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CHAPTER 7
CONSTRUCTION OF THIS CODE

COMMENT: This Chapter is a consolidation of all of the general sections on construction found in the several Codes of Guam, except those sections which relate to a specific Code, or Title, only. The purpose of such consolidation is to provide a consistent interpretation of the entire Guam Code Annotated, and to apply the sections of this Chapter to the entire Code.

- § 700. Use of Common Law Rules of Construction.
- § 701. Inclusiveness of this Code.
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- § 721. Severability.
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- § 723. Scope of This Chapter.
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§ 700. Use of Common Law Rules of Construction.

Unless a different intent appears in law, or in applicable court decisions, or in this Code, the common law rules of construction shall apply to the interpretation of this Code and to all other laws of Guam; provided,

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that, common law rules that statutes in derogation of the common law, and penal statutes shall be strictly construed shall not apply.

SOURCE: New Section. Compare Code of Civil Procedure § 4, Civil Code § 4, 9 GCA § 1.20 and 8 GCA § 1.07; former Penal Code §§ 4, 5.

COMMENT: It is recognized that the laws of Guam cannot contain all of the rules of construction that will be used in their interpretation. Neither have the courts ruled upon all questions of interpretation. Thus, some additional provision must be found and, based upon prior practice in Guam, can be found in the common law rules of interpretation. However, consistent with § 101 of this Title, this Section does not adopt substantive common law, and rejects the rule, as have the Codes of Guam, that laws in derogation of the common law should be strictly construed. Such treatises as Sutherland, Statutes and Statutory Construction, 1972 ed. (or current edition), with supplements, are intended to be a guide to interpreting the laws of Guam under this Section.

§ 701. Inclusiveness of This Code.

This Code establishes the law of the Territory respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed with the view to effect its objects and to promote justice.

SOURCE: Former Civil Code § 4, Code of Civil Procedure § 4, Probate Code § 100, Government Code § 5, ¶2.

COMMENT: This Section has been modified from the above sections to meet present conditions of this Code. This Section brings together the second sentence of § 4 found in both the Civil and Civil Procedure Codes. In applying it to the whole of the Guam Code Annotated, the intent is to create one body of law to which one can refer on the topics which are covered therein. As shown by § 102 and § 104 of this Title, there are many different sources of Guam laws at the present time. Upon completion of this project, there should be only three sources; this Code, the *Session Laws* and the *Current Laws*.

§ 702. Laws Not Retroactive.

No part of this Code is retroactive, unless expressly so declared.

SOURCE. Found in former § 3 of the Civil Procedure Code, § 3 of the Civil Code, and an exception found in § 2 of P.L. 13-186 enacting the Criminal and Correctional Code (8 GCA). Compare § 4, Government Code.

§ 703. Provisions Similar to Existing Law.

The provisions of this Code, as far as they are substantially the same as existing law, shall be construed as continuations thereof and not as new enactments.

SOURCE: Former Government Code § 2. Similar provisions in Civil Procedure Code, § 4.

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§ 704. Actions Affected by This Code.

No action or proceedings commenced before this Code, or any individual Title thereof, takes effect, and no right accrued is affected by its provisions, but proceedings therein must conform to the requirements of this Code, or any particular Title thereof, as far as possible.

SOURCE: Former Code of Civil Procedure § 8. Also, § 2 of P.L. 13-186 enacting the Criminal and Correctional Code; and Government Code § 4, Probate Code § 3.

§ 705. (Omitted)

§ 706. Official Languages.

English and Chamorro are the official languages of Guam, provided, however, that the Chamorro language shall not be required for official recording of public acts and transactions.

SOURCE: Former Government Code § 3000.

COMMENT: Former Govt. Code § 3000, as originally enacted in 1952, was a prohibition against the use of Chamorro by government employees, hence its placement in Title 4 of the Govt. Code. However, with its amendment by P.L. 12-132 in 1974, the scope of the Section was enlarged to provide a scope which is island-wide. Therefore, this Section is being placed in this Title as a provision of general coverage, together with new § 707, which complements it.

§ 707. English Version Controls.

Wherever there is found to exist a material difference between the English version and Chamorro version of any law or public document, the English version shall be held to be binding.

SOURCE: New Section. From § 1-13, Hawaii Revised Statutes.

COMMENT: While this question has not arisen to date, the adoption of amended Section 3000 of the Government Code (§ 706 of this Title) makes it seem wise to add a section dealing with the conflicts that will inevitably arise. One change from the Hawaiian law has been made. Where Hawaii involves only a "radical or irreconcilable" conflict, the Commission recommends that the English version prevail in case of only "material" difference. The term "material" has been adequately defined by the courts and seems a better standard to commence with. Hawaii, of course, has its own long history of dual languages to rely upon. Guam has none, at least legally.

§ 708. Limitations.

When a limitation or period of time prescribed in any existing law for acquiring a right or barring a remedy, or for any other purpose, has begun to run before the applicable Title of this Code goes into effect, and the same or any limitation is prescribed by this Code, the time which has already run

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shall be deemed a part of the time prescribed as such limitation by the applicable Title of this Code.

SOURCE: Former Civil Procedure Code § 9; updated to refer to the enactment of this Code by Titles.

§ 709. Time Within Which to do an Act.

The time within which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday or holiday, and then it also is excluded.

SOURCE: Former Code of Civil Procedure § 12; Civil Code § 10; Govt. Code § 205.

§ 710. Seal: What is.

When the seal of a court, public officer, department, agency or section of the Government, or notary public, or of any person, is required by law to be affixed to any paper, the word "seal" refers to an impression of such seal on the paper alone, either as a physical impression or an impression in ink.

SOURCE: Former Civil Procedure Code § 14, updated.

COMMENT: The former § 14, CCP, referred to a "seal" as including what we normally regard as a Seal, a direct impression on paper, in addition to the older impressions in wax or on a wafer. The wax or wafer seal has long ceased to be in common usage, and the latest usage practiced in a number of states, including California, is a rubber stamp impression of the seal on the paper in question. Thus, this new section no longer refers to wax or wafers, but does permit ink impressions from a stamp.

§ 711. Joint Authority of Public Officers.

Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act granting the authority.

SOURCE: Former Civil Procedure Code § 15.

§ 712. Authority of Deputies and Agents.

Whenever a power is granted to, or a duty is imposed upon, a public officer the power may be exercised or the duty may be performed by the deputy of the officer, or by a person authorized, pursuant to law, by the officer unless this Code provides otherwise.

SOURCE: Former Government Code § 7. From Govt. Code of California, § 7. *Deputies*, in the California Code, refers to those who are in a position of "second-in-command" to the department or agency head.

§ 713. Government Defined.

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Government means the government of Guam and all of its branches.

SOURCE: Former Government Code § 18. This Section reflects the present status of autonomous agencies. If any change is made, it will be made in the portions of the law specifically dealing with these agencies.

§ 714. Amendments and Additions.

Whenever any reference is made to this Code or to any other law of Guam, the reference applies to all amendments and additions now or hereafter made.

SOURCE: Former Government Code § 9.

§ 715. Words and Terms Defined: Significance of Words.

Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word *person* includes a corporation, firm, association, organization, partnership, business trust or company unless this Code otherwise provides; *writing* includes printing, typewriting and physical copy from electronic media; *oath* includes affirmation and declaration; and every mode of oral statement, under oath or affirmation, is embraced in the term *depose*; *signature* or *subscription* includes mark, when the person cannot write, his name being written near it by a person who writes his own name as a witness, provided that when a signature is by mark it must, in order that the same may be acknowledged or may serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto.

The following words have in this Code the meaning attached to them in this Section, unless otherwise specifically provided or apparent from the context:

1. The word *property* includes both real and personal property;
2. The words *real property* are coextensive with lands, tenements and hereditaments;
3. The words *personal property* include money, goods, chattels, things in action, and evidence of debt;
4. The word *month* means a calendar month unless otherwise expressed;
5. The word *will* includes codicil;

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6. The word *writ* signifies an order or precept in writing, issued in name of the government, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial, or quasi-judicial proceedings;

7. The word *affinity* when applied to the marriage relation, signifies the connection existing in consequence of marriage, between each of the married persons and the blood relative of the other;

8. The phrase *dissolution of marriage* includes divorce;

9. *Shall* is mandatory and *may* is permissive.

10. *Section* means a section of this Code unless some other statute is specifically mentioned. *Subsection* means a subsection of the section in which the term is used unless some other section is specifically mentioned.

11. *Adequate Public Educational System* means a system of public schools that provides an adequate public education to public school students.

12. *Adequate public education* means public schools which at the minimum provide:

(a) a certified teacher for every class in a ratio established by relevant collective bargaining agreements;

(b) certified professional administrators;

(c) certified guidance counselors;

(d) certified school health counselors;

(e) certified allied health professionals;

(f) air conditioned or properly ventilated classrooms in which the sensible air temperature is no greater than 78°F.;

(g) potable water sufficient to provide each student a daily ration of drinking and washing water;

(h) a reliable supply of electricity;

(i) proper sanitation to include flushable toilets, clean restrooms, dining areas and classrooms;

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(j) adopted and required textbooks and workbooks issued to each public school student for the classes in which he or she is enrolled;

(k) libraries, which meet the standards of the American Association of School Librarians, at each school, operated by certified librarians;

(l) a healthful, safe, sanitary learning environment;

(m) at least one hundred eighty (180) instructional days each school year with school years ending *no later than* thirty (30) days following the end of the calendared school year; and

(n) regular, timely school bus transportation to and from the school for his attendance area as established by 17 GCA §6102 for every child in accordance with policies adopted by the Education Policy Board.

13. In item 12, above, '*certified*' means that a person holds at least the first level of professional certificate issued in accordance with standards at least as stringent as those in place on the day this Section is effective, for the position he or she holds.

14. *Public school* means a facility established, maintained or operated pursuant to §29 (b) of the Organic Act, as amended.

15. *Public school student* means a child who is required to attend school by Section 1421b. (r) of the Organic Act or 17 GCA §6102 who is enrolled in a public school and has not been expelled.

SOURCE: Former Code of Civil Procedure § 17; Civil Code § 17 and Government Code §§ 8, 10, 11, 12, 13, 14, 15, 16 and 18; updated to refer to various forms of electronic printing and computer output. Note that *subdivision* (Govt. Code § 10) is not used here, as this term is used differently in the Guam Code Annotated than in the Government Code. Subsections 11, 12, 13, 14 and 15 added by P.L. 28-045:4.

§ 716. Authorization of Expenditures; Effect.

A law which *authorizes* the expenditure of funds, but which does not appropriate those funds authorizes the department, agency or person to whom the authorization is directed to take all necessary steps to accomplish the terms of the law except the obligation or expenditure of the funds which have been authorized, but not appropriated.

SOURCE: A new Section.

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COMMENT: Up to the present, there has been much doubt as to the effect, if any, of a bill authorizing an program and authorizing, but not appropriating funds to carry out that program. In many instances such bills have been ignored completely. In other instances hardship has been caused to the agency receiving the authorization because an obligation was made and lesser funds were appropriated than were obligated under the authorization. This section is designed to correct both extremes, guiding both the Legislature and the affected parties in their actions under a *fund authorization*,

Thus, if funds were authorized to finance a program granting some benefit to a group who met certain statutory criteria the designated agency could commence screening to determine those who meet the criteria, up to the ceiling established by the authorization. Then the agency would present to the legislature those who had qualified so that the Legislature can appropriate the exact amount required. See Train v. City of New York, 95 S.Ct. 839, 420 U.S. 35 (1974).

The Attorney General has suggested that the Legislature be required to appropriate funds when creating new burdens on existing budgets. While this would be a good idea, this type of requirement cannot be placed in law because, in reality there would be so many amendments to the requirement that the code section would become obsolete shortly after its passage.

§ 717. Notice; How Given.

Wherever any Territorial law or rule provides for the giving of notice or service of legal process by registered mail, or for service of notice or legal process and proof of mailing or proof of delivery, the sending of such notice or service of such legal process may be made by means of certified mail, return receipt requested and deliver to addressee only. Should the U.S. Postal Service, in the future, provide a similar service under a different designation, such designated service shall be sufficient notice under this Section if such service provides for written proof of mailing, written proof of delivery and restricted delivery to the addressee only.

SOURCE: Compare California Probate Code § 5 and HRS § 1-28.

COMMENT: In addition to references contained in both the Hawaii and California statutes to "certified mail", reference is made to future contingencies within the postal service. Since statutes similar to this one were required to be enacted when the Postal Service created "certified mail" as a less expensive option providing the essential (for purposes of this Section) services of Registered Mail, it is desirable to permit the same essential service under this Section regardless of what it is called by the Postal Service. Thus, this law concerns itself with the quality of service provided, not the name of the service.

§ 718. Notice: Actual and Constructive.

Notice is:

Actual - which consists of express information of a fact; or

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Constructive - which is imputed by law.

SOURCE: Former Civil Code § 18.

§ 719. Constructive Notice: Presumed.

Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of that fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact.

SOURCE: Former Civil Code § 19.

§ 720. Headings Have No Effect.

Title, division, part, chapter, article and section headings and tables of contents do not in any manner affect the scope, meaning, or intent of the provisions of this Code.

SOURCE: Former Government Code § 6. See also 9 GCA § 1.36 and 8 GCA § 5.13.

§ 721. Severability.

If any of the provisions of this Code, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

SOURCE: Identical to 8 GCA § 1.05, 9 GCA § 1.12 and similar to former Govt. Code. § 19.

COMMENT: While this Section has appeared only in the codes cited above, court decisions have assumed its existence with respect to all codes and laws of Guam unless there were special circumstances indicating that the provisions in question were not severable. See *People v. Camacho*, Guam Supreme Court Crim. Case #4F-75 (1975). In this, the only decision of the Guam Supreme Court, the Court found that because the appointment power of the Special Prosecutor was invalid, the exercise of the powers by him was invalid and that the first was inseparable from the whole scheme of the statute. Thus, the whole Act and indictments brought under the Act were held invalid.

§ 722. Tenure of Office Preserved.

All persons who, at the time any Title of this Code takes effect, hold office under any of the acts repealed by this Code, which offices are continued by this Code, continue to hold them according to their former tenure.

SOURCE: Former Government Code § 3.

§ 723. Scope of This Chapter.

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This Chapter shall apply to this Code, as the titles thereof become law, and to the Government Code, Civil Code, Code of Civil Procedure and Probate Code, so long as the latter Codes remain outside of the Guam Code Annotated. The definitions found in this Chapter shall apply to the Criminal and Correctional Code, to the Criminal Procedure Code, which are Titles 8 and 9 of this Code, and to the Uniform Commercial Code, which is Title 13 of this Code, only if the definitions of this Chapter are consistent with the definitions contained in Titles 8, 9, and 13 of this Code.

SOURCE: New Section.

COMMENT: This Section is required to insure that this Chapter is seen to cover all the Codes of Guam existing at the time this Title is enacted, not only the GCA. The sections replaced by this Chapter are repealed from the Codes affected so that there are not two definitions, or sometimes three, enacted at one time on one subject. Several of the definitions contained herein are combinations of definitions from three codes and differ, in form, from all three. Therefore, to have these definitions, and the Code definitions enacted at the one time would cause much confusion.

§ 724. Words and Phrases.

Words and phrases are construed according to the context and the approved usage of language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

SOURCE: CC § 13.
