

ADMISSIBILITY OF EXHIBITS
FOUNDATIONS / PREDICATES

TYPE OF EVIDENCE	FOUNDATION REQUIREMENTS	QUESTIONS TO LAY FOUNDATION
Actual object (distinguishing mark)	<ul style="list-style-type: none"> • Witness has personal knowledge of the object. • Witness can identify the object by its distinguishing mark. • Witness can testify that the object is in the same or substantially the same condition as it was in the last time he saw the exhibit. 	<p>Example: Officer takes gun from defendant at the crime scene.</p> <p>Q: I am showing you what has been marked as Exhibit 1. Do you recognize it?</p> <p>Q: When is the first time you saw Exhibit 1?</p> <p>Q: How do you recognize Exhibit 1 as the gun you took from the defendant?</p> <p>Q: Is Exhibit 1 in the same or substantially the same condition as it was when you took it from the defendant at the crime scene?</p>
Actual object (no distinguishing mark)	<p>Chain of Custody (continuous, exclusive possession) Object is in same condition as the last time witness saw it.</p> <p>It may take more than one witness to establish that the object is what it purports to be and that it was not tampered with.</p>	<p>Example: Drug inside baggie (looks like any other drug). First witness must testify that the exhibit was continuously in his possession and was not tampered with until he gives it to another person. Then that person must testify about continuous and exclusive possession, and so on until 100% of the time of possession is accounted for. (See Mauet, pp. 288-296)</p>
Object (not actual one)	<p>Object offered to illustrate what the actual object looked like.</p> <p>Illustrative object must fairly and accurately represent the actual object and the illustrative exhibit helps the jury understand the actual object. Illustrative exhibit if admitted does not go back to jury room.</p>	<p>Example: Victim testifies that defendant threatened him with a knife, but he cannot identify the actual knife. He can testify about what the knife looked like, and a similar knife can be admitted if the witness testifies that the similar knife fairly and accurately represents the knife he was threatened with.</p>
Photographs / Diagrams	<ul style="list-style-type: none"> • Witness has personal knowledge of the subject in the photo. • Photograph fairly and accurately depicts the subject to the time witness saw the subject. <p>Note: If diagram is created in courtroom and contains testimony, it will not go back to jury room because it is cumulative (jury heard it and can read it on the diagram).</p>	<p>Example: Witness sees accident at intersection on 1/16/2016.</p> <p>Q: Do you recognize Exhibit 1?</p> <p>Q: How do you recognize Exhibit 1?</p> <p>Q: Are you familiar with how the intersection looked on 1/16/2016?</p> <p>Q: Does Exhibit 1 fairly and accurately depict how the intersection looked on 1/16/2016?</p>

Business records	<p>Four requirements:</p> <ul style="list-style-type: none"> • It was the regular practice of the business to make the record. • The record is kept in the regular course of business. • The record was made at or near the time of the event or condition recorded occurred. • It was made by a person with knowledge of the facts or was made from information transmitted by a person with knowledge of the facts. <p><i>Unless circumstances indicate lack of trustworthiness.</i></p>	See TRE 803(6)
Public records	<p>Four requirements:</p> <ul style="list-style-type: none"> • It must be the record of a public office or agency. • It sets out the activities of the office or agency. • Matters observed pursuant to duty imposed by law for which there is a duty to report (there is criminal case exception). • Factual findings resulting from an investigation authorized by law. <p><i>Unless circumstances indicate lack of trustworthiness.</i></p>	See TRE 803(8)
Writings/Instruments (with legal significance)	<p>Witness must have personal knowledge that writing was written or signed by the person document purports to be written or signed by.</p> <p>Witness can have observed the writing or signing, or may recognize the handwriting on the document.</p>	Examples: Contracts, checks, promissory notes, wills (These documents are not hearsay.)
Letters / Other written communications (with no independent legal significance)	<p>Witness must have personal knowledge that writing was written or signed by the person document purports to be written or signed by.</p> <p>Witness can have observed the writing or signing, or may recognize the handwriting on the document.</p>	Even if foundation is laid, documents may be subject to hearsay objection.

NOTE: Even if proper foundation is laid to show that the exhibit is authentic, objections can be made to admissibility based on hearsay, relevance, etc.