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CH. 12 PARTIES TO CIVIL ACTIONS

**CHAPTER 12**  
**PARTIES TO CIVIL ACTIONS**

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**NOTE:** A substantial part of Title 3, Guam Code of Civil Procedure, §§ 367 through 389, has been superseded by the Superior Court Rules of Civil Procedure. 7 GCA § 2206 provides that sections of this title which have been replaced by the rules shall have no further force and effect. However, the Rules may change procedural portions only of this Title. Therefore, those sections will be deleted from this Chapter, and are to be found in their current form in the Rules of Court. What remains in this Chapter are those sections which are not specifically dealt with in the Rules of Court and, in addition, which are of a substantive nature. Rule 17(b) of the Superior Court Rules of Civil Procedure refers to Title 3 (this Chapter) for matters dealing with the capacity to sue.

CCP § 367, *Action to be in name of Party in Interest*, replaced by Guam Rules of Civil Procedure, Rule 17.

**§ 12101. Assignment of a Thing in Action Not to Prejudice Defense.**

In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set-off, or other defense existing at the time of, or before notice of, the assignment, but this section does not apply to a negotiable promissory note or bill of exchange, transferred in good faith and upon good consideration, before maturity.

**SOURCE:** CCP § 368.

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**COMMENT:** In 1978, the Federal Trade Commission promulgated rules by which all state laws providing the defense of good faith assignment of such negotiable promissory notes for value were superseded by the Federal rule.

**NOTE:** CCP § 369, Executor, Trustee, etc., may sue without joining the persons beneficially interested, has been superseded by GRCP Rule 17.

**§ 12102. Married Women as Parties to Action.**

A married woman may be sued without her husband being joined as a party, and may sue without her husband being joined as a party, in all actions, including those for injury to her person, libel, slander, false imprisonment, or malicious prosecution, or for the recovery of her earnings, or concerning her right or claim to the homestead property.

**SOURCE:** CCP § 370.

**COMMENT:** The California § 370 was amended to make this Section applicable to both spouses. Guam has enacted, in P.L. 14-28 as Government Code 1104, the local equivalent of the failed federal constitutional "Equal Rights Amendment", with instructions that all laws should be read in light of this new public law.

**§ 12103. When Wife May Defend.**

If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also.

**SOURCE:** CCP § 371.

**§ 12104. Minors, Insane or Incompetent Persons; Appearance By Another.**

When an infant, or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian ad litem appointed by the court in which the action is pending, in each case. A guardian ad litem may be appointed in any case, when it is deemed by the court in which the action or proceeding is being prosecuted, or by a judge thereof, expedient to represent the infant, or insane or incompetent person in the action or proceeding, notwithstanding that he may have a general guardian and may have appeared by him. The general guardian or guardian ad litem so appearing for any infant, or insane or incompetent person in any suit shall have power to compromise the same and to agree to the judgment to be entered therein for or against his ward, subject to the approval of the court in which such suit is pending.

**SOURCE:** CCP § 372.

**§ 12105. Guardian Ad Litem--Appointment.**

When a guardian ad litem is appointed by the court, he must be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen (14) years, or if under that age, upon the application of a relative or friend of the infant.

(2) When the infant is defendant, upon the application of the infant, if he be of the age of fourteen (14) years, and apply within ten days after the service of the summons, or if under that age, or if he neglect so to apply, upon the application of a relative or friend of the infant, or of any other party to the action.

(3) When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

SOURCE: CCP § 373.

**§ 12106. Unmarried Female May Sue for Her Own Seduction.**

An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

SOURCE: CCP § 374.

**§ 12107. Father May Sue for Seduction of Daughter.**

A father, or, in case of his death or desertion of his family, the mother, may prosecute as plaintiff for the seduction of the daughter, and the guardian for the seduction of the ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

SOURCE: CCP § 375.

**§ 12108. Injuries to Children.**

The parents of an unmarried minor child, acting jointly, may maintain an action for injury to such child caused by the wrongful act or neglect of another. If either parent shall fail on demand to join as plaintiff in such action or is dead or cannot be found, then the other parent may maintain such action and the parent, if living, who does not join as plaintiff must be joined as a defendant and, before trial or hearing of any question of fact,

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must be served with summons either personally or by sending a copy of the summons and complaint by registered mail with proper postage prepaid, addressed to such parent's last known address with request for a return receipt. If service is made by registered mail, the production of a return receipt purporting to be signed by the addressee shall create a rebuttable presumption that such summons and complaint have been duly served. In the absence of personal service or service by registered mail, as above provided, service may be made as provided in § 14106 of this Title and in GRCP Rule 3e. The respective rights of the parents to any award shall be determined by the court.

A mother may maintain an action for such an injury to her illegitimate unmarried minor child. A guardian may maintain an action for such an injury to his ward.

Any such action may be maintained against the person causing the injury, or if such person be dead, then against his personal representatives. If any other person is responsible for any such wrongful act or neglect, the action may also be maintained against such other person or this personal representatives in case of his death. The death of the child or ward shall not abate the parents' or guardians' cause of action for his injury as to damages accruing before his death.

In every action under this section, such damages may be given as under all of the circumstances of the case may be just; provided, that in any action maintained after the death of the child or ward, damages recoverable hereunder shall not include damages for pain, suffering or disfigurement nor punitive nor exemplary damages nor compensation for loss of prospective profits or earnings after the date of death.

If an action arising out of the same wrongful act or neglect may be maintained pursuant to § 12109 of this Chapter, for wrongful death of any child, the action authorized by this section shall be consolidated therewith for trial on motion of any interested party.

**SOURCE:** CCP § 376, amended by P.L. 15-61.

**COMMENT:** Where, as here, the Guam Legislature has specifically acted on a subject after the Rules of Civil Procedure have gone into effect, the Compiler presumes that this enactment will prevail over any Rule of Civil Procedure.

**§12108.1. Public School Student: Standing to Sue.**

(a) A public school student *shall* have a claim and standing to sue the government of Guam and any officer of the Executive Branch of the government of Guam in his official capacity only for the purpose of

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enjoining such officer from failing to provide an adequate public education to that public school student but *not* for money damages, provided that the student must exhaust the administrative process mandated by Title 17 GCA Chapter 11.

(b) No action shall lie under this Section until thirty (30) days, Saturdays, Sundays, and holidays excepted, after notice of the claim has been filed in the manner required by 5 GCA §§ 6101, 6103(b), (c) and (d), 6201, 6202, 6205 and 6207 with the Attorney General and the head of the department or agency against which the claim is to be made.

**SOURCE:** Added by P.L. 28-045:16, effective, October 1, 2007, per P.L.28-045:23. Subsection (a) amended by P.L. 29-019:VI:80 (Sept. 29, 2007).

**§ 12109. Wrongful Death of Adults or Certain Minors.**

(a) When the death of a person is caused by the wrongful act or neglect of another, his or her heirs or personal representatives on their behalf may maintain an action for damages against the person causing the death, or in case of the death of such wrongdoer against the personal representative of such wrongdoer, whether the wrongdoer dies before or after the death of the person injured. If any other person is responsible for any such wrongful act or neglect, the action may also be maintained against such other person, or in case of his or her death, his or her personal representatives. In every action under this Section, such damages may be given as, under all the circumstances of the case, may be just, but shall not include damages recoverable under 19 GCA § 31104. The respective rights of the heirs in any award shall be determined by the court. Any action brought by the personal representative of the decedent pursuant to the provisions of 19 GCA § 31104, may be joined with an action arising out of the same wrongful act or neglect brought pursuant to the provisions of this Section. If an action be brought pursuant to the provisions of this Section, and a separate action arising out of the same wrongful act or neglect be brought pursuant to the provisions of § 956 of the Civil Code, such actions shall be consolidated for trial on the motion of any interested party.

(b) For the purposes of Subsection (a), heirs mean only the following:

(1) Those persons who would be entitled to succeed to the property of the decedent according to the provisions of 15 GCA Division 3 (Administration of Decedents' Estates).

(2) Whether or not qualified under Paragraph (1), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren and parents. As used in this Paragraph,

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"putative spouse" means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid.

(3) Minors, whether or not qualified under Paragraphs (1) or (2) if, at the time of the decedent's death, they resided for the previous one hundred eighty (180) days in the decedent's household and were dependent upon the decedent for one-half (1/2) or more of their support.

Nothing in this Subsection (b) shall be construed to change or modify the definition of heirs under any other provision of law.

**SOURCE:** CCP § 377, amended by P.L. 14-128.

**CROSS-REFERENCE:** Civil Code § 956; 19 GCA § 31104.

**COMMENT:** A note to original Guam CCP § 377 states that Rule 18 of the GRCP provides for joinder of claims and remedies. Also, see *Vela v. Govt. Emp. Ins. Co.*, (1968) 395 F.2d. 427. However, the Fourteenth Guam Legislature believed that this Section superseded any rule on the topics covered within this Section, and by passing a new Subsection (b) to this Section indicated its substantive nature. Therefore, this Section is included herein. As a result of this amendment, Guam and California § 377 (this Section) now read substantially the same.

**NOTE:** CCP § 378, *Who may be Joined as Plaintiffs*; § 379, *Who May be joined as Defendants*; § 379a, *Same*; have been replaced by GRCP Rule 19. § 379b, *Order Preventing Embarrassment*, has been replaced by GRCP Rule 20.

**§ 12110. Doubt as to Defendant Liable.**

Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, with the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined between the parties.

**SOURCE:** CCP § 379c.

**§ 12111. Defendants - Actions for Real Property.**

In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may be joined as defendants, and if the judgment be for the plaintiff, he have a writ for the possession of the premises, as against the defendants in the action, against whom the judgment has passed.

**SOURCE:** CCP § 380.

**§ 12112. Persons Holding Under Common Title.**

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Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common or in severalty, may unite in an action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

**SOURCE:** CCP § 381.

**NOTE:** CCP § 382, *Parties in interest, when to be joined*, has been replaced by GRCP Rules 10-21. CCP § 383, *Persons severally liable as sureties, etc.*, has been replaced by GRCP Rule 22.

**§ 12113. Tenants in Common May Sever.**

All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

**SOURCE:** CCP § 384.

**NOTE:** CCP § 385, *Abatement of Actions*, has been replaced by GRCP Rule 25, *Substitution of Parties*.

**§ 12114. Interpleader.**

A defendant, against whom an action is pending upon a contract or for specific personal property, may at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon such contract, or for such property, upon notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, upon his depositing in court the amount claimed on the contract, or delivering the property or its value to such person as the court may direct; and the court may, in its discretion, make the order. And whenever conflicting claims are or may be made upon a person for or relating to personal property, or the performance of an obligation, or any portion thereof, such person may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. The order of substitution may be made and the action of interpleader may be maintained, and the applicant or plaintiff be discharged from liability to all or any of the conflicting claimants, although their titles or claims have not a common origin, or are not identical, but are adverse to and independent of one another.

**SOURCE:** CCP § 386.

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**COMMENT:** While GRCP Rule 25 covers Interpleaders, this section provides the substantive basis for such actions, and for additional actions of a similar sort. Therefore, it has not been replaced by the GRCP.

**NOTE:** CCP § 387, Intervention, has been replaced by GRCP Rules 14 and 24.

**§ 12115. Associates may be Sued by Name of Association.**

When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, and the individual property of the party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability.

**SOURCE:** CCP § 388.

**NOTE:** CCP § 389, *Court may order Amended Pleading*, has been replaced by GRCP Rule 15.

**§ 12116. Exemplary Damages in Malpractice Cases.**

Any exemplary damages awarded to a client in a tort suit based on health care or professional services rendered or which should have been rendered by a health professional or health care institution to a patient shall be placed in a special fund that may be expended at the discretion of the administrator, Guam Memorial Hospital, for the improvement of medical services within the territory of Guam.

**SOURCE:** Added by P.L. 13-116:5 as CCP § 390.

**COMMENT:** This is a section unique to Guam, but was added intentionally by the Legislature as part of an act relative to malpractice suits against health care professionals. The Compiler has added the word "exemplary" after "any" at the beginning of the first sentence of this Section. The title of this Section, as enacted, indicates that only exemplary damages are to be placed in this separate fund. However, the wording of this Section indicates that "any damages" received in tort actions of the type described are to be placed in the special fund. It is inconceivable that the Legislature intended to deprive a plaintiff of all recovery in malpractice actions. Even if this were the intent, the title of this Section indicates a different intent.

**§ 12117. Officer or Agent Who Assists Violation.**

Any person, who either as a director, officer, or agent of any firm or corporation or as an agent of any person violating the provisions of 9 GCA Chapter 69, 5 GCA Chapter 32, or any other law; knowingly aids or assists, directly or indirectly, in such violation, knowing that the firm, corporation,

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or person is violating a law, is responsible therefor equally with the firm, corporation or person in any civil case.

**SOURCE:** CCP § 391 added by P.L. 21-18.

**COMMENT:** This addition is part of an act to create an anti-trust law and to strengthen the Attorney General's consumer protection powers.

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