

4.05. Conditional Relevance (Evidence Offered “Subject to Connection”)

When the admissibility of offered evidence depends on the introduction of further evidence to fulfill the requirements of admissibility, the court may admit the offered evidence after, or subject to, receipt of that further evidence. Upon failure of a party to fulfill the requirements of further evidence, the offered evidence must be struck and the jury instructed to disregard it, or, if undue prejudice has resulted, the court may grant a mistrial.

Note

This rule governs the situation where the relevance of offered evidence depends upon the existence of an additional fact(s). It is derived from Court of Appeals precedent that in such a situation the court may admit the evidence “subject to connection”—later proof of that additional fact(s)—or require before admitting the evidence proof of that additional fact(s). (See *e.g. People v Caban*, 5 NY3d 143, 151 [2005]; *Cover v Cohen*, 61 NY2d 261, 269 n 2 [1984].) The order of proof is within the discretion of the court. (See *e.g. Caban*, 5 NY3d at 151.) However, the Court has cautioned that where the evidence is highly prejudicial in content, the “better practice would be for relevance to be established prior to admission, out of the presence of the jury.” (*Cover*, 61 NY2d at 269 n 2.) The second sentence sets forth judicial options when the promised connection does not occur. (See *People v Stone*, 29 NY3d 166, 171 [2017]; *United States Vinegar Co. v Schlegel*, 143 NY 537, 544 [1894].)