GUIDE TO NY EVIDENCE

Article 2 Judicial Notice

Table of Contents

2.01 Judicial Notice of Facts[1]

(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.

(3) A court may take judicial notice of a fact, whether requested or not.

(4) 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.

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

(6) In determining the propriety of taking judicial notice of a fact pursuant to subdivision two, 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.

(7) A judge may not take judicial notice of a fact based solely upon the judge's own personal knowledge.

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 Guide to New York Evidence rule 2.03.

The definition of judicial notice of fact is derived from *Wood v North W. Ins. Co.* (46 NY 421, 426 [1871] ["(J)udicial 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 510, 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, which 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"]; s*ee 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 (consisting 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] ["facts which are capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy" (internal quotation marks omitted)]) and *People v Schreier* (22 NY3d 494, 498 n [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, 870 [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 a proceeding (*see Matter of Albano v Kirby*, 36 NY2d 526, 532 [1975] [taking judicial notice on appeal of a memorandum of a state department]).

Subdivision (6). The rule set forth in this subdivision is derived from *Hunter* (116 NY at 621 ["(J)udicial notice may be taken of facts which are a part of the general knowledge of the country, and which are generally known and have been duly authenticated in repositories of facts open to all, and especially so of facts of official, scientific or historical character"]).

Subdivision (7). The rule set forth in this subdivision is derived from *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)]).

---

[1] In December 2022, subdivision (5) was amended to add "appeal"; subdivision (6) was amended to add the phrase "pursuant to subdivision two"; and subdivision (7) was added.

2.03. Judicial Notice of Law (CPLR 4511) [1]

(a) When judicial notice shall be taken without request.

Every court shall take judicial notice without request of the common law, constitutions and public statutes of the United States and of every state, territory and jurisdiction of the United States and of the official compilation of codes, rules and regulations of the state except those that relate solely to the organization or internal management of an agency of the state and of all local laws and county acts.

(b) When judicial notice may be taken without request; when it shall be taken on request.

Every court may take judicial notice without request of private acts and resolutions of the congress of the United States and of the legislature of the state; ordinances and regulations of officers, agencies or governmental subdivisions of the state or of the United States; and the laws of foreign countries or their political subdivisions. Judicial notice shall be taken of matters specified in this subdivision if a party requests it, furnishes the court sufficient information to enable it to comply with the request, and has given each adverse party notice of his intention to request it. Notice shall be given in the pleadings or prior to the presentation of any evidence at the trial, but a court may require or permit other notice.

(c) Determination by court; review as matter of law.

Whether a matter is judicially noticed or proof is taken, every matter specified in this section shall be determined by the judge or referee and included in his or her findings or charged to the jury. Such findings or charge shall be subject to review on appeal as a finding or charge on a matter of law.

(d) Evidence to be received on matter to be judicially noticed.

In considering whether a matter of law should be judicially noticed and in determining the matter of law to be judicially noticed, the court may consider any testimony, document, information or argument on the subject, whether offered by a party or discovered through its own research.

Whether or not judicial notice is taken, a printed copy of a statute or other written law or a proclamation, edict, decree or ordinance by an executive contained in a book or publication, purporting to have been published by a government or commonly admitted as evidence of the existing law in the judicial tribunals of the jurisdiction where it is in force, is prima facie evidence of that law and the unwritten or common law of a jurisdiction may be proved by witnesses or printed reports of cases of the courts of the jurisdiction.

Note

Rule 2.03 restates CPLR 4511. Its provisions are fairly self-explanatory. (*See generally* Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 4511.)

Two Court of Appeals decisions interpreting CPLR 4511 are especially noteworthy.

In *Hamilton v Miller* (23 NY3d 592 [2014]), the Court held that, for purposes of subdivision (a)'s reference to "public statutes of the United States," a prefatory statute containing congressional fact-findings about the dangers of lead-based paint to children is not such a "public statute."

In *Edwards v Erie Coach Lines Co.* (17 NY3d 306 [2011]), the Court held that subdivision (b) permits a court to take judicial notice of foreign law notwithstanding the failure of the party seeking judicial notice to comply with

CPLR 3016's requirement that foreign law be pleaded by the party in the relevant pleading.

---

[1] Effective December 28, 2018, CPLR 4511 was amended by the Laws of 2018, c. 516, to add a subdivision (c) and to relabel the remaining subdivisions. This rule was then amended accordingly. The added subdivision authorized "judicial notice of an image, map, location, distance, calculation, or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool." Thereafter, however, the Legislature decided that admissibility of those items should not be in CPLR 4511and subdivision (c) was deleted and its contents was enacted in a separate section, CPLR 4532-b, by the Laws of 2019, c. 223, signed on August 30, 2019, although effective on the same day (December 28, 2018) as its predecessor. This rule was then again revised to delete subdivision (c) and to relabel the remaining subdivisions.

2.05 Judicial Notice of Map Information (CPLR 4532-b)

[1] An image, map, location, distance, calculation, or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool, is admissible in evidence if such image, map, location, distance, calculation, or other information indicates the date such material was created and subject to a challenge that the image, map, location, distance, calculation, or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool does not fairly and accurately portray that which it is being offered to prove.

[2] A party intending to offer such image or information in evidence at a trial or hearing shall, at least thirty days before the trial or hearing, give notice of such intent, providing a copy or specifying the internet address at which such image or information may be inspected. No later than ten days before the trial or hearing, or later for good cause shown, a party upon whom such notice is served may object to the request to admit into evidence such image or information, stating the grounds for the objection.

[3] Unless objection is made pursuant to this [rule], the court shall take judicial notice and admit into evidence such image, map, location, distance, calculation or other information.

Note

This rule restates CPLR 4532-b, except for the addition of subdivision numbers and the substitution of "rule" for "subdivision" in subdivision (3). Also, because the statute was enacted without a section title, a title has been added.

CPLR 4532-b was enacted initially as subdivision (c) of CPLR 4511 (Judicial Notice of Law). (L 2018, ch 516 [eff Dec. 28, 2018]; Guide to NY Evid rule 2.03.) The following year, however, the legislature deleted subdivision (c) and

reenacted it with modifications in CPLR 4532-b. (L 2019, ch 223 [signed on Aug. 30, 2019, although effective on the same day (Dec. 28, 2018) as its predecessor].)

This rule, as specified in CPLR 4532-b, authorizes a trial court to take "judicial notice" of an "image, map, location, distance, calculation, or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool" that bears the date it was created, unless it "does not fairly and accurately portray that which it is being offered to prove."

As set forth in subdivision (2) of this rule, CPLR 4532-b provides that a party intending to introduce an item specified in subdivision (1) "shall" notify the opposing party of that intent, and the opposing party "may" in turn register an objection. In the absence of actual prejudice, the time periods a party "shall" adhere to may be ruled "directory, not mandatory," and thereby subject to modification by the trial court. (*Cf. Matter of Hendricks v Annucci*, 179 AD3d 1232, 1233 [3d Dept 2020]; *People v Coleman*, 58 AD2d 968 [4th Dept 1977]; *Matter of Moskal v State of N.Y., Executive Dept., Div. of Human Rights*, 36 AD2d 46, 49 [4th Dept 1971].) Absent an objection, the trial court "shall" take "judicial notice" of the proffered item.