

6 GCA EVIDENCE  
DIV. 2 PRINCIPLES OF EVIDENCE  
CH. 8 THE EFFECT OF EVIDENCE

**CHAPTER 8**  
**THE EFFECT OF EVIDENCE**

- Article 1. General Effect of Evidence.
- Article 2. Effect of Evidence in Particular Cases.
- Article 3. Proceedings to Perpetuate Testimony.

**ARTICLE 1**  
**GENERAL EFFECT OF EVIDENCE**

§ 8101. Effect of Evidence; What Judges are to Consider.

**§ 8101. Effect of Evidence; What Judges are to Consider.**

The judges or referees or juries are the judges of the effect or value of evidence addressed to them, except when it is declared by law to be conclusive. In so weighing the evidence, they shall consider:

1. That their power in judging the effect of evidence is not arbitrary, but to be exercised with legal discretion, and in subordination to the rules of evidence;

2. That they are not bound to decide in conformity with the declarations of any number of witnesses, which do not produce conviction in their minds, against a lesser number or against a presumption or other evidence satisfying their minds;

3. That a witness who fails in one part of his testimony may be distrusted in others;

4. That the testimony of an accomplice ought to be viewed with distrust, and the evidence of the oral admissions of a party with caution;

5. That in civil cases, the affirmative of the issue must be proved, and when the evidence is contradictory, the decision must be made according to the preponderance of the evidence, that in criminal cases guilt must be established beyond reasonable doubt;

6. That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

7. That if weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the

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power of the party, the evidence offered should be viewed with distrust.

**SOURCE:** CCP § 2061.

**CROSS-REFERENCES:** 8 GCA 90.23 - reasonable doubt defined. 8 GCA 90.21 - specific standards required for conviction of certain crimes.

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**ARTICLE 2**  
**EFFECT OF EVIDENCE IN PARTICULAR CASES.**

- § 8201. An Offer Equivalent to Payment.
- § 8202. Whoever Pays Entitled To Receipt.
- § 8203. Objections To Tender Must Be Specified.
- § 8204. Rules For Construing Land Descriptions.
- § 8205. Compromise Offer of No Avail.
- § 8207. Certain Evidence of Criminal Sexual Conduct.

**§ 8201. An Offer Equivalent to Payment.**

An offer in writing to pay a particular sum of money, or deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument or property.

**SOURCE:** CCP § 2074.

**§ 8202. Whoever Pays Entitled To Receipt.**

Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

**SOURCE:** CCP § 2075.

**§ 8203. Objections To Tender Must Be Specified.**

The person to whom a tender is made must, at the time, specify any objection he may have to the money, instrument or property, or he must be deemed to have waived it, and if the objection be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms or kind which he requires, or be precluded from objections afterward.

**SOURCE:** CCP § 2076.

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**CROSS-REFERENCES:** Compare 13 GCA § 2511 (UCC).

**§ 8204. Rules For Construing Land Descriptions.**

The following are the rules for construing the descriptive part of a conveyance of real property, when the construction is doubtful and there are no other sufficient circumstances to determine it:

1. Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown or false, does not frustrate the conveyance, but it is to be construed by the first mentioned particulars.

2. When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles or surfaces, the boundaries or monuments are paramount.

3. Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces, and that of lines paramount to both.

4. When a road, or the stream of water not navigable, is the boundary, the right of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or thread of stream is held under another title.

5. When a road or stream of water is contained within the boundaries of the land in question, the rights of the grantor to the road or to the land underneath the stream of water are included in the conveyance, except where the road or land under the stream is held under another title.

6. When tide water is the boundary, the rights of the grantor to ordinary high-water mark are included in the conveyance.

7. When the description refers to a map, and that reference is inconsistent with other particulars, it controls them if it appears that the parties acted with reference to the map, otherwise the map is subordinate to other definite and certain particulars.

**SOURCE:** CCP § 2077 modified.

**COMMENT:** See Attorney General Opinion CV80-2-1212 (2-25-80). This Opinion determined that Guam law in existence as of that time did not define the rights of private owners vs. the Government concerning land that runs under a stream which is non-navigable. After examining case law, the Attorney General determined that the owner of such land is the person whose land encompasses the course of the stream.

Compare 21 GCA § 1202 and 21 GCA § 9202 of the Civil Code relative to ownership under navigable streams and adjacent to tidal waters. See also 21 GCA §

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64105 confirming government ownership of land below the high-water or high-tide level. .

This Section was used for defining land questions because it was amended prior to the codification of Title 21 of this Code as the place for land issues. Note that all of this Title 6 was a positive enactment by the Guam Legislature..

**§ 8205. Compromise Offer of No Avail.**

An offer of compromise is not an admission that anything is due.

**SOURCE:** CCP § 2078.

**§ 8206. In Divorce Admission Not Sufficient.**

In an action for divorce, on the ground of adultery, a confession of adultery, whether in or out of the pleading is not of itself sufficient to justify a judgment of divorce.

**SOURCE:** CCP § 2079.

**CROSS-REFERENCES:** See 19 GCA regarding Marriage and Divorce.

**§ 8207. Certain Evidence of Criminal Sexual Conduct.**

(a) Notwithstanding any other provision of law, reputation or opinion evidence of a person's past sexual behavior is not admissible in any trial if an issue in such trial is whether such person was a victim of criminal sexual conduct.

(b) Notwithstanding any other provision of law, evidence of specific instances of a person's past sexual conduct is not admissible in any trial if an issue in such trial is whether such person was a victim of criminal sexual conduct, except that otherwise admissible evidence of specific instances of such conduct is admissible in such trial:

1. If such evidence:

i. is evidence of sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of pregnancy, disease, semen or injury; or

ii. is of past sexual behavior with the accused and is offered by the accused upon issue of whether the alleged victim consented to the sexual behavior with respect to which criminal sexual conduct is alleged; and

2. If the requirements contained in subsection (c) are satisfied.

(c) (1) If the person accused of criminal sexual conduct intends to offer under subsection (b) of this Section, evidence of specific instances of

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the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen (15) days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. Any motion made under this paragraph shall be served on all other parties and on the alleged victim if not a party.

(2) The motion described in paragraph (1) of this subsection shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subsection (b)(1), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the alleged victim and offer relevant evidence. If the relevance of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in paragraph (c)(2), that the evidence which the accused seeks to offer is relevant and the probative value of such evidence substantially outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) For purposes of this Section, the term past sexual behavior means sexual behavior other than the sexual behavior with respect to which criminal sexual conduct is alleged.

**SOURCE:** CCP § 2080 added by P.L. 15-60.

**COMMENT:** The Legislature adopted a Section 6 to P.L. 15-60 which stated that the Judicial Council does not have the power to prescribe any rule of evidence abolishing or abridging the requirement set forth in CCP § 2080. The Compiler of Laws is likewise required to note the provision of Section 6 in a footnote to this Section.

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**ARTICLE 3**

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**PROCEEDINGS TO PERPETUATE TESTIMONY**

- § 8301. Evidence May Be Perpetuated.
- § 8302. Manner of Application for Order.
- § 8303. Taking Depositions.
- § 8304. Manner of Taking.
- § 8305. Papers Prima Facie Evidence.
- § 8306. When Deposition Used.

**§ 8301. Evidence May Be Perpetuated.**

The testimony of a witness may be taken and perpetuated as provided in this Article.

**SOURCE:** CCP § 2083.

**§ 8302. Manner of Application for Order.**

The applicant must produce to a judge of the Superior Court a petition, verified by the oath of the applicant, stating:

1. That the applicant expects to be a party to an action in a court of Guam and, in such case, the names of the persons whom he expects will be adverse parties; or
2. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship or any other matter which may hereafter be material to establish, though no suit may at the time be anticipated or, if anticipated, he may not know the parties in such suit; and
3. The name of the witness to be examined, his place of residence and a general outline of the facts expected to be proved.

A judge to whom such petition is presented must make an order allowing the examination, and designate himself or another judge or the clerk of the court before whom the same must be taken, and prescribe the notice to be given, which notice, if the parties expectant are known and reside in Guam, must be personally served.

**SOURCE:** CCP § 2084 modified.

**COMMENT:** This Article covers the taking of testimony before an action is commenced, or even anticipated, or when no action will be taken. Therefore matters in this Article are not covered in the Rules of Civil Procedure nor in Division 1.

**§ 8303. Taking Depositions.**

The judge or the person appointed by the judge to take the deposition is authorized, on receiving a copy of the order of the judge, and of the notice

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prescribed in 8302, with proof of its personal service, to take the depositions of the witness named in the order, or if more than one witness is thus named, of such of them as appear before him, at the time designated, and the taking of the same may be continued from time to time.

**SOURCE:** CCP § 2085.

**§ 8304. Manner of Taking.**

The manner of taking depositions under this Article shall be same as prescribed in the Guam Rules of Civil Procedure for taking of a witness' testimony by deposition in a civil action.

**SOURCE:** New Section. Contrast CCP § 2086.

**COMMENT:** This new Section conforms to the Rules of Civil Procedure and with the deletion from this Title of sections defining depositions and the manner of their taking.

**§ 8305. Papers Prima Facie Evidence.**

The petition and order, and papers filed by the judge, or a certified copy thereof, are prima facie evidence of the facts stated therein to show compliance with the provisions of this Article.

**SOURCE:** CCP § 2087.

**§ 8306. When Deposition Used.**

If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein in may be material to establish the facts which such depositions prove, or tend to prove, the depositions may be used at such trial in the same manner as other depositions are used pursuant to the Guam Rules of Civil Procedure.

**SOURCE:** CCP § 2088 modified to reflect the GRCP.

**NOTE:** Sections 2110-2120, Civil Arbitration, have been added to the Evidence part of the Code of Civil Procedure. Arbitration is more a matter of procedure than of evidence, and, therefore, these sections are included in Title 7, GCA - Civil Procedure

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