

2.01 Judicial Notice of Facts

(1) Judicial notice of a fact as used in this rule means a court's declaration of the existence of a fact normally decided by the trier of fact, without requiring proof of that fact.

(2) Facts that may be judicially noticed are: (a) facts of such common knowledge within the community where the court sits that they cannot reasonably be the subject of dispute; (b) facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned; and (c) certain facts contained in undisputed records of a court, such as prior orders or kindred documents, which would not otherwise be inadmissible. A court may take judicial notice of a fact, whether requested or not.

(3) A party is entitled to an opportunity to be heard on whether a court should take judicial notice. In the absence of prior notification, a party shall, upon request, be given an opportunity to be heard after judicial notice has been taken.

(4) Judicial notice may be taken at any stage of a hearing, trial, or other proceeding.

(5) In determining the propriety of taking judicial notice of a fact, any source of relevant information may be consulted or used, whether or not furnished by a party, and the rules of evidence shall not apply except for privilege.

Note

The law governing judicial notice of facts has been developed exclusively under the common law. This rule collates the common law.

Subdivision (1). This subdivision governs only judicial notice of fact. Judicial notice of law is governed by rule 2.02.

The definition of judicial notice of fact is derived from *Wood v North W. Ins. Co.* (46 NY 421, 426 [1871] [“judicial notice comes in the place of proof. It is to be exercised by a tribunal, which has the power to pass upon the facts”]).

In a criminal trial, a trial court may not direct a verdict of guilty (*People v Green*, 35 NY2d 437, 442 [1974]; *People v Walker*, 198 NY 329, 334 [1910]; see also *Sandstrom v Montana*, 442 US 511, 516 n 5 [1979]). Therefore, a court may not employ judicial notice of a fact or facts to accomplish that result (*cf. People v McKenzie*, 67 NY2d 695 [1986] [statutory presumptions in criminal cases are permissive]).

Subdivision (2). This subdivision sets forth three categories of facts, recognized by the Court of Appeals, that may be judicially noticed.

Subdivision (2) (a) is derived from *People v Snyder* (41 NY 397, 398 [1869] [“courts will generally take notice of whatever ought to be generally known within the limits of their jurisdiction”]) and *Hunter v New York, Ontario & W. R.R. Co.* (116 NY 615, 621 [1889] [facts “which are generally known”]). (See also *People v De Lago*, 16 NY2d 289, 292 [1965] [in issuing a “no-knock” search warrant, “the court could take judicial notice that contraband (constituting of gambling paraphernalia) is easily secreted or destroyed if persons unlawfully in the possession thereof are notified in advance that the premises are about to be searched”].)

Subdivision (2) (b) is derived from several Court of Appeals decisions, including *People v Jones* (73 NY2d 427, 431 [1989] [internal quotation marks omitted] [“facts which are capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy”]); and *People v Schreier* (22 NY3d 494, 498 [2014] [“we can take judicial notice that sunrise was at 7:41 a.m. that day (see United States Naval Observatory, Astronomical Applications Department, Complete Sun and Moon Data for One Day, Form A - U.S. Cities or Towns, Dec. 24, 2008, Rochester, New York, http://aa.usno.navy.mil/data/docs/RS_OneDay.php”]).

Subdivision (2) (c) is derived from several cases. See *Matter of Ordway* (196 NY 95, 97 [1909] [“We are judicially aware that the claim of the plaintiff in this action was contested by Mrs. Ordway, both individually and as administratrix, until it was finally determined adversely to her in this court”]); *Long v State of New York* (7 NY3d 269, 275 [2006] [“Taking judicial notice of the court records demonstrating that the indictment was not dismissed until June 28, 2000, . . . we are satisfied that claimant sustained the timeliness of his claim”]); and *Ptasznik v Schultz* (247 AD2d 197, 199 [2d Dept 1998]).

Care must be taken in deciding whether an item in a court file is subject to judicial notice. As *Ptasznik* (at 199) explains,

“In some instances, and under certain circumstances, undisputed portions of court files or official records, such as prior orders or kindred documents, may be judicially noticed. No authoritative case has ever held, however, that an item may be considered and weighed by the finder of fact merely because the item, however unauthenticated and unreliable it may be, happened to repose in the court’s file. [Items] that are otherwise inadmissible are not rendered admissible merely because they happen to be part of the paperwork filed with the court. . . .

“Court files are often replete with letters, affidavits, legal briefs, privileged or confidential data, in camera materials, fingerprint records, probation reports, as well as depositions that may contain unredacted gossip and all manner of hearsay and opinion” (citations omitted).

(See *Sleasman v Sherwood*, 212 AD2d 868, 869 [3d Dept 1995] [the court did not err in refusing to take judicial notice of an administrative agency’s records, especially those involving a permit the agency issued that “contained [the agency’s] findings of fact”].)

Examples of the proper application of judicial notice, as set forth in *Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.* (61 AD3d 13, 19 - 20 [2d Dept 2009]), include: census data; agency policies; certificates of corporate dissolution maintained by the Secretary of State; resignation of public officials; legislative proceedings; legislative journals; the consumer price index; the location of real property recorded with a clerk; death certificates maintained by the Department of Health; “undisputed” court records and files; and material derived from official government websites.

Subdivision (3). The rule set forth in this subdivision is derived from *Hunter* (116 NY at 621 [“Courts are not bound to take judicial notice of matters of fact. Whether they will do so or not depends on the nature of the subject, the issue involved and the apparent justice of the case”]). While the Court of Appeals has not addressed the issue of whether a court may take judicial notice sua sponte, such action would appear to be within the court’s discretion, provided the parties are given notice and an opportunity to respond, as set forth in subdivision (4). (See *Matter of Justice v King*, 60 AD3d 1452, 1453 [4th Dept 2009].)

An appellate court, as well as a trial court, may take judicial notice of some official documents, albeit “it is simply improper to make wholesale presentation of factual data through the medium of addenda to a brief” (*Board of Educ. of Belmont Cent. School Dist. v Gootnick*, 49 NY2d 683, 687 [1980]).

Subdivision (4). Notice as to the taking of judicial notice, as well as the opportunity to be heard on the issue, is constitutionally required. (See *e.g. Garner v Louisiana*, 368 US 157, 173 [1961]; *Matter of Chasalow v Board of Assessors of*

County of Nassau, 176 AD2d 800, 804 [2d Dept 1991] [“Should the Supreme Court find it appropriate to take judicial notice . . . , fundamental fairness dictates that it should provide the parties with advance notice of its intention to do so”].)

Subdivision (5). The rule set forth in this subdivision is derived from *Hunter* (116 NY at 621), which recognizes that the circumstances under which the taking of judicial notice may be appropriate are not limited to any particular stage of the proceeding. (See *Matter of Albano v Kirby*, 36 NY2d 526, 532 [1975].)

Subdivision (6). The rule set forth in this subdivision is derived from *Hunter* (116 NY at 621 - 624). A court may not take judicial notice of a fact based solely upon the court’s own personal knowledge. (See *People v Dow*, 3 AD2d 979, 979 [4th Dept 1957] [“There is a real distinction between a judge’s personal knowledge as a private person and his knowledge as a judge. As a judge he may have to ignore what he knows as an individual observer. . . . It is sometimes difficult to distinguish between knowledge of a fact by observation and knowledge of a fact by notoriety, that is, by common knowledge, but the distinction is an important one, for in the former case a judge may not take judicial notice of the fact, whereas in the latter he may” (citation omitted)].)