

8.13. Declaration of Future Intent

(1) Where an out-of-court statement of a declarant describes the declarant's then-existing intent and is offered to prove subsequent conduct, it is admissible as follows:

(a) A declarant's out-of-court statement of an intention to engage in particular conduct is admissible to prove that the declarant engaged in that conduct, provided there is independent evidence of the statement's reliability, i.e., a showing of circumstances which all but rule out a motive to falsify, and independent evidence that the declarant was at least likely to have engaged in that conduct.

(b) Where the statement also indicates an intention to engage in particular conduct with another person, such statement is admissible to prove that such other person engaged, in fact, in the conduct:

(i) if the declarant is unavailable;

(ii) if the statement of the declarant's intent unambiguously contemplated some future action by the declarant, either jointly with the non-declarant or which required the non-declarant's cooperation for its accomplishment;

(iii) to the extent that the declaration expressly or impliedly refers to a prior understanding or arrangement with the non-declarant, it must be inferable under the circumstances that the understanding or arrangement occurred in the recent past and that the declarant was a party to it or had competent knowledge of it; and

(iv) if there is independent evidence of reliability, i.e., a showing of circumstances which all but rule out a motive to falsify, and evidence that the intended future acts were at least likely to have actually taken place.

Note

This rule addresses specifically the situation where a statement of the declarant's then-existing intent, which is admissible under the exception set forth in Guide to New York Evidence rule 8.39, is offered as proof of subsequent conduct. It encompasses the doctrine as set forth in *Mutual Life Ins. Co. v Hillmon* (145 US 285 [1892]). The United States Supreme Court noted in *Hillmon* that a declarant's statements of current intent were admissible to show that the intended act occurred.

Subdivision (1) (a) is derived from several Court of Appeals decisions which followed *Hillmon*. In these decisions, the Court held that where the statement of current intent by the declarant is offered as proof that the declarant performed the intended act, the statement is admissible for that purpose. (See e.g. *Crawford v Nilan*, 289 NY 444, 448-449 [1943]; *People v Conklin*, 175 NY 333, 342 [1903].) The foundation for admissibility is derived from *People v James* (93 NY2d 620, 634-635 [1999]).

Subdivision (1) (b) is taken verbatim from *People v James* (93 NY2d at 634-635). Following dictum in *Hillmon*, the Court of Appeals held a declarant's statement of intent to participate in conduct with another person is admissible to prove that the other person engaged in the intended conduct, provided the four conditions in the rule were satisfied.