

Admissibility of Evidence

Four Prong Test for Admissibility

To be admissible, evidence must:

1. Relevant
2. Material
3. Authentic
4. Overcome Objections

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RELEVANCE

TRE 401 – Test for Relevant Evidence

- a. It has any tendency to make a fact more or less probable than it would be without the evidence.
- b. The fact is of consequence in determining the action.

TRE 402 – General Admissibility of Relevant Evidence

Evidence is generally admissible unless prohibited by statutes or rules.
Irrelevant evidence is not admissible.

Exclusion of Relevant Evidence Under TRE 403

TRE 403 – Excluding Relevant Evidence for Prejudice, Confusion, or Other Reasons

The Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following:

- * Unfair prejudice
- * Confusing the issues
- * Misleading the jury
- * Undue delay
- * Needlessly presenting cumulative evidence

Other Relevance Rules

TRE 404 – Character Evidence; Crimes or Other Acts

TRE 405 – Methods of Proving Character

TRE 406 – Habit; Routine Practice

MATERIALITY

This requirement is found in TRE 401.

Evidence is relevant if:

(b) The fact is of consequence in determining the action.

Example: Mary is testifying about John. John has brown eyes.

Issue: John saw an accident.

Issue: John committed a crime.

AUTHENTICITY

To be “authentic”, there must be sufficient proof that the evidence being offered is what it is claimed to be.

Generally, two forms of evidence: Testimony and Exhibits (documents and tangible objects).

For testimony to be authentic, the witness testifying:

1. Must have personal knowledge (TRE 602)
(Expert Exception – TRE 703)
2. Be under oath or affirmation (TRE 603)

For exhibits to be authentic, see TRE 901 and 902.

Also use of predicates (foundations) under other rules and common law.

OVERCOMING OBJECTIONS

Objections can be to the form of the question. If sustained, questioner is allowed to rephrase the question in a non-objectionable form.

Objections can be to the admissibility of evidence. If sustained, evidence is not admitted.

Doing a case analysis can identify potential objections to admissibility so you can prepare to make them (or respond to them) before trial.

See Generally Accepted Trial Objections list.