

Which of the following items of evidence is LEAST likely to be admitted without a supporting witness?

- A. In a case involving contaminated food, a can label purporting to identify the canner as the defendant, a food processing company.
- B. In a case involving injury to a pedestrian, a pamphlet on stopping distances issued by a state's highway department.
- C. In a defamation case, a document purporting to be a memorandum from the defendant company's president to "All Personnel," printed on the company letterhead.
- D. In a libel action, a copy of a newspaper purporting to be published by the defendant, a newspaper publishing company.

Explanation:

Self-authenticating evidence

(FRE 902)

Public documents with official's signature & certification by second official or seal

Certified copies of public records & records of regularly conducted activities

Newspapers, periodicals & official publications

Documents with trade inscription

Acknowledged documents

Commercial paper with signature & related documents

FRE = Federal Rule of Evidence.

Tangible evidence must be **authenticated** before it can be **admitted** into evidence. This requires that the proponent produce extrinsic evidence—ie, evidence outside the document—to support a finding that the thing is what the proponent claims it to be. However, some tangible evidence is **self-authenticating** and therefore admissible without extrinsic evidence of authenticity. This includes:

trade inscriptions (eg, a can label) affixed in the course of business that indicate ownership (**Choice A**)

official publications issued by a public authority (eg, a pamphlet issued by a state's highway department) (**Choice B**)

printed materials purporting to be a **newspaper or periodical** (**Choice D**)

In contrast, a purported memorandum from a company's president printed on company letterhead is *not* self-authenticating. That is because company letterhead is held by many employees (not just the president) and can easily be copied or stolen. Therefore, the memorandum is *least* likely to be admitted without a supporting witness or other extrinsic evidence of authenticity (eg, an acknowledgement or seal attesting that the memorandum was from the president).

Educational objective:

Some tangible evidence is self-authenticating and can be admitted without extrinsic evidence of authenticity—eg, trade inscriptions affixed in the course of business that indicate ownership, official publications issued by a public authority, newspapers, and periodicals.

References

Fed. R. Evid. 902 (self-authenticating evidence).

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