested to by a Notary Public of such civil jurisdiction, and shall, in a foreign country, be authenticated by the certificate of a minister or ambassador of consul, vice consul or consular agent of the United States in such foreign country.

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SOURCE: CCP § 1919b modified.

COMMENT: The GRE (Division 1) provide no specific mention of the authentication and admission of church records. However, because such records are of importance on Guam and in the Trust Territory and in the Commonwealth of the Northern Marianas, the above two sections are continued in this Division. Church records are neither public records nor purely private records under this Title.

The modification is to being up to date the means of authenticating documents by referencing them to the laws of Guam now in existence and as amended in the future. This Section, in former law, refers to a very formal, antiquated method of authentication.

§ 4221. Entries Prima Facie Evidence.

Entries in public or other official books or records, made in the performance of his duty by a public officer of Guam, or by another person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts stated therein.

SOURCE: CCP § 1920.

SOURCE: While the GRE (Div. 1) detail the means by which such evidence is to be admitted, the GRE do not state the effect of such evidence. Therefore this Section is retained.

§ 4222. Contents of Certificates.

Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any seal, or if he be the clerk of a court having a seal, under the seal of such court.

SOURCE: CCP § 1923.

CROSS-REFERENCES: GRE 902(4) [Div. 1].

COMMENT: This Section is in addition to, not contrary to § 902 of Div. 1.

§ 4223. Applicability to Territories, etc.

The provisions of this Title applicable to public writings of a state are equally applicable to the public writings of the United States, of a territory, possession, Commonwealth or Trust Territory of the United States, and of the District of Columbia.

SOURCE: CCP § 1924 updated to refer to Commonwealths and the TT.

§ 4224. Certificates of Title Primary Evidence.

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A certificate of title or purchase, or of location, of any lands in Guam, issued or made in pursuance of any law of the United States, or of Guam, is primary evidence that the holder or assignee of such certificate is the owner of the lands described therein.

SOURCE: CCP § 1925.

CROSS-REFERENCES: See Title 7 of this Code for the laws relating to real property and titles.

§ 4225. Entries By Officers, etc.

An entry made by an officer or board of officers, or under the direction and in the presence of either, in the course of official duty, is prima facie evidence of the facts stated in such entry.

SOURCE: CCP § 1926.

CROSS-REFERENCES: § 4103 of this Division.

§ 4226. Deeds As Evidence.

A deed of conveyance of real property, purporting to have been executed by a proper officer in pursuance of legal process of any of the courts of record of Guam, or in pursuance of any law authorizing such transfer of land, acknowledged and recorded in the Department of Land Management, or the record of such deed, or a certified copy of such record, is prima facie evidence that the property or interest therein described was thereby conveyed to the grantee named in such deed.

SOURCE: CCP § 1928 modified.

COMMENT: The former law applies only to deeds issued by some officer acting under an order of a court. The modification includes within this Section's scope deeds issued by any government officer acting within the scope of his duty. The purpose of the modification is to make sure that old deeds executed by government officials have prima facie validity even if the supporting documents, such as approval of appropriate boards and commissions, are missing. This gives basic protection to the present owners of former government land and to third parties. Obviously, prima facie evidence can be disproved by appropriate counter-proof.

ARTICLE 3
PRIVATE WRITINGS

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- § 4301. Coverage of this Article.
- § 4302. Seals of No Effect.
- § 4303. Execution of an Instrument Defined.
- § 4304. Subscribing Witness Defined.
- § 4305. Entries of Decedents.
- § 4306. Removal of Public Records.
- § 4307. Court May Order Old Exhibits Destroyed.
- § 4308. Unsworn Declarations under Penalty of Perjury.

§ 4301. Coverage of this Article.

Except as specifically provided in this Article, this Article concerns itself with private writings only.

SOURCE: New Section.

COMMENT: Much of former CCP Ch. 3, Article 3 is covered in Division 1. This Article contains those portions of the former law not covered in Division 1 -- those which deal with the effect of this evidence, as opposed to its admission. This Section is required because of the similarity between the admission of public and private writings. While there is similarity, the sections are not identical.

§ 4302. Seals of No Effect.

There shall be no difference hereafter, in Guam, between sealed and unsealed writings. A writing under seal may therefore be changed, or altogether discharged by a writing not under seal.

SOURCE: CCP § 1932.

COMMENT: At common law, the sealing of private writings had legal significance. As indicated by this Section, certain sealed writings could not be changed except by other sealed writings. However, this distinction has been abolished at least since 1953 when the Code of Civil Procedure was enacted.

Therefore, former CCP § 1929-1931, delineating the difference between sealed and unsealed writings, defining a seal and describing how such seals are made, have been eliminated. Since sealed documents no longer have any effect, there is no need to prescribe in law the means by which such seals are made nor to delineate the difference between sealed and unsealed documents.

This Section, and the deletion of the former CCP sections relative to seals, do not affect the law on notary seals which, in any event, is contained in 5 GCA Chapter 34.

§ 4303. Execution of an Instrument Defined.

The execution of an instrument is the subscribing and delivering it.

SOURCE: Former CCP § 1933, as modified.

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COMMENT: The modification here is the deletion of the words "with or without affixing a seal." With the elimination of any legal difference between sealed and unsealed documents, the reference to a seal is irrelevant.

Former CCP § 1934, relative to the ability to compromise or settle a debt without a writing under seal, is deleted since this Article already stated that seals have no effect.

§ 4304. Subscribing Witness Defined.

A subscribing witness is one who sees a writing executed or hears it acknowledged, and at the request of the party, thereupon signs his name as a witness.

SOURCE: CCP § 1935.

CROSS-REFERENCES: § 903 of Division 1 (Guam Rules of Evidence.)

§ 4305. Entries of Decedents.

The entries and other writings of a decedent in a position to know the facts stated therein, made at or near the time of the transaction, may be read as prima facie evidence of the facts stated therein, in the following cases:

1. When the entry was made against the interest of the person making it.
2. When it was made in a professional capacity and in the ordinary course of professional conduct.
3. When it was made in the performance of a duty specially enjoined by law.

SOURCE: CCP § 1946 modified grammatically.

§ 4306. Removal of Public Records.

The record of a conveyance of real property, or any other record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court, in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending, or where the court is held in the same building with such office.

SOURCE: CCP § 1950.

§ 4307. Court May Order Old Exhibits Destroyed.

The court, on its own motion, by an order entered in the minutes, may order destroyed or otherwise disposed or, any exhibit introduced in the trial of a civil action or proceeding which, if appeal has not been taken from the

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decision of the court in the said action or proceeding, remains in the custody of the court three (3) years after the time for appeal has expired, or, if appeal has been taken, remains in the custody of the court three (3) years after final determination thereof, provided no such order shall be made authorizing destruction or disposal of any exhibit which conveys title to or creates a lien on real property.

SOURCE: CCP § 1952.

CROSS-REFERENCES: For the rule in criminal cases, see 8 GCA 150.40 (Criminal Procedure.)

§ 4308. Unsworn Declarations under Penalty of Perjury.

Whenever, under any law of Guam or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established or proved by the unsworn declaration, certificate, verification or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed outside of Guam: "I declare (or certify, verify or state) under penalty of perjury under the laws of Guam that the foregoing is true and correct. Executed on (date).

(Signature)."

(2) If executed within Guam, or within a state having a rule of law or procedure similar in effect to this Section: "I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)."

SOURCE: 28 USC 1746, modified to refer to Guam and its jurisdiction.
